



PAYCHECK PROTECTION PLAN (“PPP”) FORGIVENESS PROCESS FOR THE APPLICANT

FREQUENTLY ASKED QUESTIONS (“FAQS”)

As of July 15, 2020

Disclaimer: These FAQs include interpretations from the Small Business Administration (“SBA”) and Treasury PPP Forgiveness guidance as of July 15, 2020 and are to be used for informational purposes only. These FAQs do not constitute legal, business, or tax advice. Each person should consult his or her own accountant, attorney, or business advisor with respect to matters referenced in this document. Abrigo assumes no liability for actions taken in reliance upon the information contained herein and recommends that you access the SBA and Treasury websites for further guidance.

General

Question 1: When can I apply for forgiveness?

Answer: You may submit a loan forgiveness application any time on or before the maturity date of your loan and may apply before the end of defined covered periods as long as you have used all of your loan proceeds for which you are requesting forgiveness. If you do not apply early and you received your loan before June 5, 2020, you may apply at the end of eight weeks or 24-weeks from loan disbursement. If you received your loan on or after June 5, 2020 you may use the 24-week covered period but do not have the option of using the eight-week period.

Question 2: What is a covered period?

Answer: The start of your covered period begins on the date your loan was disbursed. A covered period can be eight weeks, 24-weeks, or any point at which you submit your application after you use all of your loan proceeds, using the guidelines in Question 1 above.

Question 3: If I use all of my loan proceeds before the end of either covered period above and apply early, how does that work?

Answer: You may apply for forgiveness once you have used all of your loan proceeds. If you apply for forgiveness before the end of the covered period (upon use of all of your loan proceeds) and you have reduced any employee's salaries or wages in excess of 25%, you must account for the excess salary reduction for the full eight or 24-week covered period.

Question 4: Who can use the SBA Form 3508EZ?

Answer: The abbreviated Loan Forgiveness Application Form, SBA Form 3508EZ, may be used by you if you meet the following criteria:

- You are self-employed and have no employees, OR
- You did not reduce the salaries or wages of your employees by more than 25%, and did not reduce the number or hours of your employees, OR
- You experienced reductions in business activity as a result of agency and/or governmental health directives related to COVID-19 and did not reduce the salaries or wages of your employees by more than 25%.

Question 5: When will my lender notify me of my forgiveness amount?

Answer: Your lender has 60 days from receipt of a completed application to issue a decision to the Small Business Administration ("SBA"). Your lender is responsible for notifying you of your forgiveness amount.

Question 6: If I received an Economic Injury Disaster Loan ("EIDL") Advance, how is this treated for forgiveness?

Answer: While EIDL advances are not required to be repaid, the SBA will deduct your EIDL advance from your forgiveness amount when completing the application. You are required to include the advance number and amount on the Form 3508.

Question 7: Can the SBA review my loan forgiveness application?

Answer: Yes. The SBA has issued guidance that indicates the agency can review any loan for eligibility. If the SBA determines that you were ineligible

for the PPP loan, the loan will not be eligible for loan forgiveness. The SBA will notify your lender, who, in turn, will notify you.

Question 8: When does my deferral of paying principal and interest end?

Answer: If you do not apply for forgiveness of a loan within 10 months after the last day of your covered period, payments on the PPP loan are no longer deferred and you must begin paying principal and interest. In addition, if the SBA determines that you are not eligible, your lender will notify you of when your first payment is due.

Question 9: What happens to any unforgiven portions of my PPP loan?

Answer: Unforgiven amounts will revert to loans with a maturity of five years and a 1% interest rate if your loan was disbursed on or after June 5, 2020. If your loan was disbursed prior to June 5, 2020, the loan maturity date remains at two years unless the lender and you negotiate a five-year term.

Payroll

Question 10: How much of my loan proceeds must be used for payroll in order to receive full forgiveness of my loan?

Answer: You must use at least 60% of your loan proceeds for payroll in order to receive full loan forgiveness. You may receive partial loan forgiveness, if you use less than 60% of your loan proceeds for payroll costs.

Question 11: What period do I use in determining payroll costs?

Answer: You may apply for forgiveness for payroll costs for the applicable covered period beginning on either the date of disbursement of your PPP loan proceeds from your Lender or the first day of the first payroll cycle in the covered period (*aka* the "alternative payroll covered period" if you have a bi-weekly or more frequent payroll).

Question 12: What is the alternative covered period that may be used for payroll costs only?

Answer: An alternative covered period may be used if you have a bi-weekly or more frequent payroll so that you are able to start your alternative Payroll covered period with the payroll register immediately following

the date of your loan disbursement. For example, if you are using a 24-week alternative Payroll covered period and you received your PPP loan proceeds on April 20, and the first day of your first pay period following its PPP loan disbursement is April 26, the first day of your alternative payroll covered period is April 26.

*Question 13:*What is included in eligible compensation?

Answer: Cash Compensation to employees with residences in the U.S., who were employed by you at any point during the covered or alternative covered period. Payroll includes gross salary/wages, tips, commissions, paid leave (vacation, family, medical or sick leave, but not including leave covered by the Families First Coronavirus Response Act), and dismissal or separation paid or incurred during the covered period or the alternative payroll covered period.

*Question 14:*What types of employer-paid benefits are eligible?

Answer: Employer contributions for employee health insurance, employee retirement plans and employer state and local taxes paid by you and assessed on employee compensation are eligible. You may not include payments of your portion of federal payroll taxes.

Do not add employer health insurance contributions or retirement contributions made for self-employed individuals, general partners, or owner-employees of S-corporations, because these payments are already included in their compensation. Contributions on behalf of owner/employees are capped at 2.5 months' worth of your 2019 contribution amount.

*Question 15:*Are there any dollar limits on payroll costs?

Answer: For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the covered period. For an eight-week covered period, that total is \$15,385. For a 24-week covered period, that total is \$46,154.

*Question 16:*Are payroll limits different for owner compensation?

Answer: For a 24-week covered period, compensation is capped at \$20,833 (the 2.5-month equivalent of \$100,000 per year) for each individual or

the 2.5-month equivalent of their applicable compensation in 2019, whichever is lower. For an eight-week covered period, this amount is capped at 8/52 of 2019 compensation (up to \$15,385). In particular, C-corporation owner-employees are capped by the amount of their 2019 cash compensation and employer retirement and health insurance contributions made on their behalf. S-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement contributions made on their behalf. Schedule C or F filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. For self-employed individuals, including Schedule C or F filers and general partners, retirement and health insurance contributions are included in their net self-employment income and therefore cannot be separately added to their payroll calculation.

Question 17: What if I pay my employees in arrears for services performed?

Answer: The SBA recognizes that the covered period will not always align with an applicant's payroll cycle. If you have a **bi-weekly (or more frequent)** payroll cycle, you may elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle after your loan is disbursed. Likewise, if payroll costs are incurred during this alternative payroll covered period but paid after the end of the alternative payroll covered period, payroll costs will be eligible for forgiveness if they are paid no later than the first regular payroll date following the end of the period.

Payroll costs are generally incurred on the day the employee's pay is earned (i.e., on the day the employee worked). For employees who are not performing work but are still on your payroll, payroll costs are incurred based on the schedule established by you (typically, each day that the employee would have performed work).

Non-payroll Expenses

Question 18: What other nonpayroll expenses are eligible?

Answer: Your business mortgage interest and rent/lease payments as well as utilities are eligible. These nonpayroll expenses must be for contracts or services that were in place prior to February 15, 2020.

Question 19: Can an applicant include interest on loans secured by personal property such as interest on business automobile loans?

Answer: Yes. You can include interest on personal property. The SBA has not specifically mentioned types of property but if we follow the definition of personal property, it should include any personal property type owned by the business.

Question 20: Can an applicant include rent or lease expense on personal property such as business automobile leases?

Answer: Yes. You can include rental or lease expense on personal property.

Question 21: Can an applicant use the funds for items other than eligible expenses outlined in the SBA guidance?

Answer: Yes. However, the amounts will not be forgiven and will revert to a loan.

Question 22: How do I handle inclusion of payment for services within the covered period if amounts were incurred but not paid until after the covered period?

Answer: A nonpayroll cost is eligible for forgiveness if it was 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. For example, if you received your October electricity bill and a portion of it represented charges for services rendered through September 30, which happens to be the end of the covered period, you may include the portion that pertains to services for September as long as you pay them on the October billing cycle.

Question 23: Are any operating expenses forgivable outside of payroll, mortgage interest, rent or lease payments, and utilities payments?

Answer: No.

Full-time Equivalents ("FTE")

*Question 24:*How do I account for FTEs in the application?

Answer: You must reduce the amount of the PPP loan that may be forgiven if you reduced full-time equivalent employees during the covered period as compared to a base period selected (known as the "Reference Period") and you do not eliminate this FTE reduction by December 31, 2020.

Example 1 from the SBA guidance: A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$1,200 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling \$1,200).

Example 2 from the SBA guidance: A borrower who received a PPP loan before June 5, 2020 has elected to use an eight-week covered period. This borrower reduced a full-time employee's weekly salary from \$1,000 per week during the reference period to \$700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first \$250 (25 percent of \$1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list \$400 as the salary/hourly wage reduction for that employee (the extra \$50 weekly reduction multiplied by eight weeks).

*Question 25:*What Reference Period do I use in my FTE calculation?

Answer: You may use any of the following reference periods to compare to your covered or alternative payroll covered period for purposes of calculating any FTE reductions:

- February 15, 2019 to June 30, 2019, OR
- January 1, 2020 to February 29, 2020
- Seasonal employers – may elect either of the above OR any consecutive 12-week period between May 1, 2019 and September 15, 2019

*Question 26:*What are the FTE Safe Harbors?

Answer: Inability to rehire employees and inability to hire qualified employees for unfilled positions. Supporting documentation may include: (1) Written offers to rehire and employee's refusal of the offer, (2) HR records of firing for cause, (3) Resignation letter or employee request for reduction of hours, (4) Written record of efforts to hire qualified employees (e.g., job postings).

Inability to return to the same level of business 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 (CDC), or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer 23 safety requirement related to COVID-19. Supporting documentation must include copies of applicable COVID requirements or guidance for each business location and relevant borrower financial records showing financial impact. Guidance from state and local government shutdown orders that are based in part on guidance from the three federal agencies may also be considered.

Example from the SBA guidance: A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all non-essential businesses, including the borrower's business, to shut down their stores, based in part on COVID-19 guidance issued by the CDC in March 2020. Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID requirements or guidance, the borrower satisfies the exemption. The borrower will not have its forgiveness amount reduced because of a reduction in FTEs during the covered 24 period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID requirement or guidance as described above.

*Question 27:*Will my loan forgiveness amount be reduced if I reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined my offer?

Answer: No, this falls under the safe harbor allowances. In calculating the loan forgiveness amount, you may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual

employee if you: (1) Made a good faith, written offer to restore the reduced hours, and, your offer was for the same salary or wages and same number of hours earned by the employee in the last pay period prior to the reduction in hours, and, (2) The offer was rejected by the employee, and, (3) You have records documenting the offer and its rejection.

Supporting Documentation:

*Question 28:*What are my record retention requirements for the forgiveness application?

Answer: You must retain all supporting documentation for six years after the date the loan is forgiven or repaid in full for any unforgiven amounts.

*Question 29:*What documents must be submitted with my PPP forgiveness application?

Answer: Payroll: Documentation that verifies cash compensation and non-cash benefit payments from the covered period or the alternative payroll covered period. Examples are third-party service provider payroll registers, payroll tax filings, such as 941s, and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, for the periods that overlap with the covered period or the alternative payroll covered period. [Note: if you are using a third-party payroll provider, inquire as to if they will run a special payroll report for your covered and reference periods].

Payment receipts, cancelled checks, or account statements documenting the amount of your employer contributions to employee health insurance and retirement plans.

Nonpayroll expenses: Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the covered period, such as: (1) Copies of lender mortgage statements and receipts or cancelled checks verifying eligible payments from the covered period through one month after the end of the covered period verifying interest amounts and eligible payments, (2) Copies 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, and, (3) Copies of invoices from February 2020 and those

paid or incurred during the covered period and receipts, or cancelled checks, or account statements verifying those eligible payments.

Question 30: What documents do not need to be submitted but must be maintained?

Answer: Documentation supporting the certification that annual salaries or hourly wages were not reduced by more than 25% 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 you 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 you were 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, or from any state agency. This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records.