

Frequently Asked Questions

Paycheck Protection Program

Loan Forgiveness



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Additional guidance from the Small Business Administration and the Treasury Department to address Paycheck Protection Program (PPP) loan forgiveness is expected. All answers herein are based on the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the guidance that has been provided by the SBA and the Treasury Department as of the date noted above and are subject to change as additional guidance is issued.

You can access the SBA and Treasury guidance [here](#) and PDFs of the applicable documents may be found at the following links:

1. [CARES Act](#)
2. [Top-line overview of the paycheck protection loan program](#)
3. [Borrower Fact Sheet](#)
4. [PPP Application](#)
5. [Interim Final Rule](#)
6. [Interim Final Rule – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#)
7. [Frequently Asked Questions](#)

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Defined Terms

The following terms referenced throughout these FAQs have the meanings set forth below:

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act.

“designated PPP expenses” means payroll costs, mortgage interest, rent payments, utility payments and interest on other debt payments (for mortgages, leases, utility contracts, or other debt contracts that were in place as of February 15, 2020).

“eight-week covered period” means the period beginning on the date the PPP loan is first disbursed by the lender and ending eight weeks thereafter.

“forgivable expenses” means (i) payroll costs, (ii) mortgage interest payments, (iii) rent payments, and (iv) utility payments (for mortgage, lease or utility payments, the applicable contracts must have been in place as of February 15, 2020) that are expended by a borrower during the eight-week covered period.¹

“FTE” means full-time equivalent employee and are not specifically defined in the CARES Act or any recent guidance. However, the SBA has previously defined FTE based on a 30-hour work week and employees working less than 30 hours can be combined. For example, if borrower has eight employees working 40 hours a week and fifteen part-time employees working a total of 120 hours a week, the borrower has 16 FTEs ($8 + (120/15) = 16$).

“initial FTE reporting period” means, at borrower’s choice, either (i) the monthly average FTEs for the period between February 15, 2019, and June 30, 2019 (note that seasonal employers must use this time period), or (ii) the monthly average FTEs for the period between January 1, 2020 and February 29, 2020

“loan period” means the period beginning on the date the PPP loan is first disbursed by the lender and ending two years thereafter.

“monthly average FTEs” means the number of FTEs determined by calculating the average number of FTEs per pay period during an applicable month.

“payroll costs” means, with respect to an employee, all of the following:

- a. The following payments, up to \$100,000 annualized rate per employee or partner, (i) salaries; (ii) hourly wages; (iii) commissions; (iv) similar compensation; and (v) any guaranteed payments (or other payments subject to self-employment income) to a partner of an LLC and the partner’s corresponding tax liability associated with such payments;
- b. Cash tips or equivalent;
- c. Payments for vacation, parental or family leave, or sick or medical leave;
- d. Payments for any group health insurance coverage (including employer’s portion of any premiums);
- e. Employer contributions to retirement plans;
- f. Employee’s portion of federal payroll taxes;
- g. Payments for separation or dismissal of employee; and
- h. State and local taxes assessed on compensation.

Payroll costs expressly exclude:

- ix. Cash compensation in excess of \$100,000 per employee or partner on an annual basis;
- x. Employer’s portion of any federal income tax, FICA, non-US employee payroll costs (and other taxes imposed under Sections 21, 22 or 24 of the Internal Revenue Code);
- xi. Qualified medical/sick leave under Section 7001 of the Families First Coronavirus Response Act;
- xii. Compensation to an employee whose principal place of residence is outside the USA;
- xiii. Payments to independent contractors or other 1099s.

“PPP loan” means a paycheck protection program loan provided by a lender under the CARES Act and related SBA guidance under the SBA’s Section 7(a) loan program.

“SBA” means the Small Business Administration of the United States.

¹ Paying interest on other indebtedness is a permitted use of a PPP loan but those payments are not counted towards forgiveness.

Calculating the Forgiveness Amount

1. What conditions are required in order for 100% of a PPP loan to be forgiven?

The full principal amount and any accrued interest² of a PPP loan may be forgiven if the following conditions are met:

- i. All loan proceeds used were for forgivable expenses and at least 75% of the forgivable expenses are used for payroll “costs incurred and payments made”³ over the eight-week covered period;
- ii. There is no reduction in FTEs when comparing the number of FTEs during the eight-week covered period to the initial FTE reporting period, unless restored on or before June 30, 2020; and
- iii. There is no reduction in salaries (or wages) by more than 25% for any FTE that made less than \$100,000 annualized in 2019 when comparing the FTE’s salaries (or wages) during the eight-week covered period to the FTE’s salaries (or wages) during the previous quarter, unless such reduction is restored on or before June 30, 2020.

Interest on other debt payments is included as a designated PPP expense, but those payments do not count towards a borrower’s forgivable expenses.

Example

Assuming no reductions in FTEs or salaries between February 15, 2020 and April 26, 2020, if a borrower acquired a \$100,000 PPP loan, and spent \$100,000 on forgivable expenses during the eight-week covered period and \$75,000 (75%) of those expenditures were for payroll costs and the remaining \$25,000 (25%) were for other forgivable expenses, then the full \$100,000 would be forgiven.

2. What happens to the portion of the PPP loan that is not forgiven?

The unforgiven portion of a PPP loan will continue to accrue interest at 1% and have a maturity date that is two years from the date of the note entered into between the borrower and the lender. In addition, (i) the first interest payments are not due for six months after the date of the note entered into between the borrower and the lender (the CARES Act included a six-month deferral of interest on PPP loans), and (ii) the borrower must spend any remaining loan amount on designated PPP expenses.

Example

Same facts as above but if (i) \$90,000 of the \$100,000 PPP loan was spent on forgivable expenses, and (ii) \$67,500 (75%) of the \$90,000 was spent was on payroll costs, then \$90,000 of the \$100,000 PPP loan would be forgiven. The remaining \$10,000 (plus any interest that accrued during the eight-week covered period) will continue to accrue interest and have a maturity date that is two years from the date of the note.

3. What happens if a borrower spends more than 25% of PPP loan proceeds on forgivable expenses other than payroll costs?⁴

We are expecting additional guidance from the SBA, but, as of now, our reading is that the forgiveness amount would be reduced on a dollar-for-dollar basis so that 75% of the forgivable amount is spent on payroll costs and 25% of the forgivable amount is spent on other forgivable expenses. Any other expenses, whether incurred during the eight-week covered period or after, must still be designated PPP expenses, but would not be forgivable expenses.

Example

Assuming no reduction in FTEs or salaries (or wages), if a borrower spends \$100,000 during the eight-week covered period on forgivable expenses, but only \$70,000 of such amount was on payroll costs, the borrower would not be in compliance with the requirement that at least 75% of the loan proceeds be used for payroll costs. As a result, the amount forgiven would be limited to \$93,333 ($\$70,000 / 75\% = \$93,333$).

2 The CARES Act did not specifically state if any accrued interest may (or may not) be included in the forgivable amount, but the SBA’s interim final rules confirmed that forgiveness may include the full principal amount and any accrued interest.

3 We expect SBA to provide further guidance on when any costs must be incurred and payments made. It is not entirely clear if the costs and payments must both be incurred within the eight-week covered period or only that the payments actually be made during such period.

4 The requirement that 75% of the funds be used for payroll costs arose in the SBA’s first interim final rule. The rule provides that “not more than 25% of the forgivable amount may be attributable to non-payroll costs” and that “at least 75% of the PPP loan proceeds shall be used for payroll costs”.

Loan Forgiveness & FTE Headcount and Salaries

The below calculations and examples are based on the most recent guidance from the SBA, but we are expecting additional information from the SBA in the coming days, which may contradict or supplement the below information.

4. If the borrower reduced FTE headcount or salaries between February 15, 2020 and April 26, 2020, what must it do in order to be eligible for 100% PPP loan forgiveness?

Based on the most recent guidance from the SBA, a borrower may still be eligible to have 100% of its PPP loan forgiven if it laid off or furloughed any FTEs between February 15, 2020 and April 26, 2020, or reduced their salaries during the same period, as long as any reductions are restored to February 15, 2020 levels on or before June 30, 2020.

As of now, there is no guidance on who the borrower must rehire. It is clear the borrower does not have to rehire the exact same individuals it terminated but who it may hire and for what positions is not clear.

Example

If a borrower terminated five FTEs on February 20, 2020, but rehired five FTEs on or before June 30, 2020, then the reduction in forgiveness amount the borrower would be required to take because of the five FTE loss would not be applied and the borrower would receive full forgiveness (assuming all other obligations under the program for purposes of obtaining forgiveness are followed).

5. What happens if the borrower reduced FTE headcount or salaries between February 15, 2020 and April 26, 2020, but does not restore headcount or salaries to 100% of February 15, 2020 levels?

Based on the most recent guidance from the SBA, if FTE headcount or salary levels are not restored to the applicable initial FTE reporting period level on or prior to June 30, 2020, the forgivable portion of the PPP loan will be reduced by the amount of any headcount or salary reduction.

6. What happens if the borrower reduces FTE headcount after April 26, 2020?

The amount of loan forgiveness will be decreased proportionally based on the reduction in FTE headcount when compared to the FTE headcount during the applicable initial FTE reporting period level. See below for further information and examples.

The borrower may choose which initial FTE reporting period it would like to use when calculating FTE headcount. The intent is for borrower to choose the time period most beneficial to it and not penalize a borrower that may have gone through a natural process of contraction or expansion prior to COVID-19.

7. What happens in the borrower reduces salaries (or wages) after April 26, 2020?

The amount of loan forgiveness will be decreased proportionally based on the reduction in salaries (or wages), as long as the decrease in salaries (or wages) is no more than 25% of the FTE's previous quarter's annualized salary (or wages). This requirement only applies to any FTE that made less than \$100,000 annualized in 2019.⁵ See below for further guidance and examples.

8. How will PPP loan forgiveness be calculated if the borrower uses at least 75% of the PPP loan proceeds towards forgivable expenses, but does not restore FTE headcount to the applicable FTE monthly average levels before June 30, 2020 or reduces FTE headcount after April 26, 2020?

Based on the SBA's current guidance, if the borrower does not restore FTE headcount to February 15, 2020 levels before June 30, 2020 or reduces FTE headcount after April 26, 2020, the amount eligible for loan forgiveness will be calculated as follows:

- a. First, calculate the amount spent on forgivable expenses during the eight-week covered period;
- b. Second, calculate the average number of FTEs per month during the eight-week covered period;
- c. Third, calculate the applicable monthly average FTEs during the initial FTE reporting period;

⁵ The CARES Act says the reduction in salary (or wages) does not apply to any employee who, during any pay period in 2019, received an annualized salary in excess of \$100,000. It seems unlikely that the SBA's guidance will follow this language since it would result in any employee who received a bonus during any single pay period in 2019 that, if annualized, would exceed \$100,000.

- d. Fourth, calculate the reduction percentage, which equals (i) the average number of FTEs per month during the eight-week covered period (item (b) above), divided by (ii) the applicable monthly average FTEs during the initial FTE reporting period (item (c) above);
- e. Finally, calculate the amount forgiven, which equals (i) the amount spent on forgivable expenses during the eight-week covered period (item (a) above), multiplied by (ii) the reduction percentage (item (d) above).

The following formula, provided by the SBA, demonstrates how the forgivable amount will be reduced if the borrower reduces the number of FTEs:

$A \times (B/C)$ where:

A = the forgivable expenses

B = the average number of FTEs per month during the eight-week covered period

C = applicable monthly average FTEs during the initial FTE reporting period

Example

If borrower has \$100,000 in forgivable expenses but reduces the number of FTEs to an average of 90 FTEs per month during the eight-week covered period and the borrower had 100 average FTEs during the applicable initial FTE reporting period, the borrower would be eligible for forgiveness on \$90,000 and the remaining \$10,000 would be treated as a loan.

$$\$100,000 \times (90/100) = \$90,000$$

9. How will loan forgiveness be impacted if a borrower reduces salaries (or wages) of FTEs during the eight-week covered period?

Loan forgiveness is only impacted if the FTEs who had their salaries (or wages) reduced made less than \$100,000 on an annualized basis in 2019. We expect additional guidance from the SBA on this issue but, as of now, we are assuming that each FTE who made more than \$100,000 on an annualized basis in 2019 is not included in this calculation if their salaries (or wages) are reduced by more than 25% during the eight-week covered period.

The penalty for reducing salaries (or wages) of FTEs is only applicable if the borrower reduces the salaries (or wages) of any other FTE (i.e., those FTEs who made less than \$100,000 on an annualized basis in 2019) by more than 25% of the FTE's salary (or wages) earned during the most recent quarter immediately prior to the commencement of the eight-week covered period.

Example

If (i) the borrower's forgivable expenses equal \$320,000, (ii) an FTE made less than \$100,000 on an annualized basis in 2019, and (iii) the FTE was paid \$7,000 during the eight-week covered period, which is 30% less than the FTE received during the previous quarter (on average), the amount eligible for forgiveness will be reduced by \$2,100. This is calculated by multiplying (x) \$7,000, which is the amount actually paid to the FTE during the eight-week covered period, by (y) 30%, which is the amount the FTE's average salary (or wages) was reduced.

$$\$320,000 - (\$7,000 \times 30\% = \$2,100) = \$317,900$$

Example

If (i) the borrower's forgivable expenses equal \$425,000, (ii) FTE 1 made less than \$100,000 on an annualized basis in 2019, (iii) FTE 2 made more than \$100,000 on an annualized basis in 2019, and (iv) FTE 1 and FTE 2 were each paid \$5,000 during the eight-week covered period, which is 35% less than FTE 1 received during the previous quarter (on average) and 50% less than FTE 2 received during the same period, then the amount eligible for forgiveness will be reduced by \$1,750. This is calculated by disregarding the reduction in salary to FTE 2 since FTE 2 made more than \$100,000 on an annualized basis in 2019, and multiplying (x) \$5,000, which is the amount actually paid to FTE 1 during the eight-week covered period, by (y) 35%, which is the amount FTE 1's average salary (or wages) was reduced.

$$\$425,000 - (\$5,000 \times 35\% = \$1,750) = \$423,250$$

10. How will loan forgiveness be calculated if a borrower reduces (1) FTE headcount and (2) salaries (or wages) of FTEs during the eight-week covered period without curing these reductions or if the reductions are made after April 26, 2020?

As mentioned above, the amount forgiven will be impacted by both reductions to FTE headcount and salaries (or wages) of FTEs during the eight-week covered period.

Example

If borrower has \$100,000 in forgivable expenses, but (i) reduces the number of FTEs to an average of 90 FTEs per month during the eight-week covered period and the borrower had 100 average FTEs during the applicable initial FTE reporting period, and (ii) pays an FTE, who made less than \$100,000 on an annualized basis in 2019, \$7,000 during the eight-week covered period, which is 30% less than the FTE received during the previous quarter (on average), the borrower would be eligible for forgiveness on \$87,900 and the remaining \$12,100 would be treated as a loan.

Reduction for FTE reduction - $\$100,000 \times (90/100) = \$90,000$

Reduction for salary reduction - $\$90,000 - (\$7,000 \times 30\% = \$2,100) = \$87,900$

Use of Funds

11. Can an employer use the PPP funds to supplement the income of a commission-only based employee, and if so, what effect does that have on the PPP funds?

As of now, there is no direct guidance on how commission-only based compensation is treated but the analogy that may be helpful is that the CARES Act includes a provision stating that borrowers may receive forgiveness for “additional wages” paid to employees. We anticipate the SBA issuing guidance to the effect that the intent of PPP is to keep people employed at similar wage levels and if the commissions are not there anymore, then the amount that the employer allocates to the FTE to make up the missing amounts should be forgivable.

12. What is included in “rent” costs?

At this time, there is no guidance that addresses what can be included as “rent.” The CARES Act includes as a valid use of proceeds “rent (including rent under a lease agreement)” and as a forgivable amount any payments for “covered rent obligations” and further defines “covered rent obligations” as meaning “rent obligated under a leasing agreement in force before February 15, 2020”.

13. Can borrowers use funds for interest on other debt and receive forgiveness?

A borrower may use PPP funds to pay interest on debts that are not mortgages, but may not receive forgiveness for any amounts used in that manner.

Process

14. What is the process to obtain forgiveness?

After June 30, 2020, the borrower will submit a request for forgiveness to the lender servicing its loan. Borrowers should, at a minimum, include documentation that verifies the number of FTEs and their pay rates during the eight-week covered period and the applicable initial FTE reporting period, as well as any payments on any other forgivable expenses. We expect that such documentation would include payroll tax filings, state income, payroll and unemployment insurance filings, copies of cancelled checks, payment receipts, transcripts of accounts or other documentation verifying payments during the relevant periods. Borrowers will be required to certify that the documents are true and correct and that the amount for which forgiveness is sought was used on forgivable expenses.

After the borrower submits the above information, the lender has 60 days to make a decision on forgiveness.

Borrowers should keep meticulous records of how they spend PPP funds so that when they seek forgiveness they can easily meet requests for documentation from lenders and the SBA. In addition, borrowers should consider opening a separate bank account to keep track of how loan proceeds are used (some lenders are requiring this).

Other Questions

15. Must borrower include the amount forgiven as taxable income on its 2020 tax returns?

No, the CARES Act specifically provides that the forgiven amount under a PPP loan is not included as taxable income.

16. Do independent contractors count as employees for purposes of PPP loan forgiveness?

No, payments to independent contractors (1099s) do not count as employees. They have the ability to apply for a PPP loan on their own so they do not count as a FTE for purposes of a borrower's PPP loan forgiveness.

17. Is it possible to delay the disbursement date so that the eight-week covered period falls later in the year?

No, lenders must disburse loan proceeds within ten days after the loan is approval by the SBA. The eight-week covered period immediately follows the date of disbursement.

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