



## PPP Loan Forgiveness Tip Sheet

*This document was updated on June 18, 2020. Guidance regarding financial relief for the impacts of COVID-19 is rapidly changing. Please check appropriate state and federal websites frequently for the most updated information.*

### Overview

*What part of a PPP loan is forgivable?*

The forgivable portions of a PPP loan include payroll costs and certain non-payroll costs. Payroll costs are capped at \$100,000 for each employee, prorated over the loan period.

Allowable non-payroll costs must be connected to the business and include:

- mortgage interest payments (but not any pre-payments),
- lease payments, and
- utility payments for electricity, gas, water, transportation, telephone, or internet access.

In order to be forgivable, the business must have been paying the mortgage interest, lease payments, and utility payments before Feb. 15, 2020. In other words, they cannot be new liabilities incurred by the business post-COVID.

*What is the 60% rule?*

Under the Paycheck Protection Program Flexibility Act (PPP Flexibility Act), at least 60% of the forgivable amount of a borrower's loan must be for payroll costs. This replaces the previous 75% threshold adopted by the SBA.

*What is the applicable time period for determining forgivable costs?*

Under the CARES Act, for an expense to be forgivable, it must have been incurred during the 8-week (56 day) covered loan period. The PPP Flexibility Act extended this period to 24 weeks (168 days) or December 31, 2020, whichever is earlier. Borrowers who received their loan before June 5, 2020 may elect to have the loan forgiveness covered period be the 8-week period beginning on the date its PPP loan was disbursed. The covered loan period will vary by loan depending on when the funds were initially disbursed to the borrower.

*What does a borrower need to do to have a loan forgiven?*

At the end of its covered period, the borrower must submit a loan forgiveness application to its lender. The borrower must submit a loan forgiveness application within 10 months after the end of its loan forgiveness covered period or December 31, 2020, whichever is earlier. The SBA released an updated loan forgiveness application on June 16, 2020.

The borrower is responsible for calculating the loan forgiveness amount and providing any required documentation to the lender. The documentation requirements are discussed in detail below, and the loan forgiveness application can be found on the SBA's website:



<https://www.sba.gov/document/sba-form--paycheck-protection-program-loan-forgiveness-application-revised-6-16-2020>.

Instructions for the form can be found at:

<https://www.sba.gov/document/sba-form--paycheck-protection-program-loan-forgiveness-application-instructions-borrowers-6-16-2020>.

A Spanish version of the application can be found at:

<https://www.sba.gov/document/sba-form-3508-solicitud-de-condonacion-de-prestamos-ppp>

#### *What is the PPP EZ Loan Forgiveness Application?*

The EZ Loan Forgiveness Application is a shortened application form with fewer calculations and documentation requirements that is only available to certain borrowers. A business is eligible for the EZ form if it meets at least one of the following 3 requirements:

- Borrower is self-employed and has no employees;
- Borrower did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; or
- Borrower experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

The PPP EZ Loan Forgiveness Application can be found at:

<https://www.sba.gov/document/sba-form--paycheck-protection-program-ez-loan-forgiveness-application-6-16-2020>.

Instructions for the EZ form can be found at:

<https://www.sba.gov/document/sba-form--paycheck-protection-program-ez-loan-forgiveness-application-instructions-borrowers-6-16-2020>.

#### *What is the review process?*

Once a borrower submits an application for loan forgiveness, a lender has 60 days to review the application and forward it to the SBA. The SBA then has 90 days to renew the application. This means that a borrower may not have a decision on loan forgiveness for almost 5 months (2 months for lender review, plus 3 months for SBA review).

The SBA has indicated that it will be auditing loans greater than \$2 million, although it has reserved the right to review any loan. Any amount that the lender/SBA determines is non-forgivable must be repaid within 2 years at a 1% interest rate.

#### *What impacts the Forgiveness Amount?*



According to SBA guidance, the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. In other words, the total amount of the loan and any accrued interest is potentially forgivable.

- To maximize forgiveness, at least 60% must be spent on payroll costs.
  - No more than 40% of the forgivable loan amount can be spent on mortgage interest, rent, and utilities related to the business and entered into before February 15, 2020.
- Proceeds from any advance up to \$10,000 on an EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- Forgiveness will be reduced if full-time employee headcount declines.
  - Remember: Independent Contractors do not count as employees. Only individuals who receive W-2s qualify as employees for the purposes of the PPP.
- Forgiveness is based on maintaining salary levels and will be reduced if salaries decrease by more than 25% for an employee.
  - Does not apply to employees who made more than a pro rata amount equal to \$100,000 in a single pay period.

*When will payments begin for any unforgivable amount?*

When repayment begins depends on whether a business submits a loan forgiveness application.

- If a business submits a loan forgiveness application to the lender within 10 months after the end of its loan covered period, the business will not have to make any payments of principal or interest on its loan before the date on which SBA sends the loan forgiveness amount on the loan to the lender, or notifies the lender that no loan forgiveness is allowed. The lender will notify the business of SBA's decision regarding loan forgiveness and the date when the first loan payment will be due. The loan will continue to accrue interest during this deferment period.
- If a business does not submit a loan forgiveness application within 10 months after the end of its loan covered period, it must begin paying principal and interest after that 10-month period.

*When is the loan maturity date?*

The maturity date of a PPP loan depends on whether it was disbursed before or after the enactment PPP Flexibility Act. However, the 1% interest rate remains the same regardless of the length of the loan.

- Loans disbursed before June 5, 2020 will have a 2-year maturity date.
- Loans disbursed after June 5, 2020 will have a 5-year maturity date.

## **Payroll Costs**

*When must payroll be incurred/paid to be forgivable?*

Payroll costs incurred or paid during the 8-week or 24-week covered period are forgivable. The covered period can begin on either the:

- Date of loan disbursement (“covered period”); or



- First day of the first payroll cycle in the covered period (“alternative payroll covered period”).
  - This option is only available to businesses that have a bi-weekly (every other week) or more frequent payroll cycle.

Example:

Coastal Company, a small business in the seafood industry, has a bi-weekly payroll schedule. It has elected an 8-week covered period beginning on May 18 and ending on July 12.<sup>1</sup> The first day of its first payroll cycle in the covered period is May 25.

Coastal Company may elect an alternative payroll covered period that starts on May 25 and ends 55 days later (for a total of 56 days) on July 19.

- Payroll costs paid during alternative payroll covered period = forgivable.
- Payroll costs incurred during alternative payroll covered period = forgivable if paid on or before the first regular payroll date occurring after July 19.
- Payroll costs that were both paid and incurred during the alternative payroll covered period may only be counted once.

*Are payroll costs related to furloughed employees forgivable?*

Yes, payroll costs related to furloughed employees are forgivable, subject to the \$100,000 cap per employee prorated for the covered period. A furlough is a mandatory suspension from work, with the expectation that the employee will return to work at some future point in time.

According to the SBA’s loan forgiveness interim rule, if a business is paying a furloughed employee salary, wages, or commissions during the covered loan period, those payroll costs are eligible for loan forgiveness.

*Are bonuses or hazard pay forgivable?*

Yes, subject to the \$100,000 cap per employee prorated for the covered period. In other words, there is no limit on the amount of any bonus or hazard pay an employee may receive, but the forgivable amount remains limited by the \$100,000 threshold.

*Is loan forgiveness for payroll capped for owner-employees, self-employed individuals, or general partners?*

Yes. The amount of allowable owner compensation depends on whether the individual chooses an 8-week or 24-week covered period.

- For a 24-week covered period, the amount of owner compensation for owner-employees, self-employed individuals, and general partners is limited to the 2.5 month equivalent of their 2019 compensation or \$20,8333 (the 2.5 month equivalent of \$100,000 per year).
- For an 8-week covered period, owner compensation is limited to the lesser of either 8/52 of 2019 compensation or \$15,385 (the 8-week equivalent of \$100,000 per year) whichever is less.

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<sup>1</sup> Because its loan was disbursed before June 5, 2020, the Coastal Company can elect either an 8-week or 24-week covered period.



The amount of allowable employee benefits that are forgivable depends on whether the borrower is an owner-employee, self-employed individual, and general partner. Owner-employees can include in their payroll costs the amount of employer retirement and health care contributions made on their behalf. The retirement contributions for owner-employees are limited to 2.5 months' worth of the 2019 contribution amount. Owner-employees of an S-corporation cannot have health insurance contributions forgiven because this amount is already included in their compensation.

Self-employed individuals and general partners cannot have retirement or health insurance contributions forgiven. These amounts are already included in their compensation.

### **Non-Payroll Costs**

*When must non-payroll costs be incurred and/or paid to be eligible for forgiveness?*

A non-payroll cost is eligible for forgiveness if it was:

- 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.

#### Example:

Coastal Company's covered period runs from May 25 to July 19. It pays May and June electricity bills during the covered period and pays its July electricity bill on August 10, which is the next regular billing date.

- May and June electricity bills = forgivable
  - The bills were paid during the covered period.
- Portion of July electricity bill through July 19 (the end of the covered period) = forgivable
  - That portion of the bill was incurred during the covered period and paid on the next regular billing date.

### **PPP Loan Forgiveness Calculations**

*How does a business calculate its number of full-time employees?*

The CARES Act does not define what a full-time employee (FTE) is. The SBA has determined that an FTE is an employee who works 40 hours per week.

The SBA has outlined two ways for a business to calculate its FTE numbers. Part-time employees who work less than 40 hours a week may be included in the calculations. Although there are two options for calculating full-time employees, the business must use the same calculation method for all of its employees.



Method #1:

Divide the average number of hours paid for each employee per week during the covered period by 40, capping this quotient at 1.0.

Method #2:

Use 1.0 for all employees who work 40 hours or more per week.

Use 0.5 for all employees who work less than 40 hours per week.

Example:

Coastal Company has 3 employees, and it is trying to determine what FTE calculation method to use. Employee #1 works 48 hours per week, Employee #2 30 hours per week, and Employee #3 5 hours per week.

Using Method #1, Coastal Company has a total FTE of 1.875.

- Employee #1 works 48 hours per week:  $48/40 = 1.2$ , capped at 1.0 FTE
- Employee #2 works 30 hours per week:  $30/40 = .75$  FTE
- Employee #3 works 5 hours per week:  $5/40 = .125$  FTE

Using Method #2, Coastal Company has a total FTE of 2 and should choose this method.

- Employee #1 works 40 hours or more per week = 1.0 FTE
- Employee #2 works less than 40 hours per week = .5 FTE
- Employee #3 works less than 40 hours per week = .5 FTE

*What effect does a reduction in a business's FTE number have on its loan forgiveness amount?*

A business's loan forgiveness amount will be reduced if full-time employee headcount declines. The CARES Act directs that FTE employees should be averaged for each pay period falling within a month. A borrower must calculate the average weekly FTE employees it had during the covered period or alternative payroll covered period as compared to a reference period. The reference period can be:

- February 15, 2019 through June 30, 2019; or
- January 1, 2020 through February 29, 2020.

Seasonal employers can use for their reference period:

- February 15, 2019 through June 30, 2019;
- January 1, 2020 through February 29, 2020; or
- Any consecutive 12-week period between May 1, 2019 and September 15, 2019.

A business's loan forgiveness amount will be reduced proportionally if the average weekly FTE employees during the covered period or alternative payroll covered period is less than during the reference period. This reduction is calculated as:

$$\text{Loan forgiveness amount} \times \left( \frac{\text{Avg. FTE per month loan period}}{\text{Avg. FTE per month reference period}} \right)$$



Example:

Coastal Company has an alternative payroll covered period starting on May 25 and ending on July 19. It chooses the February 15, 2019 - June 30, 2019 reference period. During this time its average weekly FTE employees is 4. During its alternative payroll covered period, its average weekly FTE employees is 2. It has calculated its loan forgiveness amount as \$50,000. However, since Coastal Company's FTE employees have declined, it must reduce its loan forgiveness amount.

$$\$50,000 \times (2/4) = \$25,000 \text{ reduced loan amount}$$

However, the CARES Act includes a safe harbor provision that applies to businesses that reduced their workforce from February 15, 2020 to April 26, 2020 (30 days after passage of the CARES Act). Under this provision, a business can avoid the forgiveness reduction for having a reduced workforce over their covered period or alternative payroll covered period so long as the business has the same number of employees by December 31, 2020 that they had on February 15, 2020.

Example:

The Coastal Company had 4 FTE on February 15, 2020 using calculation Method #2 above:

- Employee #1: 48 hours/week = 1.0 FTE
- Employee #2: 30 hours/week = 0.5 FTE
- Employee #3: 5 hours/week = 0.5 FTE
- Employee #4: 40 hours/week = 1.0 FTE
- Employee #5: 20 hours/week = 0.5 FTE
- Employee #6: 20 hours/week = 0.5 FTE

Due to economic impacts from COVID-19, the Coastal Company was forced to lay-off Employees #4, 5, and 6 on February 24, 2020. Because of the timing of the lay-off, the Coastal Company would be eligible to take advantage of the safe harbor provision by hiring employees back by December 31, 2020. Importantly, it does not need to hire back the same employees or at the same amount of hours to take advantage of this provision. Any combination of employees that it could hire that would increase their FTEs would help to reduce or eliminate the 50% loan forgiveness reduction discussed above.

*What effect does a borrower's reduction in the salary or wages of its employees have on the forgiveness amount?*

The CARES Act provides that loan forgiveness amounts will be reduced if the salary or wages of employees have been reduced by more than 25%. This requirement applies on a per employee basis and to two categories of employees:

- New employees hired in 2020; and
- Existing employees who were not paid more than the annualized equivalent of \$100,000 in any 2019 pay period.



If the 25% limit is exceeded for a business for one of more of these categories of employees, the business's loan forgiveness amount will be reduced by the total dollar amount of the salary or wage reductions that are in excess of 25% of base salary or wages during the reference period: January 1, 2020 and March 31, 2020. The purpose of this provision is to keep people at pre-pandemic wages.

Example:

During its reference period of January 1, 2020 and March 31, 2020, the Coastal Company paid Employee #1 (Sally) \$1,200 per week. Due to COVID-19, the Coastal Company had to reduce Sally's wages to \$800 per week during its alternative payroll covered period. Her hours remained the same and she still qualified as a 1.0 FTE.

25% of Sally's reference period wages is \$300. Sally's wages were reduced \$400 per week from the reference period to the cover period ( $\$1,200 - \$800 = \$400$ ). This reduction exceeds the 25% threshold. Thus, the Coastal Company must reduce its loan forgiveness amount by \$100 - the amount of the reduction over the 25% threshold ( $\$400 - \$300 = \$100$ ) - for 8 weeks. The total loan forgiveness reduction due to the reduction of Sally's wages is therefore \$800.

However, the Loan Forgiveness Safe Harbor Provision discussed above also applies to reductions in salary. In order for a business to be eligible for this provision, a business must have reduced salaries or wages from February 15, 2020 to April 26, 2020 (30 days after passage of the CARES Act). Under this provision, a business can avoid the forgiveness reduction so long as the business restores salary or wage amounts by December 31, 2020 to the amounts in existence on February 15, 2020.

Example:

The Coastal Company reduced Sally's wages from \$1,200 per week to \$800 per week on April 1, 2020. The timing of the reduction makes the Coastal Company eligible for the safe harbor provision. In order to avoid the \$800 loan forgiveness reduction attributable to her decreased wages, the Coastal Company would have to restore Sally's wages to at least \$900 a week (25% of her previous wages or \$300) by December 31, 2020.

*How do the FTE and salary/wage loan forgiveness reductions work together?*

The SBA has determined that the salary/wage loan forgiveness reduction will only apply to reductions that are not attributable to FTE reductions. The SBA has made this determination based on a desire to not doubly penalize small businesses with the loan forgiveness reduction provisions.

Example:

Sally, the Coastal Company's Employee #1, works 48 hours and makes \$1,200 a week during the Coastal Company's reference period. This makes her a 1.0 FTE employee. On April 1, 2020, the company reduces her hours and salary to 40 hours and \$800 a week. Her FTE remains 1.0 so the FTE reduction does not apply, meaning the \$800 salary reduction discussed above would apply.





However, if the Coastal Company reduced Sally's hours and salary to 35 hours and \$800 a week, the calculation would change. Going to 35 hours a week means that Sally is no longer a 1.0 FTE employee. Remember from above that the Coastal Company has three employees. Using FTE Method #2 as the Coastal Company did above, she would become a FTE 0.5.

- Employee #1 (Sally) works 35 hours per week = 0.5 FTE
- Employee #2 works 30 hours per week = 0.5 FTE
- Employee #3 works 5 hours per week = 0.5 FTE
- FTE total = 1.5

The FTE reduction calculation used above was as follows:

Coastal Company has an alternative payroll covered period starting on May 25 and ending on July 19. It chooses the February 15, 2019 - June 30, 2019 reference period. During this time its average weekly number of FTE employees is 4. During its alternative payroll covered period, its average weekly FTE employees is 2. It has calculated its loan forgiveness amount as \$50,000. However, since Coastal Company's FTE employees have declined, it must reduce its loan forgiveness amount.

$$\$50,000 \times (2/4) = \$25,000 \text{ reduced loan amount}$$

But if Sally becomes a 0.5 FTE employee, the Coastal Company now only has a 1.5 FTE, which would change the calculation:

$$\$50,000 \times (1.5/4) = \$18,750 \text{ reduced loan amount}$$

Since Sally's salary changes in this example are attributable to a FTE change, the Coastal Company would not have to reduce its loan forgiveness amount based on her salary reduction. In addition, the Coastal Company could use the safe harbor provision to restore its FTE number by December 31, 2020 and avoid this loan forgiveness reduction due to the FTE change. However, restoring Sally to a 1.0 FTE by December 31, 2020 would mean that the Coastal Company would have to take the salary based loan forgiveness reduction unless her salary was also increased above the 25% threshold.

*What happens if a business offers to rehire an employee, but the employee refuses the offer?*

The CARES Act gave the SBA the authority to establish *de minimis* exceptions to the limits on loan forgiveness under the Act. The SBA has used this provision to help businesses who attempt to rehire employees. Pursuant to SBA rules, laid-off employees whom the borrower offered to rehire are excluded from the CARES Act's loan forgiveness reduction calculation. This provision also applies to employees who had their hours reduced due to COVID-19.

However, this exception is only available if:

- Borrower made a good faith, written offer to rehire or restore the reduced hours of the employee during the covered period or the alternative payroll covered period;



- Offer was for the same salary or wages and same number of hours as earned by the employee in the last pay period before lay-off or reduction in hours;
  - Offer was rejected by the employee;
  - Borrower has maintained records documenting the offer and its rejection; and
  - *Borrower informed the applicable state unemployment insurance office of the employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.*
- The SBA had indicated that details on this process are forthcoming.

*Are there any other exceptions to the Employee Retention rules?*

Yes. The SBA has used its de minimis exception power from the CARES Act to establish additional categories of employees that will not affect a business's FTE numbers.

These categories include employees who:

- Were fired for cause;
- Voluntarily resign; or
- Voluntarily request a schedule reduction.

In order to take advantage of this exception, a business must maintain records demonstrating that an employee falls into one of the categories above, as the borrower may be requested to submit this documentation as part of the loan forgiveness process. Employees who fall within one of these categories may be excluded from FTE calculations.

*Are there any other safe harbors to the Employee Retention rules?*

Yes, the PPP Flexibility Act provided another safe harbor for businesses. The Act provides that businesses who are unable to return to their Feb. 15, 2020 level of business activity due to compliance with federal guidance on worker and customer safety related to COVID-19 by the Department of Health and Human Services, Centers for Disease Control, and Occupational Safety and Health Administration are exempt from a loan forgiveness reduction based on a reduction in FTE employees.

## **Documentation**

*What documents does a business need to submit if it uses the standard loan forgiveness application?*

The PPP Loan Forgiveness Application sets forth documents that a borrower must submit with an application for forgiveness. At a minimum, a borrower will need to provide:

- Payroll documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period, including:
  - bank account statements or third-party service provider reports documenting the amount of cash compensation paid to employees,
  - tax forms for the periods that overlap with the Covered Period or the Alternative Payroll Covered Period, including:



- Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941), and
- State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state; and
- payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that have been included in the forgiveness amount;
- FTE employee documentation, including documentation evidencing the average number of FTE employees for specified periods of time; and

A business must also provide documentation related to its non-payroll costs verifying the existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

- For business mortgage interest payments: Copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
- For business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments
- For business utility payments: Copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments

*What documents must a business retain if it uses the standard PPP Loan Forgiveness Application?*

Documents required to be retained include documentation:

- Submitted with its PPP loan application;
- Supporting its certifications as to the necessity of the loan request and its eligibility for a PPP loan;
- Necessary to support the borrower's loan forgiveness application;
- Demonstrating the borrower's material compliance with PPP requirements; and
- Supporting its FTE calculations.

*What documents does a business need to submit if it uses the EZ loan forgiveness application?*

The requirements stated above for payroll and non-payroll costs, except it is not required to submit documentation supporting its FTE employees. This is due to the fact that this form is only available to:

- Borrower is self-employed and has no employees;



- Borrower did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; or
- Borrower experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

*What documents does a business need to retain if it uses the EZ loan forgiveness application?*

Documents required to be retained include documentation:

- Submitted with its PPP loan application;
- Supporting its certifications as to the necessity of the loan request and its eligibility for a PPP loan;
- Necessary to support the borrower's loan forgiveness application;
- Demonstrating the borrower's material compliance with PPP requirements; and
- Supporting its FTE calculations, salary numbers, and any applicable exceptions or safe harbors that made the business eligible to use the EZ form.

*How long does a business need to retain this documentation?*

Borrowers must maintain all records relating to their PPP loan for 6 years after the date the loan is forgiven or repaid in full.