

Loan Forgiveness

1. Payroll

Payroll costs *eligible* for forgiveness:

- Salary, wages, commissions...all cash contributions
- Payments made for vacation, medical, sick leave
- Group health care benefits, including insurance premiums
- Payments for retirement benefits
- State or local payroll taxes
- Housing stipend or allowance

Payroll costs *not eligible* for forgiveness:

- Payments to an independent contractor
- Cash compensation in excess of \$100,000
- The employer's share of federal payroll taxes

2. Non-Payroll costs eligible for forgiveness:

- Interest payments on mortgage on real or personal property that existed on Feb 15, 2020
- Rent payments under leasing agreements in existence on Feb. 15, 2020. Q - CAM,
- Utility payments for electricity, gas, water, transportation, telephone or internet for which service was in existence on Feb. 15, 2020

Limitations on Forgiveness

1. **Payroll costs must meet or exceed 75%** of the amount to be forgiven.
2. **Any payment from EIDL** (Advance payment) will be deducted from the loan forgiveness amount.
3. **Reduction in number of FTE employees:**
The loan forgiveness amount is subject to reduction by multiplying it by the following fraction:

Average # of FTE employees/month during covered period /
number/month from Feb. 15, 2019, through June 30, 2019
or
number/month from Jan. 1, 2020, through Feb. 29, 2020

4. **Reduction in number of FTE employees:**

Formula for reduction in wages:

The loan forgiveness amount is subject to reduction by an amount determined as follows:

1. Identify all employees, who did not receive during any single pay period in 2019, wages or salary at an annualized rate of pay of more than \$100,000 (each, a covered employee)

2. Compare each covered employee's wages or salary during the covered period to his or her wages or salary during the first quarter of 2020
3. For any covered employee whose wages or salary during the covered period decreased by more than 25 percent
 1. Multiply the first quarter wages or salary by .75
 2. Subtract the product from the covered period wages or salary
4. Add all amounts computed under number three above

The aggregate dollar amount calculated as set forth above will reduce the loan forgiveness amount.

However:

Reductions in the number of FTE employees, or reductions in salary or wages, that occurred between Feb. 15, 2020, and April 26, 2020, will not reduce the loan forgiveness amount **if, by June 30, 2020, the borrower eliminates the reductions.**

Other employee limit provisions of the Small Business Act (SBA Act) are not based upon FTEs; they are based upon head count as described above. The CARES Act Sections 1102 and 1106 do not define FTEs. *Guidance has not yet been provided with respect to defining an FTE.*

From SBA FAQ May 6 2020:

In general, borrowers can calculate their aggregate payroll costs using data either from the previous 12 months or from calendar year 2019. For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30,

2019. An applicant that was not in business from February 15, 2019 to June 30, 2019 may use the average monthly payroll costs for the period January 1, 2020 through February 29, 2020.

Borrowers may use their average employment over the same time periods to determine their number of employees, for the purposes of applying an employee-based size standard. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

NEW!! Laid-off employees who refuse offer of continued employment:

Forthcoming interim rule allows borrowers to exclude laid-off workers in calculating FTEs, if:

1. Good faith, written offer to rehire
2. Same salary/wages, same hours
3. Documented rejection of offer by employee
4. Employees may then be disqualified for unemployment, (contrary to the availability of unemployment if the 'direct result of COVID-19').

Terms for loan amounts not forgiven

The principal amount of the PPP loan and any accrued interest that is not forgiven will continue as a loan on its original terms, including:

- A maturity date which is two years from the date of disbursement

- No payments during the first six months
 - An interest rate of one percent per annum
 - No prepayment penalty (prior notice of prepayment may be required *if the loan has been sold on the secondary market*).
-

Required Documentation

- Documentation verifying the number of FTE employees on the payroll and pay rates for the covered period and the prior periods included in the formulas for determining any reduction in loan forgiveness, including payroll tax filings reported to the Internal Revenue Service and state income, payroll and unemployment insurance filings
- Documentation, including cancelled checks, payment receipts, transcripts of accounts or other documents verifying payments on mortgage obligations, rent payments and utility payments
- A certification from a representative of the business authorized to make such certifications that the documentation presented is true
- Keep detailed records beginning on day one with an organized system for document storage.

A separate bank account is not required, but may help your organization. Good record keeping will be critical in maximizing the amount of loan forgiveness.

Lenders do not have to verify information.

The 8-week period begins on the date the lender makes the *first disbursement of the loan to the borrower*. Not when the funds are first available to the borrower.

Tips on receiving 100% forgiveness

1. Use *all* of the funds you receive on W2-generating payroll. Convert 1099 contractors to W2 employees, at least for 8 wks. Increase the amount/employee, number of employees, or give bonuses (but don't hire if you do not need to).
2. Maximum payment/employee is \$15,384.6 (\$3,846.15/employee for a two week pay period) Cash basis!!
3. Don't sabotage your business for a loan repayment
4. No matter what, be honest with your lender when applying for loan forgiveness.

Needing Clarification

1. Businesses may be closed for an extended time
 - Will the covered period be extended?
2. "Costs incurred and payments made" language
3. FTE not defined.
4. How will employees on paid leave, reduced schedules, voluntarily terminated or refused to return to work be treated.

5. Self-certification requirement. PPP FAQ #31 - large company q, but “all borrowers” language. ‘Other sources of liquidity’ language at odds with waiver of available credit requirement.

6. Sole Proprietors!

- Forgiveness limited to 8 weeks of 2019 net profit.
- It is unclear if it matters if you disburse the money you receive during the 8 weeks

Sloppy language, new interpretations,

SBA FAQ 5.6.20:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

FAQ #31:

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: *In addition to reviewing applicable affiliation rules to determine eligibility, 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. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), 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. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

Lenders may rely on a borrower's certification regarding the necessity of the loan request. 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.