

Webinar #8 May 21st, 2020

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

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

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.
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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.

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

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).

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)

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)
- Utilities - gas, water telephone, internet, electricity, transportation (Feb 15)

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

So.....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?

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)
2. Fired for cause
3. Resigned
4. Requested and received a reduction of hours

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

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.
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Wait until June 30th to calculate forgiveness!

Issues *not* addressed:

- 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?