

# Webinar #12 June 18, 2020

(non-authoritative notes...these things change)

The SBA issued its [19th Interim Final Rule](#)....

Apply for PPP if you have not done so. Let your friends and brethren know that there is still money available. JUNE 30TH DEADLINE LOOKS SOLID!

Get in touch with your lender (if possible). Get a copy of your application if you do not have one. Ask about forms, timing of deductions, requirements, anything they are asking for, whether it is documentation or substance.

## As before:

### **S-corporations:**

New forgiveness period of 24 weeks for post June 5 borrowers. Pre-June 5 borrowers can still choose the 8 weeks, June 30th or 24 weeks.

8 week limitation - \$15,385

24 week limitation - \$46,154

### **Self-Employed:**

8 week calculations -  $8/52 \times 2019$  Sched C, line 31 (net profit) \$15,385 max

24 week calculations -  $2.5/12 \times 2019$  Sched C, Line 31(net profit) \$20,833 max

Payroll spending requirement was reduced from 75% to 60%. No cliff.

### **Example:**

Borrower receives a \$100,000 PPP loan and spends \$54,000 (or 54 percent) of the loan on payroll costs.

The maximum amount of loan forgiveness the borrower may receive is \$90,000.

- \$54,000 in payroll costs (60 percent of the forgiveness amount) and
- \$36,000 in non-payroll costs (40 percent of the forgiveness amount).

Safe harbor for a reduction in FTEs if due to COVID fallout.

## New-ish:

S corporation owner health insurance costs now are not included in payroll costs (group?), but retirement costs remain.

The newly announce FTE and salary safe harbors apply from the date of the loan application. This is true whether you use the 8 weeks, June 30th or 24 week period.

Loan maturity is 5 years for post-June 5th borrowers. 2 years for pre-June 5th. (can be extended if agreed to by borrower and lender).

## A new twist:

1. There is a *new* loan forgiveness application (tear up the one you have spent hours on):

- [Revised PPP Loan Forgiveness Application](#) [instructions](#)

2. There was also an 'EZ' application released with fewer items to complete:

- [EZ PPP Loan Forgiveness Application](#) [instructions](#)

You can use the EZ form if:

- You are self employed and have no employees: **OR**
- You did not reduce wages or salaries more than 25% AND did not reduce FTE; **OR**
- You experienced reductions in business activity due to COVID AND did not reduce wages or salaries more than 25% (can have reduced FTE, though).

## Self Employed Article from [Forbes](#):

### Owner compensation

The newest IFR shows us how to calculate owner compensation under the new rules. It's either:

- Eight weeks' worth (8/52) of 2019 net profit (up to \$15,385) for an eight-week covered period or
- 2.5 months' worth (2.5/12) of 2019 net profit (up to \$20,833) for a 24-week covered period."

This does exclude any qualified sick leave equivalent amount claimed under the Families First Coronavirus Response ACT (FFCRA). For those of you filing a schedule C, the first option is the same it has always been – 2019 Schedule C line 31/52 \* 8. The second option should also look familiar because that's how you [calculated the maximum amount of your loan](#) (2019 Schedule C line 31/12 \* 2.5). So, in short, if you are choosing the 24-week covered period option, you will get full-loan forgiveness.

As always, the additional guidance answers some questions and raises others. In the rationale for the rule, the SBA specifically mentions "owner compensation replacement for individuals with self-employment income who file a Schedule C or F" but doesn't mention the owner-employees (e.g, S-Corp owners). Presumably, the \$20,833 cap applies to them, too, since the [current Schedule A on the application](#) lumps owner-employees, self-employed individuals, and general partners together. Even so, it's confusing why they weren't mentioned here.

### Employee Compensation

The 24-week extension also increased the amount eligible for forgiveness to business owners with employees. The payroll costs including salary, wages and tips is still capped at \$100,000 of annualized pay. But now instead of  $\$100,000/52 * 8$  (a max of \$15,385 per individual), you get up to  $\$100,000/52 * 24$ , making the new maximum forgiveness cap \$46,154 per individual for 24 weeks.

Keep in mind the payroll costs also include covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums).

## **Non-payroll expenses**

Lastly, the loan forgiveness amounts for non-payroll expenses have also been extended to 24 weeks, making it much easier to meet loan forgiveness thresholds. As a reminder, non-payroll expenses include:

- 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
- covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020
- covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation

The “**incurred or paid**” rule still applies. So, you can count expenses that were incurred or paid within that 24-week period, which means you’ll likely get some expenses that fall outside of the 24-week covered period as well.

## **June 5th and June 8th PPP changes and technical fixes:**

Previous question: what are the reference periods for FTE calculation?

- February 15, 2019 – June 30, 2019, or
- January 1, 2020 – February 29, 2020
- Seasonal seasonal employers - *any* consecutive 12-week period between May 1 and September 15, 2019
- Safe harbor of February 15, 2020 levels

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## **New Legislation - the *Paycheck Protection Flexibility Act of 2020* ("Flexibility Act")**

- 1. *Current* borrowers can extend the 8-week period to 24 weeks.**
- 2. *New* borrowers (funds dispersed after 6.5.20) have a covered period of 24 weeks (168 days) or December 31, 2020, whichever is earlier.**

Because the loan amount is based on 10 weeks of payroll, borrowers may have a good chance of meeting the 60% requirement with the covered period extended to 24 weeks.

**3. The deadline for PPP loan *applications* is June 30, 2020.**

**4. 75% payroll expenditure requirement is reduced to 60% - no cliff**

**5. Opportunity to avoid FTE Reduction penalties if headcount is restored by December 31 instead of June 30. Extends Safe Harbor for Rehiring Employees.**

Extends the deadline to rehire workers from June 30, 2020 to December 31, 2020, as follows:

- **FTE Reduction Safe Harbor.** If the Full Time Equivalent employee headcount was reduced between February 15, 2020 and April 26, 2020 (the Safe Harbor period) but the Borrower eliminates those reductions by December 31, 2020 (previously June 30, 2020) or earlier, the Borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in FTE employees.
- **Compensation Safe Harbor.** If employee salaries and wages were reduced between February 15, 2020 and April 26, 2020 (the Safe Harbor period) but the Borrower eliminates those reductions by December 31, 2020 (previously June 30, 2020) or earlier, the Borrower is exempt from any reduction in loan forgiveness amount that would otherwise be required due to reductions in salaries and wages.

**4. New Safe Harbors Relating to FTE Reductions.** The *Flexibility Act* provides the following two new Safe Harbors exempting a Borrower from any reduction in loan forgiveness amount that would otherwise be required due to reductions in FTE employees:

- **Inability to Rehire.** During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness shall be determined without regard to a proportional reduction in the number of FTE employees if an eligible Borrower, in good faith, is able to document: (i) 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.

- **Inability to Return to Same Level of Business.** The exemption also applies if the Borrower, is able to document (???) an inability to return to the same level of business activity as on February 15, 2020, due to compliance with requirements established or guidance issued by the 1. Secretary of HHS, 2. Director of the CDC, or 3. OSHA 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.

## **6. New exceptions for FTE reduction provided if borrower documents an inability to:**

- Rehire individuals who were employees on February 15, 2020;
- Hire similarly qualified employees for unfilled positions on or before December 31, 2020;
- Return to the same level of business activity as before Feb. 15, 2020, due to compliance with requirements established or guidance issued ...related to COVID-19.

## **7. Repayment period extended to five years for new loans**

- Existing PPP loans can have maturity extended *if lender and borrower agree*
- Interest rate to remain at 1%

## **8. PPP Borrowers can defer employer's share of payroll taxes**

- Deferral of Social Security payments (6.2%)

- 50% due in 2021, remainder due in 2022

## **9. Loan Payments are deferred until the SBA determines the amount of loan forgiveness *and* remits to the lender**

- Had been a 6-month deferral
- However, if borrower doesn't apply for forgiveness within 10 months after the last day of the covered period, payments will be required at that 10th month.
- This legislation does not address tax deductibility of expenses paid with a forgiven PPP loan.
- Currently not deductible.

## **More Questions!**

- Can a *current* borrower (loan received prior to June 5th) use the June 30, 2020 FTE Reduction safe harbor instead of December 31, 2020?
  - Does anything change with the Salary and Hourly Wage Reduction calculation and Safe Harbor of June 30th?
  - Does the limit on cash compensation change to \$100,000 x 24/52 from \$100,000 x 8/52?
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## **Summary and FAQ from the AICPA:**

### **What guidance has been issued related to loan forgiveness?**

The SBA released a [loan forgiveness application and instructions](#) on May 15, 2020. SBA, in consultation with Treasury, will promptly issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application implementing the PPPFA.

### **When does the covered period (24 weeks or 8 weeks) begin to determine the amount of the forgiveness for the PPP loan??**

The covered period begins on the date the lender makes the first disbursement of the loan. The lender must make the first disbursement of the loan no later than 10 calendar days from the date of the loan approval. Borrowers who received loans prior to June 5, 2020 can elect an 8-week covered period or a 24-week covered period. Borrowers who received loans June 5, or later will have a 24-week covered period. The loan forgiveness application released on May 15, 2020 provides for an alternative payroll covered period. Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 24-week (or 8-week if elected) period that begins on the first day of their first pay period following their loan disbursement date.

### **What are the acceptable uses of the PPP funds for businesses other than self-employed individuals?**

Payroll costs, health care benefits, mortgage interest payments, rent, utility, interest payments on debt incurred prior to February 15, 2020, and/or refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

### **What is included in utilities?**

The CARES Act defines utilities in Sec.1106(a)(5) as electricity, gas, water, transportation, telephone or internet access for service which began prior to February 15, 2020. Further guidance released added gas used when driving a business vehicle. Other common utilities such as garbage collection or security monitoring may also be classified as a utility, but a business should confirm with the lending institution.

## **When determining the potential reduction of loan forgiveness due to workforce reductions, what method is used to determine employees?**

The CARES Act uses the standard of “full-time equivalent employees” to determine whether loan forgiveness must be reduced in the measurement period. The loan forgiveness application provides for a calculation of average full-time equivalency which is calculated as the average number of hours paid per week, divided by 40 and rounded to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method is provided that assigns a 1.0 for employees who work 40 hours or more per week and .5 to employees who work fewer hours.

## **What are the acceptable uses of the PPP funds for self-employed individuals?**

- \*Owner compensation replacement (calculated based on 8/52 of 2019 net profit from Form 1040 Schedule C)
- \*Employee payroll costs (as defined by the Interim Final Rule 1 issued on April 2, 2020)
- Business mortgage interest payments on real/personal property
- Business rent payments
- Business utility payments
- Interest payments on debt obligations incurred before February 15, 2020
- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020

Note that the individual must have claimed or be entitled to claim a deduction for the included expenses on 2019 Form 1040 Schedule C.

## **What amounts will be eligible for forgiveness for self-employed individuals?**

The amount of the loan forgiveness will depend on the amount spent during the covered period on:

- \*Payroll costs as defined by the interim rule (does not include benefits for owners)
- \*Owner compensation replacement: limited to the lesser of:

- 8/52 of 2019 net profit with a maximum of \$15,385 for the covered period and excluding any qualified sick or family leave equivalent amount for which a credit was claimed under FFCRA
- 2020 compensation paid during the covered period
- Interest payments on mortgage obligations for real/personal property incurred before February 15, 2020
- Rent payments on lease agreements in force before February 15, 2020
- Utility payments under service agreements dated before February 15, 2020

\*Note that for interest, rent and utility payments, the amounts must be deductible on Form 1040 Schedule C.

**Are employee federal withholdings and employer payroll taxes on wages for the covered period included in payroll costs?**

The employee federal withholding is included in allowable payroll costs for the purposes of determining the amount to be forgiven. The employer federal payroll taxes (i.e. FICA and Medicare taxes) imposed on the gross payroll are not eligible payroll costs for the loan forgiveness calculation.

**What are the restrictions on determining the amount of loan forgiveness for businesses other than self-employed individuals?**

Eligible nonpayroll costs cannot exceed 40% of the total forgiveness amount. If salaries decrease by more than 25% for any non-owner employee who made less than \$100,000 annualized in 2019 OR if the number of FTEs decreases, the forgiveness amount will be reduced unless the safe harbor is met.

**Do qualified sick and family leave wages which are eligible for a tax credit under the FFCRA count toward payroll costs for the purpose of the forgiveness portion?**

For businesses that take this credit, the wages will be excluded from the determination of payroll costs.

**What if the business had employees who left for their own reasons? Or need to be fired due to performance issues? Is the loan forgiveness still reduced for those employees?**

An FTE reduction exception (meaning that a reduction of FTE in these circumstances does not reduce loan forgiveness) is available for any of the following:

- Borrower makes a good-faith, written offer to rehire an employee during the covered period of the alternative payroll covered period and the offer was rejected. [FAQ #40](#) addresses this issue.
- Employee was fired for cause
- Employee voluntarily resigned
- Employee requested and received a reduction of their hours
- Borrower in good faith can document the inability to
  - rehire individuals who were employees on February 15, 2020 and
  - hire similarly qualified employees for unfilled positions on or before December 31, 2020 or
  - return to the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued related to COVID-19

**Can you increase pay for employees during the forgiveness period (for example, hazard pay, bonuses or other salary increases)?**

\*Yes, salary increases in the form of bonuses are eligible for forgiveness to the extent that the total compensation to an employee does not exceed \$100,000 on an annualized basis (\$15,385 for the 8- week period).

**Can I use PPP fund to pay payroll expenses to employees when they are not currently able to work (due to business being closed or for any other reason)?**

Based on current guidance, the covered period starts when the loan is funded. For borrowers with a biweekly or more frequent payroll period, an alternative payroll covered period starting on the first day of its first pay period following loan disbursement can be used. If the borrower is not able to operate or is operating at a limited capacity when the PPP loan proceeds are received, the borrower may choose to pay employees who are not able to work. This choice may be made to help the borrower maximize loan forgiveness as current guidance states that not more than

40% of the loan forgiveness amount may be attributable to non-payroll costs.

### **Can a PPP loan be forgiven in whole or in part?**

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs and other eligible costs paid during the covered period. There are reductions in the amount of forgiveness based on the percentage of eligible costs attributable to non-payroll costs, any decrease in FTEs and decreases in salaries/wages per employee. See [PPP Loan Forgiveness Steps](#) for additional information. Also, the SBA is expected to issue additional guidance related to loan forgiveness.

### **How are eligible payroll costs determined for forgiveness purposes?**

Borrowers are eligible for forgiveness for the payroll costs paid and incurred during the covered period or alternative payroll covered period. Payroll costs are considered paid on the day that paychecks are distributed or when an ACH credit transaction is originated. Payroll costs are considered incurred on the day that the employee's pay is earned. Payroll costs incurred but not paid during the last pay period of the selected period are eligible for forgiveness if paid on or before the next regular payroll date. Payroll costs should be determined based on the Interim Final Rule.

### **What are the caps on loan forgiveness for payroll costs available for owner-employees and self-employed individuals?**

Owner-employees and self-employed individuals payroll costs for the covered period is capped at \$100,000 annualized (\$15,385) across all businesses. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by their 2019 net earnings from self-employment (reduced by Sec. 179 deduction, unreimbursed partnership expenses and depletion from oil and gas properties) multiplied by .9235. No additional forgiveness is available for retirement or health insurance contributions for self-employed individuals.

## **How are eligible non-payroll costs determined for forgiveness purposes?**

Any eligible non-payroll cost 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.

## **Can rent or other obligations be prepaid?**

To be forgiven, the eligible cost must be incurred during the covered period, so prepaid costs would not qualify. Guidance specifically addresses that prepayments of mortgage payments are not allowed.

## **Are these expenses tax deductible if the loan is ultimately forgiven?**

[IRS Notice 2020-32](#) was issued on April 30, 2020 to state that no deduction is allowed for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a PPP loan. The AICPA recently submitted a [letter of support](#) for legislation that would clarify that the receipt and forgiveness of Coronavirus assistance through the PPP does not affect the deductibility of ordinary business expenses.

## **Is the forgiveness of the loan taxable income?**

No, the forgiveness of the loan does not constitute federal taxable income. States are providing guidance on state taxability that will be included in the [AICPA state tax guidance chart](#).

## **Are payments to related parties (such as rent) included as eligible nonpayroll costs?**

This has not been specifically addressed in guidance released as of June 8, 2020.

## **What documentation is required to be submitted to the lender for self-employed individuals to support loan forgiveness?**

The following documentation is required:

- certification that the documentation provided is true and correct and the amount for which forgiveness is required was used to retain employees, and make interest, rent and utility payments
- If the self-employed individual has employees, Form 941 and state quarterly tax reporting forms or equivalent payroll processor records that correspond to the covered period
- Evidence of business rent, mortgage interest payments or utility payments for loan proceeds used for these purposes
- 2019 Form 1040 Schedule C

### **How should the forgiveness portion be recorded for financial statement purposes?**

Visit the [Coronavirus \(COVID-19\) audit and accounting resources page](#) to find out more about the financial statement impact of the PPP loan forgiveness.

### **Relationship between PPP and other SBA loans**

#### **Can a qualified entity apply for both the PPP and other SBA disaster loans?**

Yes, borrowers may apply for the PPP and other SBA financial assistance, including disaster loans and Section 7(a) loans. However, you cannot use the proceeds from the PPP for the same purpose as your other SBA loan(s). Loan proceeds would need to cover payroll for a different period or other qualifying costs. This includes the up to \$10,000 grant available with the Section 7(b)(2) loans- Economic Injury Disaster Loans (EIDL).

#### **What happens if a business applies for PPP and also receives the up to \$10,000 grant from an EIDL?**

The amount of grant received (up to \$10,000) will reduce the forgiveness amount of the PPP.

#### **The CARES Act included a deferral of the employer portion of the Social Security (6.2%) tax until 2021/2022. Is this affected by a business' participation in the PPP?**

No. Per the June 5, 2020 legislation ([H.R.7010 - Paycheck Protection Program Flexibility Act of 2020](#)), PPP borrowers now qualify for the deferral of the employers share of Social Security taxes (6.2%). 50% of tax is due by December 31, 2021 and the remaining portion is due by December 31, 2022.

## General information

### What are the general eligibility requirements?

- 500 or fewer employees whose principal place of residence is in the US
- A small business concern as defined in section 3 of the Small Business Act and are subject to SBA's affiliation rules under 13 CFR 121.301(f) unless specifically waived in the Act, a section 501(c)(3) tax exempt organization, 501(c)(19) tax-exempt veterans organization, Tribal business concern, or an individual who operates a sole proprietorship, is an independent contractor or is an eligible self-employed individual
- In operation on February 15, 2020 and had employees or paid independent contractors
- Seasonal businesses will be considered to be in operation as of February 15, 2020 if the business was in operation for any 8-week period between May 1, 2019 and September 15, 2019
- There are other factors in determining eligibility. Review the [Program Rules on the US Treasury site](#) for further guidance.
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### What is the deadline to apply for PPP funds?

June 30, 2020.

### What guidance has been issued by the Small Business Administration (SBA) and Treasury?

SBA issued [Interim Final Rules and FAQs](#) providing further guidance.

### Are faith-based organizations eligible to receive SBA loans under the PPP and/or EIDL?

SBA issued [FAQs regarding participation of faith-based organizations](#).

### **Are farmers eligible to apply for the PPP?**

Yes, farmers, ranchers and agricultural producers are eligible to apply. They are subject to the same eligibility standards and definition of payroll costs as other businesses.

### **What is the maximum amount that can be borrowed?**

The lesser of:

- Average monthly payroll costs as defined by the SBA times 2.5
  - If there is an outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020 that can be added to the PPP loan amount request.
- \$10 million
- In addition, see U.S. Treasury guidance provided on [how to calculate the maximum loan amount by business type](#). The AICPA has [several calculators](#) to assist in calculating the maximum loan amount.

### **What are the terms of the loan and the interest rate?**

The interest rate will be 1%. The maturity of the loan is 2 years for loans made prior to June 5, 2020 and 5 years for loans made on and after June 5, 2020. Loans with a maturity of 2 years can be extended to 5 years with the agreement of the lender. Payments are deferred until a determination of the amount of forgiveness is made by the SBA. If the borrower does not apply for forgiveness within 10 months after the last day of the covered period, payments will be due that month. Interest will accrue on the loan beginning with disbursement.

### **What documents are needed to be supplied with the application?**

The Interim Final Rule 1 (April 2, 2020) stated that lenders must confirm the dollar amount of average monthly payroll costs by reviewing the payroll documentation submitted with the application. Lenders may differ in the payroll documentation that they require. However the AICPA has made [recommendations](#) for the documents to be prepared and submitted with the application.

### **For self-employed individuals, what if the 2019 Form 1040 has not been submitted to the IRS at the time of the application?**

The guidance states that regardless of whether you have filed a 2019 tax return with the IRS, you must provide Form 1040 Schedule C with the loan application.

**What about self-employed individuals who were not in operation in 2019, but were in operation on February 15, 2020 and will file a Form 1040 Schedule C for 2020?**

SBA indicated that additional guidance will be issued related to this issue.

**Can the original PPP loan be increased to account for the guidance that was issued on April 14 related to partnerships and LLCs taxed as a partnership and April 28 related to seasonal employers?**

Yes in both cases as long as the lender has not submitted Form 1502 to the SBA. If a partnership received a PPP loan that did not include the self-employment income of active partners (up to \$100,000 annualized), the lender can increase the PPP loan amount to include the additional amount. If a seasonal employer is eligible for a higher maximum loan amount under the alternative calculation provided on April 28, the lender can increase the PPP loan. The borrower must provide documentation for the increased amounts.

**What factors should a borrower consider when certifying that current economic uncertainty makes the PPP loan request necessary to support the ongoing operations of the applicant?**

Borrowers should assess their economic need for a PPP loan under the standards established by the CARES Act and the PPP regulations in effect at the time of the loan application. Borrowers are considered to make this certification in good faith and by taking into account current business activity and also other sources of liquidity currently available.

Any borrower that, together with its affiliates, 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. Borrowers with loans greater than \$2 million will be subject to review by SBA for compliance with the program requirements. These borrowers should continue to assess their economic need as described above. See Q31, Q37 and Q46 in the [PPP FAQs](#) for additional guidance.

**If a business determines that funds from a PPP loan were received based on a misunderstanding or misapplication of the required certification standard, what steps must be taken by the borrower?**

If a borrower applied for a PPP loan prior to the issuance of the Interim Final Rule posted on April 24 and repays the loan in full by May 14, 2020 it will be deemed by SBA to have made the required certification in good faith. See Q31 and Q37 in the [PPP FAQs](#) for additional guidance.

## **Calculation of payroll costs**

**How should payroll costs for businesses other than self-employed individuals be calculated for the purposes of the loan amount relative to payroll taxes?**

Payroll costs are calculated on a gross basis without regard federal taxes imposed or withheld including FICA and Medicare. Payroll costs are not reduced by taxes imposed on an employee and are not increased by the employer's share of payroll taxes.

**What other costs should be considered when determining payroll costs for businesses other than self-employed individuals?**

Payroll costs consist of compensation to employees including salary, wages, commissions or similar compensation; cash tips or the equivalent; payment for leave; allowance for separation or dismissal; payment for employee benefits including group health care coverage and insurance premiums; retirement contributions, payment of state and local taxes assessed on the compensation of employees.

**Are there any other specific exclusions in determining payroll costs?**

- The compensation of an employee whose principal place of residence is outside of the U.S.
- The compensation of an individual employee in excess of an annual salary of \$100,000
- If the borrower took credits under the Families First Coronavirus Response Act (FFCRA) for sick and family leave wages, those costs are also excluded.

**The CARES Act excludes payroll costs for compensation greater than \$100,000. Does that exclusion apply to employee benefits?**

The \$100,000 cap applies only to cash compensation not to non-cash compensation such as retirement plans or group health care.

**What period of time should be used to calculate payroll costs for businesses other than self-employed individuals?**

- Borrowers can calculate payroll costs using data either from the previous 12 months or from the 2019 calendar year.
- For seasonal businesses, the applicant may use average monthly payroll for the period between February 15 or March 1, 2019 and June 30, 2019 or any consecutive 12-week period between May 1, 2019 and September 15, 2019.
- A business that was not in operation for that period may use the average monthly payroll costs for the period January 1, 2020 to February 29, 2020.

**Are payments to independent contractors included in payroll costs?**

Payroll costs do not include payments to independent contractors. Independent contractors have the opportunity to apply for PPP funding.

**Are part-time employees and/or temporary seasonal employees included in payroll costs?**

All employees paid during the period of time selected are included in payroll costs and to determine head count for eligibility purposes.

**What if a business contracts with a payroll provider or a Professional Employer Organization (PEO) to process payroll? Are those costs included as payroll costs of the eligible borrower?**

In [FAQs released by the SBA](#), they recognize that the payroll for employees in this arrangement will not be reported on Form 941s for the borrower. The employees' gross salary and benefits would be included as part of payroll costs when calculating the loan amount. For documentation, the SBA suggests providing Schedule R from Form 941 (an allocation schedule for aggregate Form 941 filers) or a statement from the payroll provider or PEO.

**For churches/religious organizations, should a minister's housing allowance be included as part of payroll costs?**

Per the Interim Final Rule released April 24, 2020, payroll costs consist of compensation to employees including salary, wages, commissions or similar compensation. In additional guidance released on April 24, 2020, housing stipends or allowances are specifically included as payroll costs.

## **Pass-through entities calculation of payroll costs**

### **How do S Corporations determine payroll costs?**

Businesses should accumulate payroll costs based on the general guidelines as noted above. Specifically, compensation of owners who receive reportable wages (i.e. W-2 wages) should be included as payroll costs up to the \$100,000 limit. Specifically, 2019 Form 941 taxable Medicare wages & tips should be added for each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from taxable Medicare wages & tips should be used to calculate payroll costs. Employer health insurance contributions (portion of Form 1120-S line 18 attributable to health insurance), retirement contributions (Form 1120-S line 17) and employer state and local taxes assessed on employee compensation (from state quarterly wages reporting forms) should be included as payroll costs.

### **How do partnerships and LLCs determine payroll costs?**

Businesses should accumulate and report payroll costs based on the general guidelines as noted above. Additionally, guidance issued on April 14 states that payroll costs should also include the self-employment income of general active partners (subject to \$100,000 compensation cap). This is determined by adding the following:

- Schedule K-1, line 14a – Net earnings from self-employment of individual U.S. based general partners, reduced by Sec. 179 deduction, unreimbursed partnership expenses and depletion claimed on oil and gas properties claimed) multiplied by .9235 (adjusting for self-employment tax), up to \$100,000 per partner
- 2019 gross wages and tips paid to the employees whose principal place of residence is in the U.S. (calculated based on guidelines noted above)
- 2019 employer contributions for employee health insurance (portion of Form 1065 line 19 attributable to health insurance)

- 2019 employer contributions to employee retirement plans (Form 1065 line 18)
- 2019 employer state and local taxes assessed on employee compensation (from state quarterly wage reporting forms)

Although partners/members are not treated as employees of the partnership/LLC and may receive guaranteed payments and other self-employment income from the partnership/LLC, the SBA determined that partners/members are not permitted to obtain PPP funds based on their self-employment income from a partnership/LLC.

### **How do single member LLCs determine payroll costs and do they apply as a business, sole proprietor or self-employed person?**

LLCs should follow the instructions that apply to their tax filing situation. For example, an LLC that is considered a disregarded entity should file an application as a self-employed person. If the LLC is electing to be taxed as a partnership, the guidance regarding partnerships/LLCs would apply in the calculation of payroll costs.

## **Self-employed individuals and independent contractors**

### **How are payroll costs calculated for self-employed individuals and independent contractors with no employees?**

The loan amount will be determined based on 2019 Form 1040 Schedule C line 31 net profit amount, up to \$100,000. If the Schedule C shows a net loss, the allowed loan amount is zero.

### **How are payroll costs calculated for self-employed individuals and independent contractors with employees?**

The loan amount will be determined by the sum of the following:

- 2019 Form 1040 Schedule C line 31 net profit amount, limited to \$100,000. If the Schedule C shows a net loss, then this amount is 0
- Payroll costs as calculated above

### **Are health insurance premium payments and retirement contributions added to payroll costs for self-employed individuals?**

Based on guidance provided, health insurance premiums and retirement contributions will be added to payroll costs for individuals with employees. For self-employed individuals with no employees, the loan amount is determined based on net profit from Form 1040 Schedule C.

**Do individuals who are self-employed and report income/expenses on forms other than Schedule C (such as Schedule F (farming)) qualify to apply for the PPP?**

Yes. Self-employed farmers (those reporting their net farm profit on Schedule F) should use Schedule F line 34 net farm profit to be used to determine their loan amount (rather than Schedule C line 31 net profit). Otherwise, the calculation of the loan amount is the determined in the same manner.

**Determining number of employees for less than 500 employee limit/affiliate questions**

**What time period should be used to determine the number of employees for the loan application?**

Businesses may use average employment over the previous 12 months or for the calendar year 2019 for the purposes of applying an employee-based size standard. As an alternative, this formula provided by the SBA can be used: average number of employees per pay period in the 12 completed calendar months prior to the loan application (or the average for the periods the business has been operational if less than 12 months).

**Are part-time or seasonal employees included in the employee count?**

Yes, all individuals who are considered employees (including those obtained from a temporary employment agency, PEO or leasing concern) are included in the employee count. Per SBA FAQs, you can average employment over the required time period.

**How do I determine whether related businesses are considered affiliates for the purpose of applying for the PPP?**

The general rules of affiliation rules can be found under 13 C.F.R. 121.301. There are 4 tests:

- based on ownership (control of 50% or more of voting equity)
- based on stock options, convertible securities and agreements to merge (considered to have a present effect on the power to control a concern)
- based on common management (one or more officer/director/ managing member or general partner controls the Board of Directors and/or management of another business)
- based on identity of interests, including family members (individuals or firms that have identical business or economic interests)

In determining whether affiliation exists, the SBA may consider other circumstances even if no single factor constitutes affiliation (13 C.F.R. 121.301(f)(5)).

**Are there any exceptions to the affiliation rules specifically related to the PPP from the CARES Act?**

Yes, affiliation is waved for the following:

- businesses with fewer than 500 employees that is assigned a NACIS Code starting with 72 (hotels, bars, restaurants)
- businesses operating as a franchise that are assigned a franchise identifier code by the SBA

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**Webinar #10 June 4, 2020**

(non-authoritative notes...these things change)

House Bill: H.R.7010 - Paycheck Protection Program Flexibility Act of 2020

Senate Bill passed the House version June 3rd 2020

- PPP borrowers can choose to **extend the eight-week period to 24 weeks** (to December 31), or they can keep the original eight-week period.
- This flexibility is designed to make it easier for more borrowers to reach full, or almost full, forgiveness. **New PPP borrowers will have a 24-week covered period, but the covered period can't extend beyond Dec. 31, 2020.**
- Under the language in the House bill, the **payroll expenditure requirement drops to 60% from 75%** but is now a cliff, meaning that borrowers must spend at least 60% on payroll **or none of the loan will be forgiven.** Since the House version intended the sliding scale to remain in effect, technical tweaks could be made to the bill to restore the sliding scale.
- Borrowers can use the **24-week period to restore their workforce levels and wages** to the pre-pandemic levels required for full forgiveness. This must be done by Dec. 31, instead of June 30.
- The legislation allows borrowers to **achieve full PPP loan forgiveness even if they don't fully restore their workforce** if you cannot find qualified employees **or** were unable to restore business operations to Feb. 15, 2020, levels due to COVID-19 related operating restrictions.

“(7) 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—

“(A) is able to document—

“(i) 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

“(B) is able to document an 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...

*related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.*

- Borrowers now have **five years to repay the loan** instead of two. Existing PPP loans can be extended up to 5 years **if the lender and borrower agree**. The interest rate remains at 1%.
- The bill allows businesses that took a PPP loan to also **delay payment of their payroll taxes**.
- If you do not file for forgiveness within 10 months of the end of the covered period, you must start making payments.

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26 pages of New Final Interim Rules:

<https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>

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PPP Forgiveness Form:

<https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>

Or type **sba forgiveness form** into your browser

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**Four parts** but only the first two required for submission to lenders:

1. The PPP Loan Forgiveness Calculation Form
2. PPP Schedule A
3. Schedule A Worksheet, and
4. Demographic Information Form.

## House Bill H.R. 6886:

- Extends loan forgiveness 'covered period' from eight weeks to 24 weeks
- Gives employers until the end of the year to hire workers back and relax rehiring requirements
- ends the requirement that 75% be spent on payroll and "not limit the non-payroll portion of a forgivable covered loan amount"
- Makes clear that employers in the PPP program can also benefit from the CARES Act payroll tax delay.

The Senate Bill failed to pass, but they are expected to approve a 24 week limit....but not change the 75/25 requirement.

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Entering 6th Week!!

## New Rules and Clarifications

1. Lender repayment schedule.
2. Furloughed employee payments are forgiven
3. Bonuses paid are eligible if annualized comp does not exceed \$100,000
4. Owner/employees may be limited to the lower of \$100,000 (annualized) or their payroll in 2019
5. Narcing on employees refusing work is now required
6. Appeals process is being established

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## Payroll Costs:

Still a definitional issue:

From Part 1, Application:

**Summary of Costs Eligible for Forgiveness:**

Borrowers are eligible for loan forgiveness for the following costs:

1. **Eligible payroll costs.** Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred

However....From Part 3, Worksheet:

**Cash Compensation:** Enter 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 in Table 1 or Table 2 for any individual employee.

So....paid and incurred or paid or incurred?

**Payroll Covered Period:**

Payroll costs are considered paid on the day paychecks are distributed, or ACH transaction date

*Payroll costs are considered incurred on the day the employee earned the pay!*

Payroll costs incurred but not paid during the borrower's last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if the borrower pays them by its next regular payroll date.

Otherwise, the SBA's guidance requires that payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period) to qualify.

**Alternative Payroll Covered Period**

The Alternative Payroll Covered Period allows biweekly payroll employers to elect to calculate eligible payroll costs using the eight-week period that **begins on the first day of their first pay period following the disbursement of PPP proceeds.**

Borrowers who opt for the Alternative Payroll Covered Period are still required to use the standard Covered Period for other costs.

As with the Covered period, payroll costs incurred but not paid during the borrower's last pay period of the Alternative Payroll Covered Period are eligible for forgiveness if the borrower pays them by its next regular payroll date.

Next. Regular. Payroll. Date

## Compensation limits:

The \$100,000 prorated annual salary still stands (less than \$15,385 for the 8 weeks) and includes:

- gross salary, gross wages, gross tips, gross commissions,
- paid leave (vacation, family, medical or sick leave,
- allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period.

Even though tips come from customers, and not the employer, you can include tips into the payroll calculation. Either keep a record of tips, or use “a reasonable, good-faith, employee estimate of such tips.”

*Not* included in the \$100k limitation (add to the above):

- employer contributions for employee health insurance
- employer contributions to employee retirement plans
- employer amounts paid for employee state and local taxes

**New Rule!!** The Rule now limits payroll expense for “owner/employees and self-employed individuals” that will count towards forgiveness to the lesser of (1) \$15,385 (the \$100,000 annualized limit), or (2) *8/52<sup>nds</sup> of 2019 compensation.*

**Confusion** - Many commentators read this to now apply to C and S corporation owners, as well as schedule C filers and general partners (as was the case previously).

However...others look at this as not a change and it was just poor drafting that is confusing. Don't panic, but look for clarification next week!

## Self-employed or general partner:

The lower of:

- \$100k limit (\$15,384), or
- The 8-week equivalent of compensation in 2019. (Divide schedule C net profit by 12, multiply by 2.5)

You can also have another 25% of costs forgiven (utilities, rent, mortgage interest). You cannot use health insurance or retirement plan costs.

### **Maximum amount for self-employed eligible for forgiveness is \$20,833**

#### **Example:**

\$20,833 total PPP loan  
 \$15,384 owner compensation  
 \$5,448 costs (25% of total)

#### **Forgiveness for Self-employed:**

You get 8 weeks worth of the 2019 net profit forgiven, whether you spend it or not. No other requirements. 'Owner Compensation Replacement'. Multiply your 2019 Schedule C net income by 8/52 (or 0.154)

The remainder needs to be spent on utilities, rent and mortgage interest to be forgiven.

#### **Example:**

\$27,300 in net income on 2019 Schedule C  
 Divide by 12 (\$2,275)  
 Multiply by 2.5 (\$5,687.50)

Maximum 'Owner Compensation Replacement'  
 Multiply \$27,300 by 8/52 (\$4,200) This is fully forgivable.  
 \$1,487 needs to be spent on utilities, rent and mortgage interest to be forgiven

### **Non-payroll Costs**

- Existing Mortgage Interest (Feb 15, 2020) for real and personal property
- No prepayments allowed for mortgage interest (specifically stated)
- Rent or lease payments (Feb 15 again) - no prepayment exclusion for rents

- Utilities - gas, water telephone, internet, electricity, transportation - no prepayment issue as long as the payments are made during the 8 wk period

Must be paid **or** incurred during Covered Period and paid on or before next billing date, **even if outside the 8 weeks.**

25/75% rule still applies

**Example:** If you have:

\$100,000 loan  
\$70,000 payroll expenses, and  
\$25,000 interest, rent, utility expenses, then  
\$23,333 of the \$25,000 will be forgiven

1. Divide  $\$70,000/3 = \$23,333$
2. Add together =  $\$93,333$
3. Divide  $\$23,333/\$93,333 = \$70,000$

It seems for now that you can count back pay, unpaid utilities, mortgage interest which was subject to forbearance, and accrued rents.

It also begs the question as to whether certain eligible expenses may be paid *in advance* of contractual terms or past practices.

Remember - The application does, however, expressly prohibit prepayments of mortgage interest. But...what is a mortgage?

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## Limitations

FTE Employees

1. Enter number of hours/week/employee for Covered or Alternative Period
2. Divide by 40
3. Round the total to the nearest tenth (maximum of 1.0)

### Alternative Calculation:

1. Multiply each employee over 40 hrs/wk by 1.0
2. Multiply each employee less than 40 hrs/wk by .5

## Exceptions!

1. Employees who reject written offer of employment (same hours, wages)
  1. Written!!!! Documented if response is verbal or no response
  2. New obligation to notify the State unemployment department within 30 days of employee's rejection of the offer.
  3. 'Further guidance' on how to report to the State coming soon to the SBA website
2. Fired for cause
3. Resigned
4. Requested and received a reduction of hours

“borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests.” P. 22

## New Safe Harbor Provision

No reduction in forgiveness due to FTE numbers *if*:

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, restored its FTE employee level to the FTE employee level that existed during the borrower's pay period that included February 15, 2020

Forgiveness is reduced by a percentage of any reduction in FTE

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## Further Reductions:

### Salary/Hourly Wage Reduction

Forgiveness decreases if salary and wages decreased.

- Calculate wages and salaries from 1.1.20 - 3.31.20
- Calculate wages during Covered Period or Alternative Covered Period
- Continue if there was a reduction in wages over 25% (total or per employee?)
- Forgiveness will be reduced by this amount (not percentage)

## **No double deduction if you have both reduction in FTE and salary**

A reduction in compensation attributable to a reduction in the number of employee's hours will not be counted as a reduction in compensation for the 75% or more test. Borrowers will not be double penalized for both a headcount and wage reduction.

### **Examples:**

If an employee making \$10 an hour and working 40 hours a week is reduced to 20 hours a week, this reduction to \$200 a week does not cause this to be considered a more than a 25% reduction in compensation.

Also, if the employee wage was reduced from \$10 an hour (40 hours a week) to \$7.50 an hour and 20 hours a week, it would still not be a "more than 25% reduction in pay," as relative to hours worked (the borrower would still have a reduction in loan forgiveness because the employee headcount would be reduced by at least 0.5).

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### **Lenders are required to:**

1. Confirm receipt of borrower's certifications contained in the Loan Forgiveness Application Form.
2. Confirm receipt of the documentation verifying payroll and non-payroll costs.
3. Confirm that the borrower's calculations on the Application are accurate.
4. Confirm that the 75% of payroll test was met.
5. Bank has 60 days after submission to approve request and send to SBA.
6. SBA has 90 days after receiving request from bank to review and pay lender.

Retain all records for at least 6 years from the date of loan forgiveness or repayment in full!

*The lender is not required to independently verify the borrower's reported information, if the borrower attests to the fact that it has provided the appropriate documentation supporting its request.*

**Wait until June 30th to calculate forgiveness.**

**Get copy of application from lender now.**

# There will be an appeals process. Don't forget home office rent

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## Issues *not* addressed in last rules:

- 8-week period too restrictive for many businesses. 24 week proposed  
Many will have to let hired employees go if business does not return to normal
- 75% rule not applicable for many businesses (e.g. food for restaurants)  
IG stated that Congress did not specify the 75%; it was SBA. Legal challenge?

When is an employee an employee? At home employee still receiving commission checks?

Are bonuses considered payroll?

When is the deadline for application? When does the form have to be turned in?

Final rules on auto costs allowed

What happens if June 30 is inside the Covered Period?

Mnuchin considering a 'technical fix'

Remember the 'refusal to work' rule

Loan could be sold. Get copy of application from lender now. Keep in touch with lender to see if loan was sold and there is a new contact.

The forgiveness amount is not taxable income (Federal). Will the IRS change its position that forgiven expenses are not deductible?

