

Your Business Received PPP Loan ... NOW WHAT? - Part II



REDW_{LLC} expertise.

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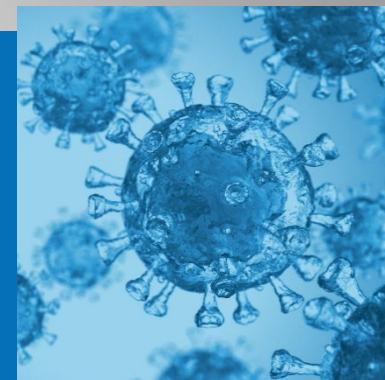
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Agenda

1. SBA Updated Guidance
2. SBA Application for Forgiveness
3. Statutory Reductions
4. FAQs
5. Documentation



SBA Updated Guidance



SBA Frequently Asked Questions

- SBA website
(<https://www.sba.gov/document/support--faq-lenders-borrowers>)
 - Current version is through May 13, 2020.
 - SBA was adding a question or two a week.
- Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation of the CARES Act and of the PPP Interim Final Rules
- U.S. government will not challenge lender PPP actions that conform to this guidance, and to the PPP Interim Final Rules and any subsequent rulemaking in effect at the time.
 - This document does not carry the force and effect of law independent of the statute and regulations on which it is based.

SBA Establishes Safe Harbor

- SBA provided guidance in questions 31, 37, 43, 45 & 47 addressing companies that may not have needed the PPP loans and when they could return the money (May 18, 2020).
- SBA provided guidance in question 46 addressing certification of economic uncertainty made in good faith for loans +/- \$2M
- Loans that are **less than** \$2M are deemed to have made the certification concerning the necessity of the loan request in good faith.
- Loans that are **greater than** \$2M will be reviewed to determine the good faith certification of necessity of loan.
 - If found not to have needed the loan, borrower will need to immediately repay the loan.
 - If repaid, the SBA will not pursue administrative enforcement or referrals to other agencies.

SBA Issues Interim Final Rule

- Final rules provide guidance on increasing loans for partnerships and seasonal employers.
- *“This interim final rule authorizes all PPP lenders to increase existing PPP loans to partnerships or seasonal employers to include appropriate amounts to cover partner compensation or to permit seasonal employers to calculate maximum loan amount using the alternative criterion on April 28, 2020.”*

SBA Issues Interim Final Rule – Partnerships

- If the partnership did not include partner compensation on original PPP loan application, they may now approach the lender to have loan increased.
- The lender may electronically request an increase through the SBA E-Tran Servicing site, even if the loan has been fully dispersed.
 - Interim final rules posted on April 14, 2020 explained that partner compensation up to \$100K may be included.

SBA Issues Interim Final Rule – Seasonal Employers

- For Seasonal Employers that received their loan before April 28, 2020.
- Seasonal Employers may follow alternative criterion issued on April 28, 2020 to determine loan amount and request a higher maximum loan amount from lender.
 - Under this interim final rule issued pursuant to section 1109 of the Act, a seasonal employer may alternatively elect to determine its maximum loan amount as the average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019.
- The lender may electronically request an increase through the SBA E-Tran Servicing site, even if the loan has been fully dispersed.

SBA Issues Loan Forgiveness Application/Instructions

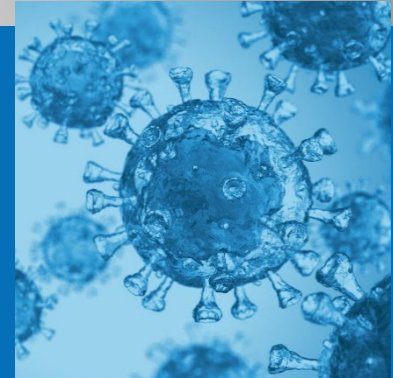
- Answered some questions:
 - \$2M threshold for will be applied to borrower and affiliates.
 - Special payroll run at the end of the covered period is not necessary.
 - Borrowers can use the newly defined “Alternative Payroll Covered Period” (8-week period).
 - In general, both payroll and other costs can be paid or incurred, **NOT BOTH**.
 - Other costs can be paid after the covered period, but before the next billing cycle.

SBA Issues Loan Forgiveness Application/Instructions

- Answered some questions (cont'd)
 - Max compensation for covered period is \$15,385 $((\$100K/52)*(8))$.
 - Salary/Hourly wage reduction uses rate of pay, not actual payments.
 - Salary/Hourly statutory reduction applied before FTE Reduction.
 - Average Full-Time Equivalent (FTE) is calculated using 40 hours.
 - Employees re-hired by 06/30/2020 DO NOT reduce FTE count.
- Application/Instruction created more questions



SBA Application for PPP Loan Forgiveness



PPP Loan Forgiveness Application

- How to apply for forgiveness:
 - Prepare SBA Form 3508, Loan Forgiveness Calculation Form and PPP Schedule A
 - Submit completed form and schedule to your lender in paper or electronic format according to lender's guidance.
 - Submit supporting documents as requested by lender
- Four (4) parts to forgiveness application:
 - PPP Loan forgiveness calculation form
 - PPP Schedule A
 - PPP Schedule A Worksheet
 - OPTIONAL borrower demographic information form

Loan Forgiveness Application (Information)



**Paycheck Protection Program
Loan Forgiveness Application**

OMB Control Number 3245-0407
Expiration Date: 10/31/2020

PPP Loan Forgiveness Calculation Form

Business Legal Name ("Borrower")		DBA or Tradename, if applicable	
Business Address		Business TIN (EIN, SSN)	Business Phone
		() -	
		Primary Contact	E-mail Address

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____

PPP Loan Amount: _____ PPP Loan Disbursement Date: _____

Employees at Time of Loan Application: _____

Employees at Time of Forgiveness Application: _____

EIDL Advance Amount: _____ EIDL Application Number: _____

Payroll Schedule: The frequency with which payroll is paid to employees is:

- Weekly
 Biweekly (every other week)
 Twice a month
 Monthly
 Other _____

Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____

If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:

Loan Forgiveness Amount Calculation

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10):

Line 2. Business Mortgage Interest Payments:

Line 3. Business Rent or Lease Payments:

Line 4. Business Utility Payments:

Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3):

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5:

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13):

Potential Forgiveness Amounts

Line 8. Modified Total (multiply line 6 by line 7):

Line 9. PPP Loan Amount:

Line 10. Payroll Cost 75% Requirement (divide line 1 by 0.75):

Forgiveness Amount

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10):

Covered Period and Alternative Period

- Covered Period
 - 8-week (56-day) period begins on the PPP Loan disbursement date.
 - Requires payroll periods that cross the start or end of the loan to be prorated to exact days in period.
- Alternative Payroll Covered Period
 - 8-Week (56-day) period begins on first day of the first pay period following PPP Loan disbursement date.
 - Only allowed for weekly or bi-weekly payroll periods.
 - Avoids the headache of prorated exact days from above.
 - *DOES NOT CHANGE THE COVERED PERIOD FOR OTHER COSTS.*

Payroll Costs for Forgiveness

- Payroll costs are considered **paid** on the day the employees receive their paychecks OR the borrower originates an ACH Transaction.
- Payroll costs are **incurred** on the day the employee's pay is earned.
- Payroll costs **incurred but not paid** during the last day of the covered period (or alternative payroll covered period) are eligible for forgiveness if paid on or before the next regular payroll date.
 - All other payroll costs should be **paid** in the covered period (or alternative payroll covered period).
- For each individual employee, the total amount of cash compensation for forgiveness may not exceed \$15,385.

What Are Payroll Costs?

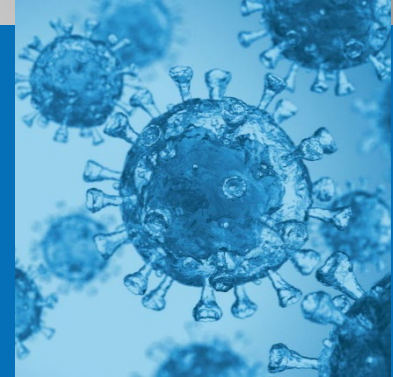
- Compensation includes:
 - Salary, wages, commissions or similar compensation for employees, not independent contractors
 - Cash tips or the equivalent (reasonable good faith)
 - Payment for vacation, parental, family, medical, or sick leave
 - Allowance for dismissal or separation
 - No more than \$15,385 for an employee during the covered period or alternative payroll covered period
- Employer Paid – Other Compensation
 - Employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan
 - Employer contributions to employee retirement plans
 - Employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax)
- Owner-employees, self-employed individual or general partner
 - For each individual, capped at the lower of the eight-week equivalent of their applicable compensation in 2019 or \$100,000 which is \$15,385

Other Costs - Forgiveness

- Eligible Other Costs must be paid during the Covered Period or incurred during the Covered Period and paid before the next regular billing date, even if the billing date is after the Covered Period.
- Other Costs are:
 - Mortgage interest
 - Rent obligations or lease payment on real or personal property
 - Utility payments
 - Distribution of electricity, gas, water, transportation, telephone, or internet access
 - All Other Costs must be in service/force before February 15, 2020.
- Other Costs cannot exceed 25% of PPP Loan forgiveness amount.



Statutory Reductions



Salary/Hourly Employees Wage Reductions

- Applied before FTE statutory reduction.
- Designed to protect wages for employees whose annualized cased compensation in 2019 was less than \$100K.
- **FOR EACH EMPLOYEE:**
 - 1) Determine if pay was reduced more than 25%.
 - Compare salary or hourly wage during covered period or alternative payroll covered period to Q1-2020.
 - Compare rates rather than actual payments. Eliminates the issue created by the 8 weeks not being 75% of 13 weeks.
 - 2) For any employees greater than 25% reduction, determine if the salary/hourly wage reduction safe harbor is met on June 30,2020.
 - Comparison is to “Average” salary wage rate on June 30th.
 - May need to explore back pay.
 - 3) If safe harbor was not met, calculate the salary/hourly wage reduction.

Full-Time Equivalency (FTE) Reduction

- What is an FTE?
 - 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.
 - The borrower may elect to assign employees who work 40 hours or more a week a 1.0 and employees who work fewer hours a 0.5 for simplicity.
- **BE CAREFUL! Simplified method does not always have favorable results**
 - Calculate both:
 - Previous period 4 employees working 10 hours per week:
 - 1 FTE Regular Method
 - 2 FTE Simplified Method
 - Covered Period 2 employees working 30 hours per week:
 - 1.5 FTE Regular Method
 - 1 FTE Simplified Method

Full-Time Equivalency (FTE) Reduction (cont'd)

- FTE Reduction Calculation
 - If borrower has not reduced headcount or average paid hours of employees between January 1, 2020 and the end of the covered period, there is no FTE Reduction.
 - If not, the borrower must determine the quotient by dividing total average FTEs during the covered period by the average FTE during the chosen denominator period (02/15/2019 – 06/30/2019) **or** (01/1/2020 – 02/29/2020).
 - Cannot exceed 1.0

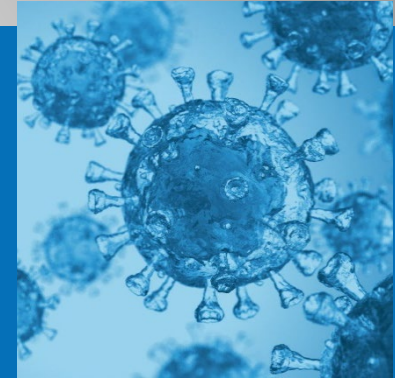
Full-Time Equivalency (FTE) Reduction (cont'd)

- FTE Reduction Safe Harbor for Rehired
 - Borrower may be exempt from reduction in loan forgiveness based on FTE (previous slide) if **BOTH** of the following are met:
 - Borrower reduced its FTE levels between 02/15/2020 and 04/26/2020.
 - Borrower restored FTE levels by, but later than, 06/30/2020 to its FTE levels in the pay period that included 02/15/2020.
 - Salary/wage not restored to previous levels would result in reduction in loan forgiveness under the salary/wage statutory reduction.

Full-Time Equivalency (FTE) Reduction (cont'd)

- FTE Reduction Exceptions – No Reduction
 - 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 which was rejected by the employee:
 - Documentation needed!
 - Employees who during the covered period or alternative payroll covered period, but only if the position was not filled by a new employee:
 - Were fired for cause (severance pay)
 - Voluntarily resigned
 - Voluntarily requested and received a reduction of their hours
- Again, documentation is needed to support no loan reduction when employees cannot be brought back through no fault of the borrower.

REDW LLC FAQs



FAQ 1: How do I calculate wages in excess of \$100K?

My covered period ends June 8th and my employee will not earn \$100K by June 8th. They are paid \$2,500 per week.

Is the calculation:

- $\$2,500 \times 23 \text{ weeks} = \$57,500$ therefore no cap in wages?
No.
- \$2,500 for 8 weeks is \$20,000. The wages per employee are capped at \$15,385 regardless of when the \$100K threshold is met.

FAQ 2: Can I pay my employees bonuses?

- Bonuses paid during the Covered or Alternative Payroll Covered Period would be considered an eligible payroll cost.
- Bonuses paid should be in the normal course of business and reasonable. They should not be used to supplement lost wages or created to utilize PPP proceeds. Bonus programs should have been in place pre-COVID-19.

FAQ 3: What if my employee's bonus increases their compensation to more than \$100K?

Example – Employee's annual wage is \$95,000

They are due a performance bonus of \$10,000 which is payable during the Covered Period.

How much can be included in payroll costs?

- Base wage would be \$14,615.38 ($\$95K \times 8/52$ weeks)
- Bonus of \$769.62 could be included in payroll costs. Anything in excess is excluded.

FAQ 4: Do I count furloughed employees in my FTE count?

Furloughed employees do not receive wages or salaries, therefore they should not be considered in FTE headcount calculations.

FAQ 5: If the 8-week period ends before June 30th, am I obligated to keep FTEs on payroll, and for how long?

FTE headcounts and wage reductions are measured as of June 30th. If your business's financial situation does not improve, you are able to furlough or lay them off as necessary after June 30th.

FAQ 6: I received my loan and now I am trying to hire my employees back, but they are declining. Will this impact my forgiveness amount?

- No. FTE reduction exceptions that do not reduce loan forgiveness include:
 - 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, which was rejected by the employee.
 - Any employee, during the Covered Period or the Alternative Payroll Covered Period (but only if the position was not filled by a new employee), who was:
 - Fired for cause;
 - Voluntarily resigned; or who
 - Voluntarily requested and received a reduction of their hours.

FAQ 7: Can my 1099 contractors be considered payroll?

- Compensation includes payments to employees and owner-employees/general partners.
- Payments to contractors will not qualify as payroll costs and are not considered non-payroll costs for forgiveness under PPP.

FAQ 8: Can I restructure my compensation - i.e., pay myself more and my employees less?

- Although this situation is not expressly covered in the SBA guidance, it does seem to go against the spirit of the program. Any increase in owner compensation should be considered carefully and documented as to why the increase is necessary due to a change in duties or responsibilities.

FAQ 9: Are payroll and other costs paid with forgiven PPP proceeds deductible?

- The CARES Act states that amounts forgiven on a PPP loan are excluded from gross income.
- IRS has issued Notice 2020-32 disallowing deductions for expenses will include payroll costs, mortgage interest, rent, and utilities – to the extent they are being reimbursed by loans forgiven under PPP.
- Congress is trying to fix with the “Small Business Expense Protection Act.”

FAQ 10: What are the minimum hours someone has to work to be considered an FTE?

- Gross wages for both part-time and full-time employees are considered eligible payroll costs for PPP spending along with Member or Partner compensation.
- FTEs are generally those working 40 hours a week. There are two methods - Regular Method and Simplified Method - that can be used to determine FTE counts for the FTE Reduction Calculation.

FAQ 10 (cont'd): What is the minimum hours someone has to work to be considered an FTE?

Let's see how the Regular and Simplified Methods work:

- Pre-2/15/20: You have three employees working 10 hours which would equal 0.8 FTE under the regular method or 1.5 FTE under the simplified method.
- During the covered period you have one employee working 30 hours which equals 0.8 FTE under the regular method or 0.5 FTE under the simplified method.
- Observation is any employer with fewer part-time employees working more hours than pre-2/15/20 will have a better result using the regular method.

FAQ 11: Are non-payroll costs calculated using accrual or cash basis?

Example at beginning of period:

- Covered period begins May 6, 2020 and ends June 30, 2020.
- Telephone service period is April 1-April 30, which is invoiced May 1 and due May 7.
 - Payment is timely and paid May 1-5. Not counted because expense was incurred and paid prior to the covered period.
 - Payment is timely and paid May 6-7. Entire amount counts because it was paid during the covered period.
 - Payment is late, between May 8-June 30. Entire amount counts because it was paid during the covered period.
 - Payment is very late and paid after June 30. Nothing can be included because it was not incurred or paid during the covered period.

FAQ 11 (cont'd): Are non-payroll costs calculated using accrual or cash basis?

Example at end of period:

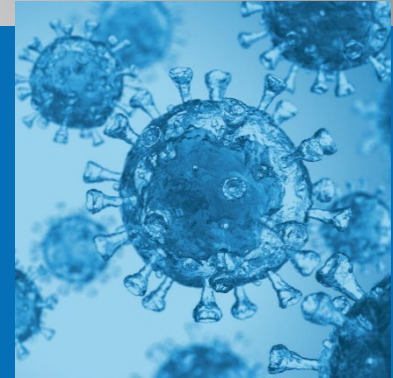
- Covered period begins May 6, 2020 and ends June 30, 2020.
- Telephone service period is June 1-June 30, 2020, which is invoiced July 1 and due July 7, 2020.
 - Payment is timely, made July 1-7. Entire amount counts because expense was incurred in the Covered Period and paid before the next billing date of August 1, 2020.
 - Payment is late, made July 8-August 31. Entire amount counts because it was incurred during the Covered Period and paid before the next billing date.
 - Payment is very late after August 31. Nothing can be included because it was not paid before the next billing date notwithstanding the fact that the expense was incurred during the Covered Period.

FAQ 12: My loan is under \$2M, do I need to be concerned about an audit?

The audit threshold of \$2M will be applied to borrowers and their affiliates. FAQ 46 provided three takeaways:

1. The uncertainty certification will be deemed to be made in good faith for PPP loans of less than \$2M.
2. The additional guidance for borrowers of PPP loans in amounts greater than \$2M will be provided.
3. The SBA will not take enforcement actions when the loan exceeds \$2M; the SBA determines the borrower lacked basis for making the uncertainty certification and the borrower repays the loan.

*REDW*_{LLC} Documentation



Payroll Documentation

- 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 the Alternative Payroll Covered Period
- Payment receipts, cancelled checks, or account statements documenting the amount of employer contributions to employee health insurance and retirement plans included in the forgiveness amount

FTE Support

- Documentation showing (at the election of the Borrower):
 - Option 1: Average number of FTE employees on payroll per month between February 15, 2019 and June 30, 2019
 - Option 2: Average number of FTE employees on payroll per month between January 1, 2020 and February 29, 2020; or
 - Option 3: In the case of a seasonal employer, the average number of FTE employees on payroll per month between February 19, 2019 and June 30, 2019; between January 1 and February 29, 2020 or any consecutive 12-week period between May 1, 2019 and September 15, 2019.
- The selected time period must be the same period selected for purposes of the chosen reference period
- Documents submitted may cover periods longer than the specific time period of the loan

Nonpayroll Costs

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

- **Business mortgage interest payments:** Copy of lender amortization schedule and receipts or cancelled checks, lender account statements from February 2020 through the Covered Period plus one month after the Covered Period.
- **Business rent and lease payments:** Copy of current lease agreement and receipts or cancelled checks, lessor account statements from February 2020 through the Covered Period plus one month after the Covered Period.
- **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.

Documents to be Maintained but Not Submitted

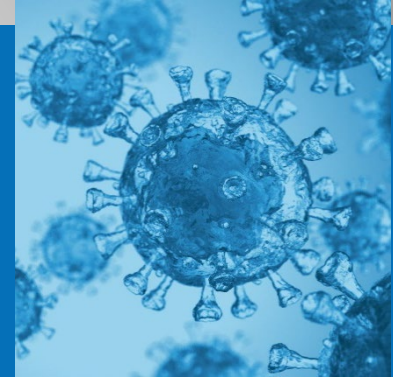
- PPP Schedule A Worksheet or its equivalent and the following:
 - Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary
 - Documentation supporting the listing of each individual employee 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.
 - Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor”

Documents to be Maintained but Not Submitted (cont'd)

- 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.
- Borrower should 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.



REDW Resources



- REDW COVID-19 Resource Hub
<https://www.redw.com/covid-19-resource-hub/>