

# SBA PPP LOAN FORGIVENESS GUIDE

## PAYCHECK PROTECTION PROGRAM (“PPP”)

## LOAN FORGIVENESS GUIDELINES

An important element of the PPP is the forgiveness afforded to loan recipients for up to 100% of the loan amount, if the loan is properly managed per the terms of the loan agreement. On June 16th, 2020, the SBA released the revised Paycheck Protection Program Loan Forgiveness Application (**SBA FORM 3508**) and the streamlined Forgiveness Application (**SBA FORM 3508EZ**) in response to the Paycheck Protection Program Flexibility Act (“PPPFA”) signed into law on June 5th, 2020.

(links to instructions can be found below).

In general, the forms and accompanying instructions guide borrowers through the details needed to complete the required forms for submission and certifications. The recent changes to the forms driven by the PPPFA allows borrowers up to 24 weeks to spend their PPP loan toward eligible expenses, reduces requirement on the amount that must be spent on Payroll Costs from 75% to 60%, and introduces certain Safe Harbor tests on employee count and wage reductions to ease administration of forgiveness.

A business may be able to submit the streamlined 3508EZ form, which reduces the documentation requirements for applying for forgiveness, if one of the following conditions is met:

**1.** The business is a self-employed individual, sole proprietor, or independent contractor and has no employees.

OR

**2.** The business did not reduce salaries/wages of employees earning less than \$100,000 by more than 25% and did not reduce the number of employees or average paid hours between January 1st, 2020 and the end of the covered period (certain exceptions apply).

OR

**3.** The business was unable to operate as a result of COVID-19 and did not reduce salaries/wages of employees earning less than \$100,000 by more than 25%.

A careful review of the **detailed** wording in the Form 3508EZ instructions is necessary to ensure all aspects of the conditions can be fully satisfied.

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<p><b>General guidelines</b></p>	<p>With the changes introduced in the PPPFA, the forgiveness calculation is based on the eight (8) week period or the twenty-four (24) week period from either 1) the date of final loan disbursement (the ‘Covered Period’) or 2) an alternative 8 or 24 week period for Payroll at borrower’s election, and to coincide with the first payroll date after disbursement (the ‘Alternate Payroll Period’).</p> <p>If the Alternate Payroll Period is selected, the loan disbursement date still applies for other forgiveness expenses other than payroll.</p> <p>Borrowers whose loan date is prior to June 5th, 2020 may choose either period. Borrowers whose loan date is June 5th or later must use the 24-week period.</p> <p>Some special rules apply:</p> <ul style="list-style-type: none"> <li>• Forgiveness amount cannot exceed loan principal</li> <li>• Must be cash spent, however, the application allows for ‘costs incurred during the 8 or 24 week periods that will be paid on the next payroll or billing cycle to be included (but counted only once in the calculation)</li> <li>• 60% or more must be spent on Payroll Costs (reductions to forgiveness will apply if this rule is not met)</li> <li>• Cannot prepay for Rent, Utilities, Interest, etc., for future periods beyond the 8 or 24 weeks</li> <li>• Forgiveness amount may be reduced if 1) FTE are reduced or 2) Compensation per employee is reduced, although this can be avoided if FTE and Compensation are restored to pre-loan levels prior to Dec 31st, 2020. Special FTE exceptions are allowed if good faith efforts are made to rehire employees and they refuse, or if they leave under certain circumstances. The new form 3508 introduces 2 Safe Harbor certifications that ease the administrative requirements on this section, if the business can certify to certain aspects on FTE and Salary maintenance.</li> <li>• Borrowers must make a series of certifications with regard to the use of funds, accuracy of calculations, and consent to share documentation with the SBA.</li> </ul>
<p><b>How much can be forgiven?</b></p>	<p>Up to 100% of the loan amount, as long as the expenses fall into one of these categories:</p> <ul style="list-style-type: none"> <li>• Payroll (using same definition as the loan application)</li> <li>• Rent for leases in place prior to Feb 15th, 2020</li> <li>• Utilities (generally assumed to be electricity, gas, water, telephone and internet) for services in place prior to Feb 15th, 2020</li> <li>• Interest portion of mortgages in place prior to Feb 15th, 2020</li> </ul> <p>Note: some reductions may apply that are described below, and the Loan Forgiveness Application has many calculations to test for potential reductions.</p>
<p><b>What constitutes Payroll Costs?</b></p>	<p>The forgiveness calculation uses the same basic definition for Payroll Costs as the loan application:</p> <ul style="list-style-type: none"> <li>• Salary, wages, commissions, tips, vacation, sick leave, dismissal/separation pay</li> <li>• Company-paid health benefits</li> <li>• Company-paid retirement benefits</li> <li>• Company-paid state and local taxes</li> </ul> <p>Reduced by:</p> <ul style="list-style-type: none"> <li>• Compensation for individuals earning &gt;\$100K annually (Note: the application specifies that individuals in this category are capped at \$15,385 (<math>\\$100,000 / 52 * 8</math>) if a borrower uses the 8 week covered periods, or capped at \$46,154 (<math>\\$100,000 / 52 * 24</math>) if a borrower uses the 24 week covered period.</li> <li>• Employees residing outside the United States</li> <li>• Qualified sick and family wages paid under the Families First Coronavirus Response Act (FFCRA) where the business may claim a credit</li> </ul>

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<p>Do all expenses have to be paid during the period?</p>	<p>The Loan Forgiveness Application introduces a concept for payroll and non-payroll costs incurred during the 8 or 24-week period, but not yet paid. The Application clarifies that payroll and non-payroll costs incurred but not paid are still eligible for forgiveness, if they are paid on or before the next regular payroll cycle or billing date.</p>
<p>What is the 60% spend on Payroll Costs rule?</p>	<p>The SBA guidance directs that not more than 40% of loan forgiveness can be for non-payroll costs, hence 60% of forgiveness must be for payroll costs. This test is embedded in the Forgiveness Application (Line 10).</p>
<p>What is the FTE Reduction rule?</p>	<p>Loan forgiveness may be reduced if the average number of FTEs during the 8 or 24 week Covered Period or Alternate Payroll Period is less than the lower of 1) the average FTEs from Feb 15th, 2019 through June 30th, 2019 or 2) the average FTEs from Jan 1st, 2020 through Feb 29th, 2020 or 3) for seasonal employers during any 12 week period during May 1st, 2019 through Sept 15th, 2019. The Loan Forgiveness Application embeds this concept and provides detailed instructions, and requires the business to complete a thorough analysis of staffing for each period to calculate each of the time points for comparison.</p> <p>However, the revised form 3508 introduces 2 Safe Harbor certifications (see FAQ below) that ease the administrative requirements on this section, if the business can certify to certain aspects on FTE and Salary maintenance, or inability to operate at same level of business activity due to health compliance, thus streamlining completion of this section. If the business cannot certify to the Safe Harbor requirements, detailed calculations will be required to complete the form.</p> <p>The SBA has also clarified that FTE count will be based on a 40 hour work week, to provide definitive guidance on calculation of part-time employees, rounded to the nearest single decimal point. Alternatively, the instruction allows at the borrower's option a 'simplified' approach to count full-time employees working 40 hours or more as 1.0, and for part time employees to count them as .5, thus forgoing a potentially difficult historical reconciliation.</p>
<p>What is the Compensation Reduction rule?</p>	<p>Loan forgiveness may be reduced if employees earning less than \$100,000 have their wages reduced by more than 25% during the 8-week Covered Period or Alternate Payroll Period. The Application requires a borrower to review every single employee in this category for potential wage reduction, and then outlines a 3-step process to calculate potential forgiveness reduction. As noted, this does not apply to employees earning more than an annual rate of \$100,000.</p> <div data-bbox="414 1644 1463 1864" style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p><b>Example:</b>  A business has an employee that earned \$78,000 annually prior to the 8-week covered period (or \$12,000 for 8 weeks). During the covered period, the employee's wages were reduced to \$6,000 for 8 weeks, a 50% reduction. The amount over 25% (\$3,000) would be a reduction in forgiveness, if wages are not restored prior to December 31st, 2020. Note: if a borrower elects the 24 week covered period, the calculation is amended to reflect the 24-week calculation period.</p> </div>

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<p>What if FTE and Compensation are restored?</p>	<p>Loan Forgiveness reductions listed above may not be applicable, based on this guidance from the SBA: “Re-Hiring: You have until December 31st, 2020 to restore your full-time employment and salary levels for any changes made between February 15th, 2020 and April 26th, 2020. This Safe Harbor test is a component of the Application.</p>
<p>What exceptions to the FTE reduction test are applicable?</p>	<p>Reductions in the following cases do not reduce a Borrower’s forgiveness for the FTE calculations:</p> <ul style="list-style-type: none"> <li>• Any position for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period which was rejected by the employee</li> <li>• Any employee who, during the Covered Period, was 1) fired for cause, 2) voluntarily resigned, or 3) voluntarily requested and received a reduction of hours</li> </ul>
<p>What are the Safe Harbor tests for FTE Reduction?</p>	<p>The revised form 3508 now includes two Safe Harbor tests that help a borrower more easily attest to the rules under the FTE reduction section of the form. In summary, a business that did not reduce employees or average paid hours during the covered period, or was unable to operate between Feb 15th, 2020 and the end of the covered period due to compliance with established health guidance can satisfy the Safe Harbor test, and not need to perform detailed calculations on current FTE vs. prior reference period, thus streamlining the documentation requirements of the submission.</p> <p>(Note: this section should be reviewed very carefully by a borrower, as the certifications are very precise in their wording.)</p>
<p>How do I treat an EIDL grant for forgiveness?</p>	<p>If your EIDL Loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness on the PPP Loan. The Forgiveness Application requires the borrower to disclose the amount of any EIDL Advance and EIDL Application Number.</p>
<p>Why does the SBA ask if the loan is over \$2 million?</p>	<p>During the PPP loan origination periods, certain businesses applied for and received PPP funding; however, questions about certain businesses’ true need to receive funds was called into question, particularly publicly-traded or well-capitalized businesses. Therefore, the SBA and Treasury have allowed businesses to pay back the loans if they could not demonstrate a true need, and for those that have kept the loans exceeding \$2 million, it is possible those businesses will undergo additional scrutiny in the forgiveness process.</p>
<p>What documentation should I gather?</p>	<p>Now would be a good time to get baseline information and utilize a tracking template for the following types of data:</p> <ul style="list-style-type: none"> <li>• Employee pay records for 2019 and 2020 by pay period (to assist with baseline wages before the Covered Period or Alternate Payroll Period starts)</li> <li>• Employee pay records for each week when the Covered Period or Alternate Payroll Period starts</li> <li>• Weekly FTE count for Feb 15, 2019 through June 30th, 2019 and Jan 1st, 2020 through Feb 29th, 2020, or if seasonal employer, select a 12 week period between May 1st, 2019 through Sept 15, 2019</li> <li>• FTE count for each week when the Covered Period or Alternate Payroll Period starts</li> <li>• Supporting documentation for payments of non-payroll costs (invoices, checks, proof services in place prior to Feb 15th, 2020)</li> </ul>

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<p>What is the process for loan forgiveness?</p>	<p>You should anticipate your lender will ask for a completed and signed Forgiveness Application form (<a href="#">SBA FORM 3508</a> or <a href="#">SBA FORM 3508EZ</a>) along with documentation to support the calculations. Since certain calculations may involve calculations up to December 31st, 2020, the borrower should be thoughtful as to the appropriate time to file the Forgiveness Application after the 8 or 24-week Covered Period is over. Alternatively, it is likely Lenders will accept applications prior to completion of the 24 week period, if a borrower has spent all of their PPP loan amount and anticipates no changes to the certifications. Lenders will provide specific guidance on their own timeline for receiving applications.</p>
<p>How long does the forgiveness process take?</p>	<p>After a borrower submits a completed forgiveness application to their lender, the lender has 60 days to evaluate the submission based on all guidelines issued by the SBA, and provide a response. The response may be forgiveness in whole or in part, denial, or denial without prejudice pending SBA review. When a lender approves the forgiveness application, it communicates to the SBA, who in turn has 90 days to reimburse the lender, and the borrower is informed of the start date for loan repayments if less than 100% of the loan is forgiven. If the loan is denied or denied without prejudice, the SBA has provided specific guidance on rights of the borrower to seek further review and reconsideration, which can be found in detailed documentation provided by the SBA.</p>