



May 18, 2020

Acceptable Use of PPP Funds

The Small Business Administration released the [Paycheck Protection Loan Forgiveness Application](#), and in doing so answered many questions about loan forgiveness and acceptable uses of PPP funds.

The application has the following components: (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) the PPP Schedule A Worksheet; and (4) the (optional) PPP Borrower Demographic Information Form. All Borrowers must submit (1) and (2) to their Lender.

- ◆ Who should I talk to about forgiveness?
 - Your lending institution will determine how much of your loan is forgivable.
 - You will need to fill out the Paycheck Protection Program Loan Forgiveness Application which may be submitted in person or electronically if your lending institution allows.
 - You may need to bring documentation on the number of employees you had and now have, payroll costs, rent or mortgage payments, and utilities payments. The bank is required to respond to your request for forgiveness within 60 days.
- ◆ When does my 8-week loan forgiveness period start?
 - The 8-week period begins on the date the borrower receives the first disbursement of the loan, and the bank is required to make the disbursement within 10 days of loan approval.
- This 56-day window is used for the calculations of costs incurred or paid like mortgage interest and other forgivable payments.
- However, for the purposes of specifically determining payroll cost forgiveness, a business may employ the “Alternative Payroll Covered Period” in which the forgivable period is 56 days from the first day of its first pay period following its PPP loan disbursement.
- ◆ What are “payroll costs”?
 - For a business with employees, payroll costs are equal to the sum of:
 - Salary, wage, commission, or similar compensation; for a partnership, recent guidance from the SBA explains that payroll costs include not only guaranteed payments to a partner, but also any partner’s share of income of the partnership subject to self-employment income.
 - These amounts are subject to a per-employee or per-partner cap of \$100,000. Payment of cash tip or equivalent;
 - Payment for vacation, parental, family, medical, or sick leave;
 - Allowance for dismissal or separation;
 - Payment required for the provisions of group health care benefits, including insurance premiums;
 - Payment of any retirement benefit; or
 - Payment of State or local tax assessed on the compensation of employees.



- ◆ What are not “payroll costs”?
 - The compensation of an individual employee — or the self-employment income of a partner in a partnership — in excess of \$100,000, as prorated for the covered period;
 - Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code during the covered period;
 - Any compensation of an employee whose principal place of residence is outside of the United States;
 - Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act; or
 - Qualified family leave wages for which a credit is allowed under section 7003 of that same Act.
 - Any payments for independent contractors or 1099 employees.

- ◆ What payments, other than payroll, are forgivable?
 - Covered Mortgage Obligations: Business mortgage interest payments (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property during the covered period. This is limited to mortgages in place before February 15, 2020.
 - Covered Rent Obligations: Rent obligations include the amount of business rent or lease payments during the covered period. This is limited to lease agreements that were in force before February 15, 2020.
 - Covered Utility Payments: The amount of business utility payments during the covered period for business utilities for which service began before February 15, 2020. The guidance defines “business utility payments” as 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.

NOTE Eligible nonpayroll costs must either be paid or incurred during the covered period. For costs incurred during the covered period - such costs must be paid on or before the next regular billing date, even if the billing date is after the covered period.

- ◆ What are the rules with regards to what type of costs can be forgiven?
 - Of the amount a business requests to have forgiven 75% or more must be payroll costs. 25% or less of the amount may be other eligible costs.
- ◆ How do I calculate whether I have kept enough employees for forgiveness?
 - The PPP forgiveness document contains a worksheet and formula to help with Full Time Equivalent “FTE” calculations. By statute, the borrower will be eligible for reduced forgiveness if it did not keep either average FTEs and average compensation.
 - The FTEs for the covered period must align with FTEs from an earlier reference period. The borrower may elect as their reference period either:
 - February 15, 2019 to June 30, 2019;
 - or January 1, 2020 to February 29, 2020;
 - or
 - in the case of seasonal employers, either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019



- ◆ What are the exceptions to the FTE rule? Are there acceptable reasons that my FTE went down, but I still qualify for full forgiveness?
 - Reductions related to any positions for which the borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period that was rejected by the employee.
 - Reductions related to any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours.
 - Reductions rectified in accordance with the CARES Act “safe harbor,” meaning: (1) the borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the borrower, by no later than June 30, 2020, restores its FTE employee level to the FTE employee level that existed during the borrower’s pay period that included February 15, 2020.

- ◆ How do I calculate if I have kept salaries and wages high enough for forgiveness?
 - The SBA forgiveness document has a worksheet for determining average salaries and wages. The amount of loan forgiveness may be reduced if the salary or hourly wages of certain employees were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period compared to the period from January 1, 2020 to March 31, 2020.

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