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Paycheck Protection Program:

Loan forgiveness guidance

This infographic has been updated as of July 9, 2020, to reflect modifications to the Paycheck Protection Program (PPP) provided in the Paycheck Protection Program Flexibility Act (the PPP Flexibility Act) and the subsequent SBA interim final rules implementing the PPP Flexibility Act.

The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, expanded the U.S. Small Business Administration's (SBA) Section 7(a) business loan program to create the PPP, which provides employers with loans the primary purpose of which is to retain or maintain workforce and salaries generally for a 24-week period following loan disbursement. Pursuant to the PPP Flexibility Act, the term of the PPP has now been extended for purposes of borrower expenditures from June 30, 2020, to Dec. 31, 2020, and on July 4 new loan origination under the PPP was extended to Aug. 8.

A primary feature of the PPP is the potential for forgiveness of that portion of the loan spent on payroll and other permitted operating expenses during the 24-week period following the first loan disbursement, ending no later than Dec. 31, 2020 (the Covered Period) (or alternative period tied to the borrower's payroll period as described below), subject to certain reductions if the borrower fails to maintain or restore employee and salary levels. Pursuant to the PPP Flexibility Act, for PPP loans existing as of June 5, 2020, borrowers may still choose to use the original eight-week period beginning on the date of loan disbursement, as originally provided in the CARES Act. The SBA's form of loan forgiveness application that each borrower must submit to its lender, which includes calculation tables for various components of forgiveness, has been provided on the SBA website. A lender may also make the SBA's form available directly through the lender's website. Borrowers are advised to check with their particular lender for additional forgiveness calculators or similar aids to be used in calculating the forgiveness amount, in addition to the worksheets included as part of the SBA's form of loan forgiveness application. On June 16, the SBA also released the simplified "EZ" version of the loan forgiveness application, with corresponding instructions, that is available only to a specific subset of borrowers that either have no employees or are able to certify that they did not make reductions to salary or employee levels during their Covered Period (or Alternative Payroll Covered Period), thereby eliminating the need for the detailed calculations for determining the extent of such reductions in the long-form forgiveness application.

The following graphic is aimed at helping borrowers understand how their actual forgiveness amount will be calculated.

Loan amount and use of funds

Maximum loan amount

The lesser of:

Avg. monthly payroll x 2.5 or **$10M**

Use of proceeds

The loan amount may be used for two categories of costs, of which no more than 40% may be spent on nonpayroll costs:

Payroll costs

Salaries, wages, commissions, vacation, sick pay

Group health insurance

Retirement benefit costs

Employer portion of state/local taxes on compensation

Nonpayroll costs

Rent

Utilities

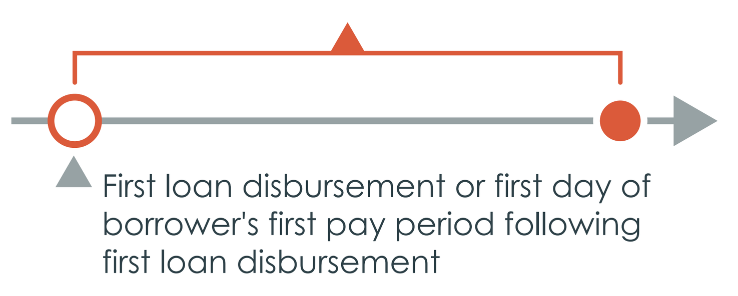
Interest on mortgages

Eligible payroll costs include compensation to employees (including furloughed employees but excluding independent contractors) in the form of salary, wages, commissions or similar compensation (including bonuses and hazard pay), up to $100,000 on an annualized basis per employee; cash tips or the equivalent; payment for vacation, parental, family, medical or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage and retirement benefits, including insurance premiums; continuation of group health care benefits during periods of paid sick, medical or family leave, including insurance premiums; and payment of employer portion of state and local taxes assessed on compensation of employees. Payroll costs incurred but not paid (i.e., a borrower did not distribute relevant paychecks or originate an ACH transaction) during the last pay period of a borrower's Covered Period (or Alternative Payroll Covered Period if a borrower so elects) are eligible for forgiveness if paid on or before the next regular payroll date.

Eligible nonpayroll costs include mortgage interest payments (but not mortgage prepayments or principal payments) on mortgage obligations incurred prior to Feb. 15, 2020; rent payments on leases for both real and personal property dated prior to Feb.15, 2020; and utility payments under service agreements dated prior to Feb. 15, 2020, including services for the distribution of electricity, gas, water, transportation, telephone and internet access for which services began prior to Feb. 15, 2020. Nonpayroll costs eligible for forgiveness 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 such billing date is after the Covered Period. The Alternative Payroll Covered Period is not available for calculating nonpayroll costs.

Loan forgiveness

Applies to costs incurred by the borrower over the Covered Period; alternatively, solely for purposes of calculating payroll costs for forgiveness, borrowers with a biweekly or more frequent payroll may elect to measure such period from the first day of the borrower's first pay period following receipt of its first loan disbursement (the Alternative Payroll Covered Period):



Payroll costs — At least 60% of forgiveness amount

Nonpayroll costs — Max 40% of forgiveness amount

The actual amount of loan forgiveness is based on the total amount spent by the borrower on eligible payroll and nonpayroll costs during the Covered Period (or Alternative Payroll Covered Period for payroll costs at a borrower's election). For these purposes, not more than 40% of the loan forgiveness amount may be attributable to nonpayroll costs.

A borrower may apply for loan forgiveness at any time if the borrower has used all of the loan proceeds for which it intends to apply for forgiveness. Borrowers that elect to apply for loan forgiveness before the end of their Covered Period (or Alternative Payroll Covered Period) must also account for any salary reductions across its full Covered Period (or Alternative Payroll Covered Period), not just for the portion of its Covered Period (or Alternative Payroll Covered Period) that occurred prior to the time that it applied for forgiveness. However, the applicable SBA interim final rules do not provide whether the calculation of FTE employees for the purpose of reduction to forgiveness amount ends as of the earlier application for forgiveness as opposed to continuing for the remainder of the Covered Period (or Alternative Payroll Covered Period), notwithstanding an earlier application for forgiveness (although the calculations provided in the forgiveness application suggest that such FTE employee calculation ends as of the time of application for forgiveness).

A borrower must apply for forgiveness no later than 10 months following the last day of its Covered Period (or Alternative Payroll Covered Period) or else forfeit the deferral of its debt service payments.

[1] Those borrowers that received PPP loans prior to June 5 can elect to retain the original eight-week period from loan origination as their Covered Period.

Forgiveness reduced by ...

Proceeds from any previously received SBA EIDL advance (Up to $10,000)

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% of net decrease in monthly average FTE employees (Covered Period [or Alternative Payroll Covered Period] vs. previous period*)

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Aggregate individual compensation reduction in excess of 25% on a dollar-for-dollar basis (during the Covered Period [or Alternative Payroll Covered Period])

The PPP loan forgiveness amount will be reduced by any proceeds from any previously received SBA economic injury disaster loan (EIDL) advance up to $10,000. The forgiveness amount will also be subject to reduction based on (i) reductions in full-time-equivalent (FTE) employee head count, by the same percentage as the percentage reduction in FTE employees and (ii) reduction in salary occurring during the Covered Period (or Alternative Payroll Covered Period) that is in excess of 25% of the total salary or wages of an employee (excluding any employees earning in excess of $100,000 on an annualized basis for 2019) earned between Jan. 1, 2020, and March 31, 2020, on a dollar-for-dollar basis. The salary/wage reduction will apply only to the portion of the decline in employee salary and wages that is not attributable to an FTE employee reduction. If a borrower elects to utilize the Alternative Payroll Covered Period for purposes of calculating payroll costs subject to forgiveness, then such Alternative Payroll Covered Period must also be used for purposes of calculating reductions to such borrower's forgiveness amount due to FTE employee or salary/wage reductions.

Documentation required

A borrower must submit either the loan forgiveness application or EZ loan forgiveness application, as applicable, to the lender servicing its loan in order to be considered for forgiveness, including documentation verifying the number of FTE employees and pay rates, cash compensation and noncash benefit payments, as well as the payments on eligible mortgage, lease and utility obligations, such as payroll tax filings, canceled checks, evidence of electronic payment transfers and other payment documentation, and documentation regarding any employee job offers or offers to restore hours (and refusals of such offers), voluntary resignations, employee requests for reductions to work schedules, firings for cause, or inability to hire similarly qualified employees for unfilled positions, as applicable.

Borrowers seeking to take advantage of the safe harbor related to an FTE employee reduction due to an inability to return to the same level of business as such business was operating before Feb. 15, 2020, due to federally mandated COVID-19 employee and customer safety requirements or guidance must retain copies of (i) local government shutdown orders that reference any applicable guidance issued between March 1, 2020, and Dec. 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 safety requirement related to COVID-19 for each business location and (ii) its relevant financial records showing a reduction in its business activity.

Borrowers must retain all supporting documentation in connection with their PPP loan for six years after the date the loan is forgiven or repaid in full.

Opportunity: 'safe harbors' and exceptions

- **Salary Reduction Safe Harbor**: Borrower reductions in individual employee salaries that occurred between Feb. 15, 2020, and April 26, 2020, will be disregarded in calculating any reduction to the forgiveness amount if, by Dec. 31, 2020, the borrower returns salaries to their Feb. 15, 2020 levels.
- **FTE Employee Reduction Safe Harbor #1**: If a borrower is able to document in good faith that its FTE employee reductions were due to an inability to return to the same level of business as such business was operating before Feb. 15, 2020, due to federally mandated COVID-19 employee and customer safety requirements or guidance, including state and local regulations that implement such federal guidelines.
- **FTE Employee Reduction Safe Harbor #2**: If a borrower's FTE employee levels were reduced during the period from Feb. 15, 2020, to April 26, 2020, but not later than the earlier of (a) the date its forgiveness application is submitted and (b) Dec. 31, 2020, and such FTE employee levels are restored to Feb. 15, 2020 levels, then the FTE headcount safe harbor will apply and such borrower's forgiveness amount will not be subject to reduction based on average weekly FTE employee head count during the Covered Period (or Alternative Payroll Covered Period). There is no requirement that the borrower rehire the same employees; restoring the number of FTE employees would be sufficient.
- **FTE Employee Reduction Exceptions**: A borrower may disregard reductions in headcount for purposes of calculating its forgiveness amount: (1) if an employee rejects a borrower's good-faith, written offer to restore the reduced hours of such employee (at the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours), and the borrower maintains records documenting the offer and its rejection; (2) if (i) a borrower can document an inability to rehire an employee who was employed by the borrower on Feb. 15 (such rejection to be informed to the applicable state unemployment insurance office of such employee's rejected rehire offer within 30 days of the employee's rejection) and (ii) the borrower is unable to hire similarly qualified employees on or before Dec. 31; or (3) any employees who, during a borrower's Covered Period (or Alternative Payroll Covered Period) (a) are fired for cause, (b)voluntarily resign, or (c) voluntarily request and receive a reduction of their hours.

* The relevant period (or baseline) is either the period beginning on Feb. 15, 2019, and ending on June 30, 2019, or the period beginning on Jan. 1, 2020, and ending on Feb. 29, 2020, at the election of the borrower.

For more information, contact

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