

PPP Loan Forgiveness & Good Faith Certification of Eligibility

DVFBC

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DISCLAIMER

THIS DOCUMENT IS A HIGH-LEVEL SUMMARY AND DISCUSSION OF PARTS OF THE PAYCHECK PROTECTION PROGRAM OF THE CARES ACT AND THE PAYCHECK PROTECTION FLEXIBILITY ACT AND RELATED REGULATIONS AND GUIDANCE.

LOAN FORGIVENESS APPLICATIONS WILL BE MADE TO YOUR LENDER WHO HAS AUTHORITY TO ADMINISTER THE PPP. IT WILL BE IMPORTANT TO COORDINATE LOAN FORGIVENESS CALCULATIONS WITH YOUR LENDER.

SBA AND TREASURY CONTINUE TO ISSUE REGULATIONS AND GUIDANCE RELATED TO THE PAYCHECK PROTECTION PROGRAM.

THIS DOCUMENT SHOULD NOT BE USED AS A BASIS TO MAKE ANY DECISIONS OR TAKE ANY ACTIONS RELATED TO A PPP LOAN, GOOD FAITH CERTIFICATIONS OR LOAN FORGIVENESS. BORROWERS SHOULD CONSULT THEIR BANK AND THEIR OWN ADVISORS BEFORE MAKING ANY DECISIONS OR TAKING ANY ACTIONS RELATED TO THESE MATTERS.

Recent Guidance

- Paycheck Protection Program - Loan Forgiveness Application
 - May 15, 2020
 - SBA Form 3508

- SBA/Treasury Department – Interim Final Rule - Requirements – Loan Forgiveness
 - May 22, 2020
 - Docket Number SBA – 2020-0032

- Paycheck Protection Flexibility Act – H.R. 7010
 - June 5, 2020
 - Treasury and SBA Joint Statement – June 8, 2020

- SBA/Treasury Department – Interim Final Rule - Review Procedures and Related Borrower and Lender Responsibilities
 - May 23, 2020
 - Docket Number SBA-2020-0033

Discussion Outline

1. Review of Recent Changes from the Paycheck Protection Flexibility Act (PPFA)
2. Review of Loan Forgiveness Provisions Considering:
 - Forgiveness Application Instructions (May 15)
 - IFR - Requirements – Loan Forgiveness (May 22)
 - PPFA (June 5)
3. Good Faith Certification of Eligibility
 - FAQs through May 27
4. Q & A

Payroll Protection Flexibility Act

Loan Forgiveness – Change in Covered Period

1. The term `Covered Period' means the period beginning on the date of the origination of a covered loan and ending the earlier of:
 - the date that is 24 weeks after such date of origination; or
 - December 31, 2020
2. Option for Borrowers That Already Received Loans - An eligible recipient that received a covered loan before the date of enactment (June 5, 2020) , may elect for the covered period applicable to such covered loan to end on the date that is 8 weeks after the date of the origination of such covered loan.
3. IMPORTANT NOTE – Borrowers who choose the 24 week covered period for their forgiveness calculations must also report their average FTE reduction calculations and average salary and wage reduction >25% calculations over the same covered period.
 - Borrowers should consider the tradeoffs between having more time to pay costs eligible for forgiveness versus potential forgiveness reductions related to the longer period to comply with forgiveness reductions due to reductions in FTEs and salary and wage levels.

Loan Forgiveness - Mix of Costs

UPDATED IN SBA & TREASURY JUNE 8, 2020 JOINT STATEMENT

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the following costs incurred and payments made during the covered period:

- At least 60% of costs must be used for Payroll Costs - (Prior was 75%)
 - Not more than 40% of the costs can be used for Nonpayroll Costs - (Prior was 25%)
- ❑ IMPORTANT NOTE – Changed from PPFA language on June 5 that caused borrowers to lose 100% of forgiveness if they did not spend at least 60% on Payroll Costs. Joint statement on June 8 allows for partial forgiveness amount based on the amount spent on Payroll Costs.

Loan Forgiveness – Date to Restore Wages and Rehire Workers

- The exemptions from loan forgiveness reductions for restoring FTE and Salary and Wage levels is changed to not later than [December 31, 2020](#).
 - Previously, the date was June 30, 2020.

Loan Forgiveness – New Exemptions for FTE Test

Exemption Based on Employee Availability

During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith is able to document an:

- inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; AND (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020;

OR

- inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued 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, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Loan Terms – Deferral Period & Term of Loan

Deferral Period

- Payment of principal, interest, and fees are deferred until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.
- Previously the deferral period was 6 months from the date of the loan.

Term of Loan

- Maturity of 5 years. (Prior was 2 years)
- Interest rate remains 1%.

Loan Forgiveness – Time Limit to Apply

Time Limit to Applying for Loan Forgiveness

- If a eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period, then
- such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

Payroll Tax Deferral

- Borrowers will be eligible for the deferral of payment of the employer's share of Social Security payroll taxes (6.2%), regardless of whether the borrower receives loan forgiveness.
- This allows borrowers to now defer the payment of the employer's share until 2021 when 50% of such taxes must be paid, with the remaining 50% due in 2022.

PPP Program Application Guidelines

- June 30, 2020 is the last day that a PPP loan can be approved.
- SBA and Treasury will issue regulations and guidance related to the PPFA.
- PPP Loan Forgiveness Application and Instructions issued on May 15 (SBA Form 3508) will be amended.
- PPP Application for will be amended.

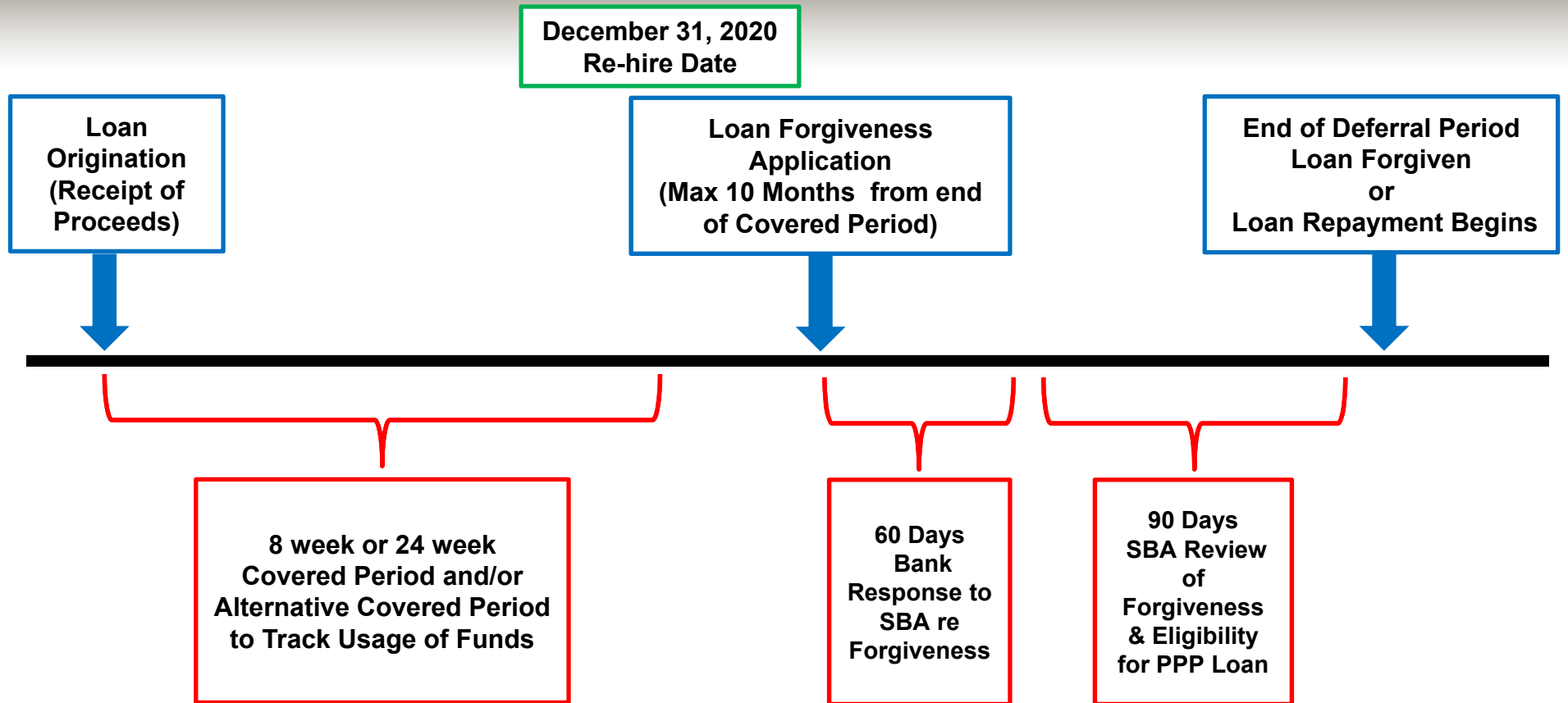
Loan Forgiveness

Loan Forgiveness Process

The general loan forgiveness process described below applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender's decision on the forgiveness application. In a separate interim final rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, SBA will describe its procedures for reviewing PPP loan applications and loan forgiveness applications.

1. Borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508 or lender equivalent) to its Lender
2. The lender has 60 days from receipt of a complete application to issue a decision to SBA.
3. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA
4. If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness.
5. The lender is responsible for notifying the borrower of the forgiveness amount.
6. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the 5 year maturity of the loan.

PPP Loan Forgiveness Timeline



Alternative Covered Period – Payroll Costs Only

Borrowers can elect to use the “Alternative Payroll Covered Period” for Payroll Costs.

- For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”).
- 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 this application to “the Covered Period” only.
- NOTE: Eligible Nonpayroll Costs are measured in the “Covered Period”

Calculating Eligible Payroll Costs (Paid or Incurred)

Eligible Payroll Costs - In general, Payroll Costs paid or incurred during the covered period or alternative covered period are eligible for forgiveness.

- Payroll 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 during the borrower's last pay period of the covered period or the 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).
- 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.
- Count payroll costs that were both paid and incurred only once.

Eligible Payroll Costs

1. **Compensation** - The sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period.
 - 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; therefore, do not enter more than \$15,385 for any individual employee.

NOTE (See IFR) – Salary, wages or commission payments to furloughed employees, hazard pay and bonuses are eligible for forgiveness.

2. **Health Insurance** - Employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan, but excluding any pre-tax or after tax contributions by employees.
3. **Retirement Contributions** - Employer contributions to employee retirement plans, excluding any pre-tax or after-tax contributions by employees.
4. **State & Local Taxes** - Employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax); do not list any taxes withheld from employee earnings.

Calculating Eligible Nonpayroll Costs (Paid or Incurred)

Eligible Nonpayroll Costs 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.
- Eligible Nonpayroll Costs cannot exceed 25% of the total forgiveness amount.
- Count Nonpayroll Costs that were both paid and incurred only once.

Eligible Nonpayroll Costs

1. **Covered Mortgage Obligations:** payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on **real or personal property** incurred before February 15, 2020 (“business mortgage interest payments”)

NOTE (See IFR) – Advance payments are not eligible for forgiveness

2. **Covered Rent Obligations:** **business rent or lease payments** pursuant to lease agreements for **real or personal property** in force before February 15, 2020 (“business rent or lease payments”)

3. **Covered Utility Payments:** business payments for a service for the distribution of electricity, gas, water, **transportation**, telephone, or internet access for which service began before February 15, 2020 (“business utility payments”)

IFR April 20 - FR 21747 – Self-Employment

How can PPP loans be used by individuals with income from self-employment who file a 2019 Form 1040, Schedule C?

The proceeds of a PPP loan are to be used for the following for Nonpayroll costs:

- Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business)
- business rent payments (e.g., the warehouse where you store business equipment or the vehicle you use to perform your business)
- business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle).

Determining the Amount Eligible For Forgiveness

1. Loan principal and interest are eligible for forgiveness.
2. An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the following costs incurred and payments made during the covered period:
 - At least 60% of costs must be used for Payroll Costs - (Prior was 75%)
 - Not more than 40% of the costs can be used for Nonpayroll Costs - (Prior was 25%)
3. Note: Refinancing an EIDL loan made between January 31, 2020 and April 3, 2020 is considered an allowable cost if your EIDL loan was used for payroll costs. The \$10,000 EIDL grant reduces loan forgiveness.

Reduction in Forgiveness Based on Reduction in Number of FTEs

1. Calculation of Average FTEs - The average number of full time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.
2. The amount of loan forgiveness is reduced, by multiplying the amount of forgiveness by the ratio of the average number of FTEs per month employed during the covered period or alternative covered period, compared to the borrowers Reference Period:
 - The average number of full time equivalent employees per month employed by the eligible recipient during the period (at the borrower's option):
 - February 15, 2019 - June 30, 2019, or
 - January 1, 2020 - February 29, 2020
 - For seasonal employers - February 15, 2019 - June 30 2019.
3. Exemption from FTE Reduction in Forgiveness – If there is a reduction in the number of full-time equivalent employees during the period of February 15, 2020 and ending 30 days after the bill becomes law (April 26, 2020) as compared to February 15, 2020, AND, if not later than December 31, 2020, the eligible employer has eliminated the reduction in the amount of full time equivalent employees.

Calculating FTEs

Average FTE:

- For each employee, 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 Borrower.
- Borrowers must follow the same method that was used to calculate Average FTEs during the Covered Period or Alternative Covered Period as compared to the reference period.

FTE Reduction Exceptions

1. Employees whom the borrower offered to rehire are generally exempt from the CARES Act's loan forgiveness reduction calculation. This exemption is also available if a borrower previously reduced the hours of an employee and offered to restore the employee's hours at the same salary or wages. A borrower may exclude any reduction in FTEs attributable to an individual employee if:
 - the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;
 - the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;
 - the offer was rejected by such employee;
 - the borrower has maintained records documenting the offer and its rejection; and
 - the borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

2. Borrowers may also exclude any reduction in FTEs for any employees who during the Covered Period or the Alternative Payroll Covered Period (FTE reduction events):
 - (a) were fired for cause,
 - (b) voluntarily resigned, or
 - (c) voluntarily requested and received a reduction of their hours

3. These FTE reductions don't apply if the position was filled by a new employee

FTE Reduction Exceptions

4. Exemption Based on Employee Availability

During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith is able to document an:

- inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; AND (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020;

OR

- inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued 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, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Reduction in Forgiveness Relating to Salaries and Wages

1. The amount of loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee during the covered period or **alternative covered period** that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
2. An employee, for purposes of this section, is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000 or were not employed by the Borrower at any point in 2019.
3. Exemption - If there is a reduction in the salary or wages of 1 or more employees during the period of February 15, 2020 and ending 30 days after the bill becomes law (April 26, 2020) as compared to February 15, 2020, and, [if not later than December 31, 2020](#), the eligible employer has eliminated the reduction in the salary or wages.

Calculating Forgiveness Reduction Based on >25% Salary and Wage Reduction

- Salaried Workers – Per Employee Basis
 1. Calculate average annual salary during Covered Period or Alternative Covered Period
 2. Calculate average annual salary during Q1 2020
 3. If reduction < 25% - STOP
 4. If reduction > 25%
 5. Calculate amount of annual salary reduction > 25%
 6. Divide by 52 and multiply by # of weeks ([8 or 24](#))

- Hourly Workers – Per Employee Basis
 1. Calculate average hourly wage during Covered Period or Alternative Covered Period
 2. Calculate average hourly wage during Q1 2020
 3. If reduction < 25% - STOP
 4. If reduction > 25%
 5. Calculate amount of hourly wage reduction > 25%
 6. Calculate the average weekly hours worked in Q1 2020
 7. Multiply hourly wage reduction >25% x average weekly hours worked in Q1 2020 x # of weeks ([8 or 24](#))

Double Penalty for FTE & Wage/Salary Reductions

To ensure that borrowers are not doubly penalized, the salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction.

- Applies only if reduction in salaries and wages > 25% is solely attributable to a reduction in hours (as opposed to pay rates)

Example:

- ✓ An hourly wage employee had been working 40 hours per week during the borrower selected reference period (FTE employee of 1.0) and the borrower reduced the employee's hours to 20 hours per week during the covered period (FTE employee of 0.5). There was no change to the employee's hourly wage during the covered period.
- ✓ Because the hourly wage did not change, the reduction in the employee's total wages is entirely attributable to the FTE employee reduction and the borrower is not required to conduct a salary/wage reduction calculation for that employee.

Taxation of Loan Forgiveness

1. The Cares Act
 - Debt forgiveness on a PPP loan shall be excluded from gross income for federal tax purposes.
2. IRS – Notice 2020-32 – April 30, 2020
 - Expenses related to PPP loan forgiveness under the Cares Act are not tax deductible.
3. Expect to see more guidance from Treasury
4. Taxability at the state level is unclear at this time.

Loan Forgiveness Methodology

- Reduction in forgiveness for greater than 25% reduction in wages is applied against total payroll costs prior to applying the reduction in forgiveness related to reductions in FTEs

	Original			Instructions	
	Forgiveness	Loan		Forgiveness	Loan
PPP Loan	1,000			1,000	
Covered Period Costs	900	100		900	100
Eligible for Forgiveness	900			900	
Wage Reductions Greater than 25%	(50)	50		(50)	50
Subtotal				850	
Non-Retained FTEs 10%	(90)	90		(85)	85
Loan Forgiveness	760	240		765	235

Documents Borrowers Must Submit with its PPP Loan Forgiveness Application – Payroll

Payroll: Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period consisting of each of the following:

- a) Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
- b) Tax forms (or equivalent third-party **payroll service provider reports**) for the periods that overlap with the Covered Period or the Alternative Payroll Covered Period:
 - 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.
- c) 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.

Documents Borrowers Must Submit with its PPP Loan Forgiveness Application – FTEs

FTE: Documentation showing (at the election of the Borrower):

- a) the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
- b) the average number of FTE employees on payroll per month employed by the Borrower between January 1, 2020 and February 29, 2020; or
- c) in the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019. (at the election of the Borrower)
- d) The average number of FTEs in the Covered Period or Alternative Covered Period

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 Borrowers Must Submit with its PPP Loan Forgiveness Application – Nonpayroll

Nonpayroll: Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

- a) Business mortgage interest payments: Copy of 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.
- b) Business 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.
- c) Business 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.

Documentation Borrower Must Maintain But Not Submit

PPP Schedule A Worksheet or its equivalent and the following:

- a. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary.
- b. 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.
- c. Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.
- d. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

Documentation Borrower Must Maintain But Not Submit – Other

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 loan forgiveness application, and
- documentation demonstrating the Borrower's material compliance with PPP requirements.

The Borrower must retain all such documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.

Good Faith Certification of Eligibility

Cares Act – March 27, 2020

- (i) CERTIFICATION –An eligible recipient applying for a covered loan shall make a good faith certification-
 - (I) “That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the recipient.”
 - (II) “acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments”

PPP Interim Final Rule – April 2, 2020

Certification:

“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the business.”

FAQ #17 - April 6, 2020

Question: I filed or approved a loan application based on the version of the PPP Interim Final Rule published on April 2, 2020. Do I need to take any action based on the updated guidance in these FAQs?

Answer: No. Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications reflected in these FAQs.

FAQ #31 - April 23, 2020

Question: Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

Answer:

- ✓ **all** borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application.
- ✓ borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, **all borrowers should review carefully the required certification that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”**
- ✓ Borrowers must make this certification in good faith, taking into account their **current business activity** and their ability to **access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.**
- ✓ Any borrower that applied for a PPP loan prior to the issuance of this guidance and **repays the loan in full by May 7, 2020** will be **deemed by SBA to have made the required certification in good faith.**

FAQ #37 - April 28, 2020

Question: Do businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

Answer: See response to FAQ #31.

FAQ #39 - April 29, 2020

Question: Will SBA review individual PPP loan files?

Answer: Yes. In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Additional guidance implementing this procedure will be forthcoming.

FAQ #46 – May 13, 2020

Question: How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?

Answer: When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA’s review of PPP loans with respect to this issue:

- Any borrower that, together with its affiliates,²⁰ received PPP loans with an original principal amount of **less than \$2 million will be deemed to have made the required certification** concerning the necessity of the loan request in good faith.
- SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally **less likely to have had access to adequate sources of liquidity** in the current economic environment than borrowers that obtained larger loans.
- This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

FAQ #46 – May 13, 2020, Continued

- Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance.
- SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form.
- If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness.
- If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request.

1. Impact Analysis

- ✓ Develop an analysis that thoroughly documents the impact of the pandemic on your business.
- ✓ This should include:
 - the uncertainties you were faced with
 - state of your business conditions and activities
 - at the time of your PPP loan application
- ✓ This analysis will be different for every company and will be case specific.
- ✓ It should include specific details of the key things going on in the business that illustrate the impact of the pandemic.

1. Impact Analysis - Examples

- The effect of mandated closures on the business and its ability to operate
- Customer losses, delays, closings, shutdowns, or cancellations
- Requests for price reductions or extended payment terms
- How the markets you serve are being affected by the pandemic
- Supply chain disruptions and closures
- People issues, including distancing measures, people not coming to work, etc.
- Layoffs, reductions, or other personnel actions
- Sales and booking details and trends
- Order cancellations
- Receivables and collections trends and deterioration
- Working capital levels and deterioration
- Production levels and trends
- Cash balances and cash flow trends

2. Decision Processes

- ✓ Document your analysis and the many alternative courses of action you considered to address the potential significant threats and adverse impacts on your business, including why you chose your course of action.
- ✓ Document the specific planning and actions you took when considering your PPP loan, such as layoffs, pay reductions, etc. that would have been necessary without the PPP funds.
- ✓ Document your thinking and decision process regarding the availability and use of other sources of liquidity and why you concluded that those sources would have been insufficient to support your business operations and to maintain employment and compensation. This should include your analysis of the risks and limitations associated with lines of credit and other forms of debt.

2. Decision Processes, continued

- ✓ Demonstrate the seriousness and intensity of your deliberations during this time related to the severity of the situation and the level of uncertainty you faced. You may want to assemble documentation consisting of meeting agendas, meeting notes, action steps, board meetings and resolutions, etc.
- ✓ Document the dates that you received PPP loan approval and PPP loan funding in relation to the date of FAQ #31 (4/23/20) being published, as well as specific decisions you made based on the PPP approval and funding.

3. Financial Analysis & Planning

- ✓ Document the financial analysis and cash flow planning that you engaged in as part of your decision process to demonstrate the need to apply for the loan.
- ✓ Include various scenarios that you considered in projecting cash flows, cash balances, and other key business metrics.
- ✓ Consider other unique risk factors, including existing debt levels and leverage, cash levels, and customer, supplier, and market concentrations.

3. Financial Analysis & Planning, continued

- ✓ Consider unique claims on capital, including existing purchase commitments, capital project commitments, shareholder redemption commitments, as well as ESOP redemptions.
- ✓ Include the factors and risks that affect your access to lines of credit, including borrowing base limitations, ramifications of potential debt covenant violations, and the uncertainty related to expiration and renewal of your line of credit given the current environment. This could include limitations or restrictions on your bonding lines.

4. Use of PPP Funds

- ✓ Document your planned and actual use of the PPP funds consistent with the purpose of the program.
- ✓ Demonstrate how this was part of your good faith effort in applying for the loan, as well as your planning and decision-making.
- ✓ Make sure you have specific accounting for the use of the funds.
- ✓ Consider a separate account to spend the money out of.

Thanks for Your Time and Attention!

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