Frequently Asked Questions
Paycheck Protection Program Loan Forgiveness

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Revisions Incorporate Paycheck Protection Program Flexibility Act of 2020, New Forgiveness Applications, and Recent Interim Final Rules

On June 16, 2020, the Small Business Administration (SBA) and the U.S. Treasury Department released a revised version of their Loan Forgiveness Application and corresponding instructions (Forgiveness Application) and a Loan Forgiveness Application Form EZ and corresponding instructions (EZ Forgiveness Application) for the Paycheck Protection Program (PPP), which incorporates changes to reflect the Paycheck Protection Program Flexibility Act of 2020 (PPPFA), which was enacted into law on June 5, 2020, the legislation extending the deadline to apply for a PPP loan to August 8, 2020, which was signed into law on July 4, 2020, and multiple recent Interim Final Rules, which provide additional guidance from the SBA on how it is interpreting and implementing the PPPFA.

Previously, the SBA had released several interim final rules on, among other things, loan forgiveness (here and here) and the process of reviewing PPP loans.

In addition to clarifying certain ambiguities and inconsistencies with respect to calculating forgiveness, the Forgiveness Application, the EZ Forgiveness Application and new Interim Final Rules included several new concepts, including:

- Borrowers that received PPP loans prior to June 5 may elect to use an 8-week or 24-week covered period, but borrowers that received loans on or after June 5 must use the 24-week period;
- Loans made before June 5 will continue to have a two-year maturity, unless the borrower and lender mutually agree to extend maturity for up to five years, and loans made on or after June 5 will automatically have a five-year maturity, as long as forgiveness applications are filed no later than ten months after the end of the 24-week period;
- Forgiveness applications are due no later than ten months after the end of the 8-week or 24-week covered period, and if applications are not received by then, the borrower must start making principal and interest payments;

- The ability for certain borrowers to avoid complicated calculations and use the EZ Forgiveness Application if they meet any of the following requirements:
  - they do not have employees;
  - they did not reduce salaries or hourly wages by more than 25% during the Covered Period and did not reduce employees[1] between January 1, 2020 and the end of the Covered Period; or
  - they did not reduce salaries or hourly wages by more than 25% during the Covered Period and were unable to operate during the covered period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19;
- An "alternative payroll covered period" for borrowers using a bi-weekly or more frequent payroll period that aligns with their regular payroll period, as opposed to the covered period;
- Flexibility to include eligible payroll costs, rent, mortgage interest, and utility expenses that are **paid or incurred** during the covered period;
- Limiting the maximum any "owner-employee" can have forgiven to either (i) eight weeks' worth (8/52) of 2019 net profit (capped at $15,385) if the borrower elects to apply the eight-week Covered Period or (ii) 2.5 months' worth (2.5/12) of 2019 net profit (capped at $20,833) if the borrower elects to apply the 24-week Covered Period;
- Exemptions from the loan forgiveness reduction based on FTEs (1) for borrowers who made a good-faith, written offer to rehire workers that was declined, and (2) for employees who (a) were terminated for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction in their hours; and
- Bonuses and hazard pay for employees whose total compensation does not exceed $100,000 on an annualized basis may be included as forgivable payroll costs.
- Please see our June 4, 2020 client alert on the PPPFA, and our July 6, 2020 client alert on PPP Borrower Disclosures and the PPP Extension for more details.

All answers herein are based on the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Paycheck Protection Program Flexibility Act of 2020 (PPPFA), the legislation extending the deadline to apply for a PPP loan to August 8, 2020, 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 (revised 6/24/2020)
5. Interim Final Rule (4/2/2020)
6. Interim Final Rule – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans (4/14/2020)
7. Frequently Asked Questions
8. Forgiveness Application
9. Forgiveness Application Instructions
10. EZ Forgiveness Application
11. EZ Forgiveness Application Instructions
12. Interim Final Rule – Loan Forgiveness (5/22/2020)
13. Interim Final Rule – Loan Review Procedures and Related Borrower and Lender Responsibilities (5/22/2020)
14. Paycheck Protection Program Flexibility Act of 2020 (6/5/2020)
15. Interim Final Rule – Revisions to First Interim Final Rule (6/11/2020)

1 The EZ Forgiveness Application references reductions to employees and not FTEs, which has been the SBA's standard reference when calculating headcount. It is unclear if the SBA will revise the EZ Forgiveness Application to fix this inconsistency.

16. Interim Final Rule – Additional Revisions to First Interim Final Rule (6/12/2020)
17. Interim Final Rule – Revisions to the Third and Sixth Interim Final Rules (6/17/2020)
18. Interim Final Rule – Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules (6/22/2020)
19. PPP Extension Through August 8, 2020 (S.4116) (7/1/2020)

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Defined Terms

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

"**Alternative Payroll Covered Period**"[2] means, **for Payroll Costs only**, an alternative period for calculating the covered period that begins on the first day of a borrower's first pay period following their PPP Loan disbursement date. This period may be selected by borrowers with a biweekly (or more frequent) payroll schedule and allows borrowers to align their payroll period to the covered period. The example included in the Forgiveness Application is as follows: If the borrower is using a 24-week covered period and received its PPP Loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP Loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, October 10. Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in this application to "the Covered Period or the Alternative Payroll Covered Period." However, borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in the Forgiveness Application to "the Covered Period" only."[3] In no event may the Alternative Payroll Covered Period extend beyond December 31, 2020.

"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act.

"**Covered Period**" means either (i) the period beginning on the date the PPP Loan is first disbursed by the lender and ending on the earlier of (x) 24-weeks thereafter or (y) December 31, 2020, or (ii) if the borrower received a loan prior to June 5, 2020, the borrower can elect an eight-week Covered Period. For example, if a borrower is using a 24-week covered period and received its PPP Loan proceeds on April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is October 4.

"**Designated PPP Expenses**" means Payroll Costs, mortgage interest, rent payments, utility payments to the extent they are deductible on Form 1040 Schedule C (business 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).

"**Eligible Nonpayroll Costs**" means (i) mortgage interest payments (not including any prepayment or payment of principal), (ii) rent payments, and (iii) utility payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access to the extent they are deductible on Form 1040 Schedule C (for mortgage, lease or utility payments, the applicable contracts must have been in place as of February 15, 2020) that are paid by a borrower during the Covered Period **or** incurred during the Covered Period and paid by a borrower on or before the next regular billing date, even if the billing date is after the Covered Period.

"**EZ Forgiveness Application**" means the SBA's PPP Loan Forgiveness Application (SBA Form 3508EZ) and corresponding instructions.

"**Forgivable Expenses**" means (i) Payroll Costs, and (ii) Eligible Nonpayroll Costs.[4]

"**Forgiveness Application**" means the SBA's PPP Loan Forgiveness Application (SBA Form 3508) and corresponding instructions.

"**FTE**" means full-time equivalent employee. The Forgiveness Application includes the following guidance: "For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the [b]orrower."

"**FTE Reference Period**" means, at the borrower's choice, either:

i. the period between February 15, 2019 and June 30, 2019, or
ii. the period between January 1, 2020 and February 29, 2020, or
iii. in the case of seasonal employers, either of the preceding periods or any consecutive twelve-week period between May 1, 2019 and September 15, 2019.

2 This is a new period of calculation in the Forgiveness Application and EZ Forgiveness Application.

3 We note that inclusion of Eligible Nonpayroll Costs in Forgivable Expenses is based on whether such costs were paid or incurred during the Covered Period, even if a borrower elects to us the Alternative Payroll Covered Period to determine what Payroll Costs to include in the Forgivable Expenses.

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

"**Payroll Costs**" means, with respect to an employee, all of the following payroll costs paid **or** incurred[5] during the Covered Period or Alternative Payroll Covered Period and paid by a borrower on or before the next regular payroll date, even if the payroll date is after the Covered Period or Alternative Payroll Covered Period:

a. The following payments, up to a $100,000 annualized rate per employee or partner, (i) salaries; (ii) hourly wages; (iii) commissions; (iv) similar compensation, which includes bonuses and hazard pay; (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; and (vi) any amounts paid to "owner-employees," which includes self-employed individuals, general partners, or owner-employees of an S-corporation or C-corporation, are permitted as long as the amount does not exceed (i) if the borrower elects to use an 8-week Covered Period, 8-weeks' worth of 2019 compensation, capped at $15,385 per person or (ii) if the borrower is using the 24-week Covered Period, 2.5 months' worth of 2019 compensation, capped at $20,833 per person.[6]
b. Cash tips or equivalent payments;
c. Payments for vacation, parental or family leave, or sick or medical leave;
d. Payments for any group health insurance coverage (including the employer's portion of any premiums or the employer's contributions to a self-insured, employer-sponsored group health plan, but excluding (i) any pre-tax or after tax contributions by employees, and (ii) any health care costs attributable to owners or general partners, unless such persons are also classified as employees and are covered under the borrower's general health insurance plan);
e. Employer contributions to retirement plans (but excluding any retirement plan costs attributable to owners or general partners, unless such persons are also classified as employees and are covered under the borrower's general retirement plan);
f. Employee's portion of federal payroll taxes;
g. Payments for separation or dismissal of the employee; and
h. State and local taxes assessed on compensation (e.g., state unemployment insurance tax).

Payroll Costs expressly exclude:

i. Cash compensation in excess of $100,000 per employee or partner on an annual basis;
ii. Employer's portion of any federal income tax, FICA[7], non-US employee payroll costs (and other taxes imposed under Sections 21, 22 or 24 of the Internal Revenue Code);
iii. Qualified medical/sick leave under Section 7001 of the Families First Coronavirus Response Act;
iv. Compensation to an employee whose principal place of residence is outside the USA;
v. Payments to independent contractors or other 1099s.

"**PPPFA**" means the Paycheck Protection Program Flexibility Act of 2020.

"**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.

5 The CARES Act §1106(b) states that the forgivable payroll costs include "costs incurred and payments made" during the Covered Period. However, there has been uncertainty about how Payroll Costs and other Forgivable Expenses could all be incurred and paid during the Covered Period, because many of these expenses are paid in arrears. The Forgiveness Application and EZ Forgiveness Application simplifies this issue and allows for Forgivable Expenses to be incurred or paid during the Covered Period.

6 Recent Interim Final Rules and Line 9 of the Forgiveness Application include this new limitation on compensation paid to owners, which is intended to prevent an owner from increasing their compensation during the Covered Period.

7 Borrowers may now defer payroll taxes under the new PPPFA legislation. See our client alert on the PPPFA for additional details.

Calculating the Forgiveness Amount

1. **What conditions are required for forgiveness?**

   The full principal amount and any accrued interest[8] of a PPP Loan may be forgiven if the following conditions are met:

   i. All loan proceeds were used for Forgivable Expenses;

   ii. At least 60% of the Forgivable Expenses are used for Payroll Costs over the Covered Period or the Alternative Payroll Covered Period;

   iii. There is no reduction in FTEs when comparing the average weekly number of FTEs during the Covered Period or the Alternative Payroll Covered Period (as applicable) to FTEs in the FTE Reference Period, unless any reduction is restored on or before the earlier of the date the borrower submits its Forgiveness Application and December 31, 2020[9]; and

   iv. There is no reduction in salaries (or wages) by more than 25% for any employee that received compensation from the borrower at an annualized rate of less than or equal to $100,000 for all pay periods in 2019[10] when comparing the employee's average annual salaries (or wages) during the Covered Period or the Alternative Payroll Covered Period to the employee's average annual salaries (or wages) during the first quarter of 2020, unless such reduction is restored on or before December 31, 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 after February 15, 2020, if a borrower received a $100,000 PPP Loan, and spent $100,000 on Forgivable Expenses during the Covered Period or the Alternative Payroll Covered Period and $60,000 (60%) of those expenditures were for Payroll Costs and the remaining $40,000 (40%) were for other Forgivable Expenses, then the full $100,000 would be forgiven.

2. **When are Payroll Costs considered paid or incurred during the Covered Period or the Alternative Payroll Covered Period?**

   According to the forgiveness applications, "[p]ayroll costs are considered paid on the day that paychecks are distributed or the Borrower originates an ACH credit transaction. Payroll costs are considered incurred on the day that the employee's pay is earned. Payroll costs incurred but not paid during the borrower's last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period)."

   Example – Covered Period

   The borrower received its PPP Loan proceeds on April 20, and the first day of its first pay period following its PPP Loan disbursement is April 26. The borrower elects to use the Covered Period for purposes of calculating Payroll Costs. The first day of the Covered Period is April 20 and the last day of the Covered Period is October 4. Any Payroll Costs paid on the first payroll period that occurs after April 20 are eligible for forgiveness even though some or all of the costs associated with those payments were incurred prior to the beginning of the Covered Period. If the final pay period during the Covered Period ends on October 3 and wages are not paid until October 16, because the Payroll Costs were incurred during the Covered Period and paid on the next regular payroll date, even though that date occurs after the Covered Period, all Payroll Costs for this payroll period should be included in the Forgivable Expenses because they were all incurred during the Covered Period. The same logic applies to any compensation earned during the stub-period between the final payroll period and the end of the Covered Period (in the above example, the stub-period is October 4).

8 After much back and forth, the SBA's most recent Interim Final Rule dated June 17, 2020, confirmed forgiveness includes the full principal amount and any accrued interest.

9 Borrowers who use the EZ Forgiveness Application will have to certify that they did not reduce the number of employees (not FTEs) or the average paid hours of employees between January 1, 2020 and the end of the Covered Period, but failure to meet this requirement will not determine whether a borrower may receive full forgiveness or not.

10 See Question 12 and Footnote 14 below for additional information about this calculation.

Example – Alternative Payroll Covered Period

The borrower received its PPP Loan proceeds on April 20, and the first day of its first pay period following its PPP Loan disbursement is April 26. The borrower elects to use the Alternative Payroll Covered Period for purposes of calculating Payroll Costs. The first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is October 10. The payroll period that runs from April 26 through May 9 and is paid on May 15 has been incurred and paid during the Alternative Payroll Covered Period and all Payroll Costs for this pay period should be included. The final pay period during the Alternative Payroll Covered Period ends on October 10, but is not paid until October 16. Because the Payroll Costs were incurred during the Alternative Payroll Covered Period and paid on the next regular payroll date, even though that date occurs after the Alternative Payroll Covered Period, all Payroll Costs for this payroll period should be included in the Forgivable Expenses.

3. When are Eligible Nonpayroll Costs considered paid or incurred during the Covered Period?

According to the forgiveness applications, an "eligible nonpayroll cost must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period."

Example

The Covered Period runs from April 20 to October 4. The water bill for the borrower is paid on the first of each month for the prior month. The bill due on May 1 for the month of April's water usage is paid during the Covered Period and 100% of the bill can be included as Forgivable Expenses. The bill due on November 1 for the month of October's water usage is partially incurred during the Covered Period and paid at the next regular billing date after the Covered Period and the amount of the bill incurred during the Covered Period (4 of 31 days) may be included in Forgivable Expenses.[11]

4. Is there a "general rule" for when Payroll Costs or Eligible Nonpayroll Costs are paid or incurred?

The borrower should generally consider the following payments as eligible Payroll Costs or Eligible Nonpayroll Costs:

a. Any Payroll Costs paid during the Covered Period or the Alternative Payroll Covered Period;

b. Any Eligible Nonpayroll Costs paid during the Covered Period; and

c. Any Payroll Costs or Eligible Nonpayroll costs incurred during the Covered Period or the Alternative Payroll Covered Period but paid on the first regular due date thereafter.

The intent of the above is the eliminate the need for a special payment for Payroll Costs and Eligible Nonpayroll Costs at the end of the Covered Period or Alternative Payroll Covered Period.

5. Can a borrower accelerate a payment for a Forgivable Expense so that it falls within the Covered Period or Alternative Payroll Covered Period?

The forgiveness applications specify that prepayments of business mortgage interest payments may not be included in the Forgivable Expenses. Otherwise, the only guidance on timing for what counts as Forgivable Expenses is the costs "paid" or "incurred" described in Questions 2 and 3 above. Borrowers should be cautious about accelerating any payments or including payments outside the normal course of business in any forgiveness calculation, however, as we expect the SBA may issue additional guidance on this issue. In addition, the changes provided by the PPPFA allow for borrowers to include more in Forgivable Expenses without pushing any boundaries of the provided guidance. We suggest staying within the clear guidance to the full extent possible.

6. 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 any PPP Loans entered into after June 5, 2020 will have a maturity date that is five years from the date of the note entered into between the borrower and the lender. For PPP Loans entered into before June 5, 2020, the maturity date is two years from the date of the note entered into between the borrower and lender, unless otherwise agreed by the borrower and lender to extend the maturity date to up to five years. In addition, the borrower must spend any remaining loan amount on Designated PPP Expenses. If the SBA determines that the loan is not eligible for forgiveness (in whole or in part), the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due.

11 We note that the forgiveness applications does not specify the need to pro-rate bills, but instead simply refers to what has been incurred during the Covered Period. Additional guidance may clarify this issue, but for now, we recommend that borrowers take a conservative approach and pro-rate any bills for the portion of such payments that were incurred during the Covered Period.

Example

Same facts as Question 1 above, but if (i) $90,000 of the $100,000 PPP Loan was spent on Forgivable Expenses, and (ii) $54,000 (60%) 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 Covered Period) will continue to accrue interest and have a maturity date that is five years from the date of the note.

7. What happens if a borrower spends more than 40% of PPP Loan proceeds on Eligible Nonpayroll Costs?[12]

The forgiveness amount will be reduced on a dollar-for-dollar basis so that 60% of the forgivable amount is spent on payroll costs and 40% of the forgivable amount is spent on Eligible Nonpayroll Costs. Any other expenses, whether incurred during the Covered Period or the Alternative Payroll 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 Covered Period or the Alternative Payroll Covered Period on Forgivable Expenses, but only $50,000 of such amount was on Payroll Costs, the borrower would not be in compliance with the requirement that at least 60% of the forgivable amount be used for payroll costs. As a result, the amount forgiven would be limited to $83,333 ($50,000 / 60% = $83,333).

Loan Forgiveness & FTE Headcount and Salaries/Wages

The below calculations and examples are based on the PPPFA, the Forgiveness Application, the EZ Forgiveness Application, and the most recent guidance from the SBA, but additional information from the SBA may be provided, which may contradict or supplement the below information.

8. How does a borrower calculate average FTEs for the applicable period?

The borrower has two options to choose from when calculating FTEs and it must apply the applicable option for all its employees (i.e., it cannot use option 1 for some FTEs and option 2 for others).

Option 1: Standard Method

An FTE is calculated as follows:

First, find the employee's average number of hours worked per week over the applicable measurement period (Total Hours/8 weeks);

Second, divide the weekly average by 40 (Average Hours/40 hours); and

Finally, round the total to the nearest tenth.

The maximum FTE for each employee is capped at 1.0 per week.

Option 2: Simplified Method

Borrowers may also elect to use a simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours.

Example

During the applicable measurement period, a borrower has five employees working an average of at least 40 hours per week and 10 employees working an average of 25 hours per week. The standard method calculation (Option 1) would result in 5.0 FTEs for the five employees working 40 hours, plus 6.0 FTEs ((25/40) * 10 = 6.0) for the part-time employees, for a total of 11 FTEs.

Alternatively, the borrower could elect to use the simplified method (Option 2), which would result in 5.0 FTEs for the five employees working 40 hours, and 5.0 FTEs (0.5 * 10 = 5.0) for the part-time employees, for a total of 10 FTEs.

12 The SBA's Interim Final Rule dated June 11, 2020, confirmed, the amount forgiven will be proportionally reduced if at least 60% of the loan proceeds are not used for Payroll Costs, as long as the remaining 40% of the proceeds are used for other Eligible Expenses.

Example

During the applicable measurement period, a borrower has five employees working an average of at least 40 hours per week; one employee (Employee X) working an average of 35 hours per week; one employee (Employee Y) working an average of 28 hours per week; and one employee (Employee Z) working an average of 16 hours per week.

Using the standard method (Option 1), the borrower calculates FTEs as follows:

Five employees at or over 40 hours: 40/40 capped at 1 FTE = 5 FTEs

Employee X: 36/40 = 0.9 FTE

Employee Y: 28/40 = 0.7 FTE

Employee Z: 16/40 = 0.4 FTE

Total FTEs = 7.0

Using the simplified method (Option 2), there would be 5.0 full-time FTEs (5 * 1 = 5) and 1.5 part-time FTEs (0.5 * 3 = 1.5), for a total of 6.5 FTEs.

9. **If the borrower reduced FTE headcount or salaries/wages between February 15, 2020 and April 26, 2020, what must it do to be eligible for 100% PPP Loan forgiveness?**

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 the earlier of the date of the borrower submits its Forgiveness Application and December 31, 2020[13]. The Forgiveness Application clarifies that for the FTE reduction safe harbor, the comparison is to the pay period that included February 15, 2020, rather than the specific date. The Forgiveness Application refers to this as the "FTE Reduction Safe Harbor 2" for purposes of FTE headcount and the "Salary/Hourly Wage Reduction Safe Harbor" for purposes of reductions in salaries/wages.

See Question 16 below for exceptions to an FTE reduction if a borrower is unable to re-hire certain employees.

Example

If a borrower terminated five FTEs on March 15, 2020, but rehired five FTEs for the same positions on or before the earlier of the date of borrower's Forgiveness Application or December 31, 2020, then the reduction in forgiveness amount the borrower would have been 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).

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

Neither the FTE Reduction Safe Harbor nor the Salary/Hourly Wage Reduction Safe Harbor would apply and the borrower will have to reduce the amount of the PPP Loan that may be forgiven.

If FTE headcount is not restored to the applicable FTE Reference Period level on or prior to the earlier of the date of the borrower's Forgiveness Application and December 31, 2020, the forgivable portion of the PPP Loan will be reduced by the amount of any headcount reduction, as calculated in Question 14.

If salary/wage levels are not restored to the same levels as the first quarter of 2020 on or prior to the earlier of the date of the borrower's Forgiveness Application and December 31, 2020, the forgivable portion of the PPP Loan will be reduced by the amount of any salary/wage reductions, as calculated in Question 13.

Note that the SBA's Interim Final Rule on Loan Forgiveness provided clarification that the reductions should not be double counted. If an employee suffers a salary/wage level reduction due to a reduction in hours worked but not due to an hourly pay reduction, the FTE reduction will apply and the salary/wage reduction will not.

13 Note that the PPPFA extended the restoration date from June 30, 2020 to December 31, 2020, but it did not extend the safe-harbor period past April 26. The SBA's revised Forgiveness Application also does not extend the April 26 safe harbor date.

11. **What happens if the borrower reduces FTEs after April 26, 2020 but does not restore them prior to the earlier of the date of the borrower's Forgiveness Application and December 31, 2020?**

The FTE Reduction Safe Harbor described in Question 9 above will not apply and 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 FTE Reference Period level. See Question 14 below for further information and examples.

The borrower may choose which FTE Reference 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.

12. **What happens if the borrower reduces salaries (or wages) after April 26, 2020 but does not restore salaries (or wages) prior to the earlier of the date of the borrower's Forgiveness Application and December 31, 2020?**

The Salary/Hourly Wage Reduction Safe Harbor described in Question 9 above will not apply and 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 greater than 25% of the employee's previous quarter's annualized salary (or wages). This requirement only applies to any employee that received cash compensation at an annualized rate of less than or equal to $100,000 for all pay periods in 2019.[14] See Question 13 below for further guidance and examples.

13. **How will loan forgiveness be impacted if a borrower reduces salaries (or wages) of employees before or during the Covered Period or the Alternative Payroll Covered Period and does not restore these salaries (or wages) prior to the earlier of the date of the borrower's Forgiveness Application and December 31, 2020?**

Loan forgiveness is only impacted if the employees who had their salaries (or wages) reduced were (a) employed by the borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and (b) received compensation from the borrower at an annualized rate of less than or equal to $100,000 for all pay periods in 2019 or were not employed by the borrower at any point in 2019. Each employee who made more than $100,000 on an annualized basis in 2019 is not included in this calculation, even if their salaries (or wages) are reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period.

The penalty for reducing salaries (or wages) of employees is only applicable if the borrower reduces the salaries (or wages) of the applicable employees (i.e., those employees who made less than or equal to $100,000 on an annualized basis in 2019 or were not employed by the borrower at any point in 2019) during the Covered Period or Alternative Payroll Covered Period by more than 25% of the employee's salary (or wages) earned during the first quarter of 2020.

The salary/wage reduction **for each employee** who made less than or equal to $100,000 on an annualized basis in 2019 or were not employed by the borrower at any point in 2019 should be calculated as follows:

Step 1. Determine if pay was reduced by more than 25%:

i. Divide (a) the average annual salary/wages during the Covered Period or Alternative Payroll Covered Period, by (b) the average annual salary/wages between January 1, 2020 and March 31, 2020.
ii. If the result is 0.75 or more, no reduction will apply for this employee.
iii. If the result is less than 0.75, proceed to Step 2.

Step 2. Determine if the Salary/Hourly Wage Reduction Safe Harbor is met:

i. Compare (a) annual salary or hourly wage as of February 15, 2020 to (b) the average annual salary or hourly wage between February 15, 2020 and April 26, 2020.
ii. If (b) is equal to or greater than (a), then there was no reduction of salary/wages during the applicable safe harbor period and there will be a Salary/Hourly Wage Reduction to be calculated in Step 3.

14 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. The Forgiveness Application also refers to "any pay period" in Table 2 of the PPP Schedule A Worksheet, but "all pay periods" in Table 1 of the PPP Schedule A Worksheet. However, it seems unlikely that the SBA intended to use this language because it could result in excluding any employee from the salary/hourly wage reduction who received a bonus during any single pay period in 2019 that, if annualized, would exceed $100,000. For example, if an employee had a regular salary of $80,000 and was paid monthly, but received a $15,000 bonus in January 2019, the employee would have received approximately $21,666 in the month of January 2019 and annualizing that month would result in an annualized salary of $259,992. While in reality, the employee only received $95,000 in salary and bonus in 2019 and should not be excluded from the reduction calculation.

iii. If (b) is less than (a), then compare (c) the average annual salary or hourly wage as of the earlier of the date of the borrower's Forgiveness Application and December 31, 2020 to (a) above.

iv. If (c) is equal to or greater than (a) above, the borrower restored the salary/wages of the employee within the Salary/Hourly Wage Reduction Safe Harbor period and no reduction will apply.

v. If (c) is less than (a), then a reduction will apply as calculated in Step 3 below.

Step 3. Determine the Salary/Hourly Wage Reduction:

i. Multiply the average annual salary/hourly wage between January 1, 2020 and March 31, 2020 by 0.75;

ii. Subtract the average annual salary/hourly wage during the Covered Period or Alternative Payroll Covered Period from the result of Step 3(i) above;

iii. Multiply the result of Step 3(ii) by either:

   A. For hourly workers: the average number of hours worked per week between January 1, 2020 and March 31, 2020. Then multiply this result by the number of weeks in the Covered Period (either 8 or 24). This is the amount of the reduction for that hourly worker.

   B. For salaried workers: the number of weeks in the Covered Period (either 8 or 24) then divide this result by 52. This is the amount of the reduction for that salaried worker.

Keep in mind that these calculations must be made for every single employee!

Example

If (i) the borrower was using a 24-week Covered Period, (ii) an employee made less than $100,000 on an annualized basis in 2019, (iii) the employee was paid $800.00 per week during the Covered Period or the Alternative Payroll Covered Period for an average annual salary of $41,600 during the Covered Period or Alternative Payroll Covered Period, and (iv) the employee was paid $850 per week during the period between January 1, 2020 and March 31, 2020 for an average annual salary of $44,200 during the first quarter of 2020.

Step 1: $41,600 / $44,200 = 0.94, or a reduction of 6%.

The analysis can end here because the employee's salary reduction was not more than 25% and therefore no reduction to the Forgivable Expenses will apply.

Example

If (i) the borrower was using a 24-week Covered Period, (ii) a salaried employee made less than $100,000 on an annualized basis in 2019, (iii) the employee was paid $800.00 per week during the Covered Period or the Alternative Payroll Covered Period for an average annual salary of $41,600 ($800 x 52) during the Covered Period or the Alternative Payroll Covered Period, (iv) the employee was paid $1,500 per week during the period between January 1, 2020 and March 31, 2020 for an average annual salary of $78,000 ($1,500 x 52) during the first quarter of 2020, (v) the employee was paid $1,500.00 for the weekly payroll period that includes February 15, 2020, for an annual salary as of February 15, 2020 of $78,000, and (v) the average annual salary between February 15, 2020 and April 26, 2020 was also $78,000.

Step 1: $41,600 / $78,000 = 0.533, meaning pay was reduced by more than 25%.

Step 2: $78,000 for the pay period including February 15, 2020 equals $78,000 for the period between February 15, 2020 and April 26, 2020, so the Salary/Hourly Wage Reduction Safe Harbor does <u>not</u> apply because these amounts are the same and the reduction in salary must have occurred after April 26, 2020.

Step 3: To calculate the reduction:

i. $78,000 * .75 = $58,500, then

ii. $58,500 - $41,600 = $16,900

iii. $16,900 * 24 = $405,600

iv. $405,600 / 52 = $7,800 is the reduction amount.

Example

If (i) the borrower was using a 24-week Covered Period, (ii) a salaried employee made less than $100,000 on an annualized basis in 2019, (iii) the employee was paid $800.00 per week during the Covered Period or the Alternative Payroll Covered Period for an average annual salary of $41,600 ($800 x 52) during the Covered Period or Alternative Payroll Covered Period, (iv) the employee was paid $1,500 per week during the period between January 1, 2020 and March 31, 2020 for an average annual salary of $78,000 ($1,500 x 52) during the first quarter of 2020, (v) the employee was paid $1,500.00 for the weekly payroll period that includes February 15, 2020, for an annual salary as of February 15, 2020 of $78,000 ($1,500 x 52), (vi) the average annual salary or hourly wage between February 15, 2020 and April 26, 2020 was $50,000; and (vii) the average annual salary or hourly wage as of the date the Forgiveness Application is submitted to the lender was $78,000.

Step 1: $41,600 / $78,000 = 0.533, meaning pay was reduced by more than 25%.

Step 2: $78,000 for the pay period including February 15, 2020 is greater than $50,000 for the period between February 15, 2020 and April 26, 2020, so the safe harbor must be tested. As of the date of submission of the Forgiveness Application, the average annual salary was $78,000 which equals the February 15, 2020 amount, so the Salary/Hourly Wage Reduction Safe Harbor is met and no reduction to the Forgivable Expenses will apply.

14. How will PPP Loan forgiveness be calculated if the borrower does not restore FTE headcount to the applicable FTE average weekly levels before earlier of the date of the borrower's Forgiveness Application and December 31, 2020 or reduces FTE headcount after April 26, 2020?

A borrower who reduced FTEs between February 15, 2020 and April 26, 2020 and who restores FTEs to February 15, 2020 levels by the earlier of the date of the borrower's Forgiveness Application and December 31, 2020 will be eligible for the "FTE Reduction Safe Harbor 2" and will not be required to reduce Forgivable Expenses for the temporary FTE reduction. The FTE Reduction Safe Harbor 2 is calculated as follows:

Step 1: Determine total average FTEs between February 15, 2020 and April 26, 2020 following the same calculation method used to determine average FTEs during the Covered Period or Alternative Payroll Covered Period.

Step 2: Determine total FTEs in the pay period inclusive of February 15, 2020 following the same calculation method used to determine average FTEs during the Covered Period or Alternative Payroll Covered Period.

Step 3: If the FTEs in Step 2 is greater than the FTEs in Step 1, then move to Step 4. If the number for Step 2 is less than or equal to the number for Step 1, then FTEs were not reduced during the safe harbor period and the borrower must complete the calculation below.

Step 4: Determine total FTE as of the earlier of the date the Forgiveness Application is submitted and December 31, 2020.

Step 5: If the FTEs in Step 4 are greater than or equal to the FTEs in Step 2, the FTE Reduction Safe Harbor 2 has been met and there will be no reduction in Forgivable Expenses for this purpose. Otherwise, the safe harbor does not apply and the borrower must complete the calculation below.

If the borrower (1) does not restore FTE headcount to February 15, 2020 levels before the earlier of the date of the borrower's Forgiveness Application and December 31, 2020 (i.e., meet the FTE Reduction Safe Harbor 2" or (2) reduces FTE headcount after April 26, 2020, the "FTE Reduction Quotient" (located on the bottom of PPP Schedule A of the Forgiveness Application) should be calculated as follows:

a. First, calculate the average weekly FTEs during the applicable FTE Reference Period;
b. Second, calculate the average weekly number of FTEs during the Covered Period or the Alternative Payroll Covered Period;
c. Third, calculate the "FTE Reduction Quotient," which equals (i) the average weekly number of FTEs during the Covered Period or the Alternative Payroll Covered Period (item (b) above), divided by (ii) the applicable average weekly FTEs during the FTE Reference Period (item (a) above).

To determine the amount that may be forgiven, borrowers should multiply (A) the above "FTE Reduction Quotient" by (B) (i) the amount spent on Forgivable Expenses during the Covered Period or the Alternative Payroll Covered Period, minus (ii) the Salary/Hourly Wage Reduction in Step 3 in Question 13 above.

Example

A borrower had (i) 100 total average FTEs between February 15, 2020 and April 26, 2020; (ii) 125 total FTEs in the pay period inclusive of February 15, 2020; and (iii) 130 total FTEs as of the date its Forgiveness Application is submitted.

Step 1: 100

Step 2: 125

Step 3: 125 > 100, so move to Step 4.

Step 4: 130

Step 5: 130 > 125, so the FTE Reduction Safe Harbor 2 applies and the borrower would be eligible for full forgiveness (assuming no other reductions apply).

Example

Assuming the FTE Reduction Safe Harbor 2 does not apply, if borrower has $100,000 in Forgivable Expenses, but reduces the number of FTEs to an average of 90 FTEs per week during the Covered Period or the Alternative Payroll Covered Period and the borrower had 100 average weekly FTEs during the applicable FTE Reference Period, the borrower would be eligible for forgiveness on $90,000 and the remaining $10,000 would be treated as a loan.

$100,000 x (90/100) = $90,000

15. How will loan forgiveness be calculated if a borrower reduces both (1) FTE headcount and (2) salaries (or wages) of FTEs prior to the earlier of the date of the borrower's Forgiveness Application and December 31, 2020, and does not cure these reductions or the reductions were 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 Covered Period or the Alternative Payroll Covered Period. However, the SBA has also clarified that the reductions should not be double counted. If an employee suffers a salary/wage level reduction due to a reduction in hours worked, but not due to an hourly pay reduction, the FTE reduction will apply and the salary/wage reduction will not.

16. Are there any exceptions to an FTE reduction if a borrower is unable to re-hire an employee?

FTE reductions will not reduce a borrower's loan forgiveness in the following situations so long as the position was not filled by a new employee:

- The borrower made a good-faith, written offer to rehire an employee during the Covered Period or Alternative Payroll Covered Period which was rejected by the employee;
- The borrower fired the employee for cause;
- The employee voluntarily resigned;
- The employee voluntarily requested and received a reduction of their hours;
- The borrower cannot find qualified employees for unfilled positions; or
- The borrower cannot restore its operations to comparable levels of business activity due to social distancing, sanitation requirements, or customer safety needs established by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020.[15]

15 Note that these last two exceptions were added by the PPPFA. The EZ Forgiveness Application notes that documentation to prove that these exceptions should apply includes: documentation regarding any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020 and copies of applicable HHS, CDC or OSHA requirements for each borrower location and relevant borrower financial records.

Other Questions Regarding Use of PPP Funds

17. 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. The SBA's Interim Final Rule on Loan Forgiveness also provided that payments to furloughed employees would be considered Payroll Costs, as well as bonuses and hazard pay. The intent of PPP is to keep people employed at similar wage levels and if commissions are no longer earned, then the amount that an employer allocates to the FTE to make up the missing amounts should be forgivable.

18. What is included in "rent" costs?

The Forgiveness Application and EZ Forgiveness Application allows for forgiveness of "business rent or lease payments" which is defined as "business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020."

19. 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.

Loan Forgiveness Process

20. Which borrowers can use the EZ Forgiveness Application?

- Those who do not have employees;
- Those who did not reduce salaries or hourly wages by more than 25% during the Covered Period and did not reduce FTEs between January 1, 2020 and the end of the Covered Period; or
- Those who did not reduce salaries or hourly wages by more than 25% during the Covered Period and who was unable to operate during the covered period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

All other borrowers must use the full Forgiveness Application.

21. When may a borrower apply for forgiveness?

Based on the most recent guidance from the SBA, borrowers may apply for loan forgiveness at any time during the Covered Period (whether the borrower uses the 24-week Covered Period or elects to use an eight-week Covered Period) if the borrower has used all the loan proceeds for which it is requesting forgiveness and their lender is accepting forgiveness applications.

Borrowers that choose to apply for forgiveness prior to the end of their applicable Covered Period and who have reduced salaries or hourly wages of FTEs in excess of 25% must calculate such reductions for the full length of the Covered Period. The reduction will be based on the number of FTEs who have reduced salaries or wages as of the date of the forgiveness application. Therefore, borrowers should be careful about choosing the date for applying for forgiveness that provides the maximum forgiveness amount based on their individual circumstances.

If a borrower does not apply for loan forgiveness within ten months after the last day of the Covered Period, or if the SBA determines that the loan is not eligible for forgiveness (in whole or in part), the borrower must begin paying principal and interest. If this occurs, the lender must notify the borrower of the date the first payment is due.

22. What is the process to obtain forgiveness?

The borrower will submit its Forgiveness Application or EZ Forgiveness Application to the lender servicing its loan. The lender may allow for borrowers to submit their applications electronically.

After the borrower submits the Forgiveness Application or EZ Forgiveness Application and all required documentation, the lender has 60 days to make a decision on forgiveness.

23. What information and documentation is required for the Forgiveness Application?

Borrowers should be prepared to provide the following when completing their Forgiveness Application (See the instructions to the Forgiveness Application for more details):

- **Business Legal Name /DBA or Tradename (if applicable)/Business TIN (EIN, SSN):** This must match borrower's application.
- **Business Address/Business Phone/Primary Contact/E-mail Address:** this must match borrower's application unless the borrower's contact information has changed.
- **SBA PPP Loan Number:** This is the loan number assigned by SBA at the time of loan approval.
- **Lender PPP Loan Number:** This is the loan number assigned to the PPP Loan by the Lender.
- **PPP Loan Amount:** This is the disbursed principal amount of the PPP Loan (the total loan amount borrower received from the lender).
- **Employees at Time of Loan Application:** This is the total number of employees at the time of the borrower's PPP Loan Application.
- **Employees at Time of Forgiveness Application:** This is the total number of employees at the time the borrower is applying for loan forgiveness.
- **PPP Loan Disbursement Date:** This is the date that borrower received the PPP Loan proceeds from the lender. If loan proceeds were received on more than one date, enter the first date on which borrower received PPP Loan proceeds.
- **EIDL Advance Amount:** If the borrower received an Economic Injury Disaster Loan (EIDL) advance, enter the amount.
- **EIDL Application Number:** If the borrower applied for an EIDL, enter the Borrower's EIDL Application Number.
- **Payroll Schedule:** Frequency with which payroll is paid to employees (weekly/biweekly/twice a month/monthly/other). This is relevant for calculating when payroll costs are paid or incurred and calculating FTEs for certain periods.
- **Calculation of Covered Period:** The Covered Period of the PPP Loan.
- **Calculation of the Alternative Payroll Covered Period, if applicable:** The Alternative Payroll Covered Period, if applicable.
- **If Borrower Received PPP Loans in Excess of $2 Million:** Borrowers must check a box if they (together with affiliates, if applicable) received PPP Loans in excess of $2 million.
- **Forgiveness Amount Calculation:** Borrowers will lay out the calculation of the Forgivable Expenses.

Borrowers should also include documentation requested in the Forgiveness Application, which includes the following:

- **Payroll -** Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or Alternative Payroll Covered Period, including:
  - Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees;
  - Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the Covered Period or Alternative Payroll Covered Period, including:
    - Payroll tax filings reported, or that will be reported, to the IRS (typically Form 941); and
    - State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported to the relevant state.
  - Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness amount.

- **FTE** - Documentation showing the average number of FTE employees on payroll per month employed by the borrower during the FTE Reference Period chosen by the borrower. Documents may include payroll tax filings reported, or that will be reported, to the IRS (typically Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state. Documents submitted may cover periods longer than the FTE Reference Period.
- **Nonpayroll** - Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period, including:
  - For mortgage interest payments – lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
  - For rent or lease payments – copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
  - For utility payments – copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks or account statements verifying those eligible payments.

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.

Finally, there is an optional demographic information form that borrowers may choose to complete and submit to the SBA. This disclosure is voluntary and has no bearing on the forgiveness decision.

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).

24. Are there other documents a borrower should maintain if using the Forgiveness Application?

Yes.

Borrowers should keep PPP Schedule A Worksheet from the Forgiveness Application and the following:

- Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary.
- Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than $100,000.
- Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule; and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
- Documentation supporting the certification, if applicable, that the borrower was unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19; including, without limitation, copies of the applicable requirements for each borrower location and relevant borrower financial records.
- Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

Borrowers should also keep all records relating to the borrower’s PPP Loan, including documentation submitted with its PPP Loan application, documentation supporting the borrower’s certifications as to the necessity of the loan request and its eligibility for a PPP Loan, documentation necessary to support the borrower’s Forgiveness Application, and documentation demonstrating the borrower’s material compliance with PPP requirements.

25. What information and documentation is required for the EZ Forgiveness Application?

The same basic information as the Forgiveness Application must be provided (as summarized in Question 23 above). The documentation to be provided with the EZ Forgiveness Application includes:

- **Payroll -** Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or Alternative Payroll Covered Period, including:
  - Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees;
  - Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the Covered Period or Alternative Payroll Covered Period, including:
    - Payroll tax filings reported, or that will be reported, to the IRS (typically Form 941); and
    - State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported to the relevant state.
  - Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness amount.
  - The average number for FTEs on payroll employed by the borrower on January 1, 2020 and at the end of the Covered Period if the borrower is able to use the EZ Forgiveness Application because it did not reduce salaries or hourly wages by more than 25% during the Covered Period and did not reduce FTEs between January 1, 2020 and the end of the Covered Period.
- **Nonpayroll** - Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period, including:
  - For mortgage interest payments – lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
  - For rent or lease payments – copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
  - For utility payments – copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks or account statements verifying those eligible payments.

Borrowers who use the EZ Forgiveness Application will also be required to certify that they meet at least one of the requirements for using the EZ Forgiveness Application as set forth in Question 20.

26. Are there other documents a borrower should maintain if using the EZ Forgiveness Application?

Yes. Borrowers should maintain, but not submit with the EZ Forgiveness Application, the following:

- Documentation supporting the certification that annual salaries or hourly wages were not reduced by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period relative to the period between January 1, 2020 and March 31, 2020. This documentation must include payroll records that separately list each employee and show the amounts paid to each employee during the period between January 1, 2020 and March 31, 2020, and the amounts paid to each employee during the Covered Period or Alternative Payroll Covered Period.
- Documentation regarding any employee job offers and refusals, refusals to accept restoration of reductions in hours, firings for cause, voluntary resignations, written requests by any employee for reductions in work schedule, and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
- Documentation supporting the certification, if applicable, that the borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period (other than any reductions that arose from an inability to rehire individuals who were employees on February 15, 2020, if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020). This documentation must include payroll records that separately list each employee and show the amounts paid to each employee between January 1, 2020 and the end of the Covered Period.

- Documentation supporting the certification, if applicable, that the Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19. This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records.

Borrowers should also keep all records relating to the borrower's PPP Loan, including documentation submitted with its PPP Loan application, documentation supporting the borrower's certifications as to the necessity of the loan request and its eligibility for a PPP Loan, documentation necessary to support the borrower's EZ Forgiveness Application, and documentation demonstrating the borrower's material compliance with PPP requirements.

27. For how long should documents be maintained and does a borrower have to share these with the SBA?

All PPP Loan documentation and records should be maintained by the borrower for six years after the PPP Loan is forgiven or repaid in full. Borrowers will be required to permit authorized representatives of the SBA to access such files upon request.

Other Questions

28. Must a 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.

29. Can a borrower deduct expenses associated with any amount forgiven on its 2020 tax returns?

While many borrowers expected that the business would also be able to write off the expenses that were forgiven, as they have traditionally done, the Internal Revenue Service (IRS) released Notice 2020-32 stating that no deduction is allowed on the borrower's 2020 tax return under the Internal Revenue Code for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP Loan. We expect that this guidance will be challenged and Section 265 of the Internal Revenue Code may be amended by Congress to allow a deduction for forgivable expenses. While the PPPFA did not include a legislative fix for this issue, additional legislation may do so. We will continue to monitor this issue and additional information may be provided.

30. 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.

31. Is it possible to delay the disbursement date so that the Covered Period falls later in the year?

No, lenders must disburse loan proceeds within ten days after the loan is approved by the SBA. The Covered Period begins on the date of disbursement.