
Paycheck Protection Program (PPP) Loan Forgiveness:

Guidance For Small Businesses

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Neighborhood Entrepreneur Law Project

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- ❖ Legal services for low- to moderate-income micro-entrepreneurs to help start their businesses on sound legal footing
- ❖ Legal advice regarding incorporation and tax issues, contracts and agreements, commercial lease negotiations, copyrights, trademarks, and patents
- ❖ Presentations and legal clinics at community-based organizations on issues of concern to micro-entrepreneurs

COVID-19 Remote Small Business Legal Clinic

- ❖ NELP has expanded its services in the wake of the COVID-19 pandemic to adapt to the emerging needs of small business owners, working with Lawyers for Good Government and several NYC law firms to provide free, remote legal consultations to small business owners.
- ❖ The purpose of the clinic is to help small business owners understand and act upon options available under the federal government's COVID-19 stimulus package and other opportunities available through federal, state and local programs as well as navigate any additional remedies available to small businesses related to COVID-19.
- ❖ Fill out our [brief intake form](#) to request an appointment.

Introductory Remarks (and Disclaimers)

- This presentation will provide a general overview of the process to apply for PPP loan forgiveness based on currently available information.
 - We will not be able to cover every aspect of loan forgiveness, but we plan to cover topics that we anticipate being relevant to many small business owners
 - We will address as many of the questions submitted in advance as we can; however, this presentation is not intended to provide individualized legal advice.
 - Participation in this presentation does not create an attorney-relationship between us, and we cannot advise you about your PPP forgiveness application in this forum.

PPP Rules: A Moving Target

- Since the PPP program was created by Congress in March, the Small Business Administration (SBA) has been issuing FAQs, rules and guidance, providing clarifications and – sometimes – new rules and requirements.
 - The PPP Flexibility Act, signed into law on June 5, made further, generally borrower-friendly changes to the program. We have noted some of the key changes; however, other topics covered in this presentation may be affected by updated regulations implementing the new bill.
 - **It is important that you regularly check the SBA website for updates to make sure your forgiveness application is consistent with the latest rules and requirements.**

Applying for PPP Loan Forgiveness

- When: At any time on or before the maturity date of the loan, including:
 - Before the end of the covered period, if all the loan proceeds have been used (subject to any reductions based on the full covered period).
 - After the end of the covered period (the earlier of 24 weeks or December 31, 2020, unless you elect an 8-week covered period).
 - » If no application is submitted within 10 months after the end of the covered period, the loan is no longer deferred.
- How: Apply through the lender that made your PPP loan
 - Loan Forgiveness Application (SBA Form 3508), with supplemental forms and instructions, available through the SBA website, [here](#).
 - » Your lender may ask you to use their own electronic application form
 - Lender has 60 days to approve or reject (in full or in part) the application and to report the forgiveness amount.
 - » If approved forgiveness amount is less than amount requested, borrower has 30 days to request SBA review of the lender's decision.
 - » Any amount not forgiven must be repaid on 2-year loan schedule (with 1% interest). 5-year maturity for new loans or for existing loans if extended by agreement with lender.

SBA Form 3508EZ

- Borrowers who satisfy one of the below criteria may apply using a shorter, simpler forgiveness application, SBA Form 3508EZ:
 - Self-employed individuals, independent contractors, or sole proprietors who had no employees at the time of their loan application and did not include any employee salaries in their payroll computation; *or*
 - Borrowers who:
 - » did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period (see slide 13); AND
 - » did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period (Ignore reductions where the Borrower was unable to rehire similarly qualified employees for unfilled positions on or before December 31, 2020) (see slide 16). Also ignore reductions in an employee's hours that the Borrower offered to restore and the employee refused (see slide 15)); *or*
 - Borrowers who:
 - » did not reduce annual salary or hourly wages of any employee by more than 25% during the Covered Period (see slide 13); AND
 - » were unable to return to the same level of business activity due to compliance with **federal** requirements or guidance related to COVID-19 (see slide 16).

Calculating the Forgiveness Amount

- Costs eligible for loan forgiveness:
 - Payroll costs
 - » **Must be at least 60% of forgiveness amount**
 - » According to SBA regulations, borrowers who do not use 60% of the loan for payroll are still eligible for partial forgiveness
 - Rent or mortgage interest on real property or personal property (e.g., business equipment)
 - Utilities: electricity, gas, water, transportation, telephone, internet access
 - » Lease, mortgage, utility agreements must have been in place before February 15, 2020
- Costs must be **incurred** or **paid** during the covered period

Payroll Costs

- Payroll Costs include:

- salary, wages, commissions, or similar compensation; cash tips or the equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees.
 - » Compensation includes all cash compensation paid, including hazard and bonus pay.
 - » Salaries paid to furloughed employees qualify for forgiveness.
 - » **Tips:** use past records of tips or a good faith estimate of tips .
 - » Cap of \$100K annual cash compensation per employee.
 - » Excludes payments to independent contractors.
- Payroll costs are *incurred* on the day the employee works (or would have worked) and must be paid on the next scheduled payroll date.

Owner-Employees/Self-Employed Individuals

- For independent contractors or sole proprietors, **payroll costs include**: wages, commissions, income, or net earnings from self-employment, or similar compensation.
- Owner-employees and self-employed individuals can be forgiven for:
 - For an 8-week covered period, the lesser of:
 - » 8/52 (approximately 15.38%) of 2019 compensation or
 - » \$15,385 per individual in total across all businesses.
 - For a 24-week covered period, the lesser of:
 - » 2.5 months' worth (2.5/12 or approximately 20.83%) of 2019 compensation or
 - » \$20,833 per individual in total across all businesses.

Covered Period

- Covered Period: 24 weeks beginning on date you received loan proceeds (or, for loans received before June 5, 2020, you may elect a covered period of 56 days from receipt of loan proceeds)
- Alternative Payroll Covered Period: 24 weeks (or 56 days) beginning on first day of pay period after the date you received loan proceeds
 - Payroll must be bi-weekly or more frequent
 - » Only applies to payroll costs; non-payroll costs must still be incurred or paid during the Covered Period
- For example, if you receive your PPP loan proceeds on Monday, April 20, and the first day of your first pay period following is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday,

Calculating Reductions In Salary

- The amount of your loan forgiven will be reduced on a dollar for dollar basis for any reductions in salary or wages in excess of 25% of the employee's salary or wages between January 1, 2020 and March 31, 2020
 - This reduction calculation is performed on a per employee basis, not in the aggregate.
 - Exclude employees with salary or wages of more than \$100,000 in 2019
 - The reduction does not apply to employee salary and wages that are *attributable to a Monthly FTE reduction* (i.e. you will not be penalized twice for the same reductions).
- Employers may cure the reduction by eliminating the reduction in salary or wages by December 31, 2020.

Fulltime Equivalent Employees (“FTE”)

- The amount of your loan forgiveness will be reduced if the number of fulltime employee equivalents at your business went down.
 - FTE is *not* headcount.
- SBA considers a fulltime equivalent employee to be an employee who works 40 hours a week.
- In calculating FTE, you have two choices:
 - Employees who work less than 40 hours a week = 0.5 FTE
 - Calculate FTE based on hours worked.
 - » Divide the average number of hours worked for each employee per week by 40, capping the quotient at 1.0.
 - » For example, 10 hours/week=0.25 FTE.

Fulltime Equivalent Employees (“FTE”)

- Choose a reference period.
 - February 15, 2019-June 30, 2019 or
 - January 1, 2020 to February 29, 2020
 - Seasonal businesses can choose a different period
- Calculate your average FTE during the comparison period.
- Calculate your expected average FTE during the Covered Period. (8-week safe harbor)
- If FTE has gone down, consider rehiring employees or increasing hours to avoid reducing forgiveness amount.
 - If FTE went down between February 15 and April 26, 2020 but goes back up by December 31, 2020, your forgiveness amount is not reduced.
- If (1) you make a good faith offer in writing to restore reduced hours of an employee on the same terms and (2) they decline and (3) you maintain records documenting the offer and rejection, then you do not need to count that position as a reduction in FTE.
- Forgiveness is not reduced for employees who are fired for cause, voluntarily resign, or voluntarily requested a reduced schedule.

New FTE Reduction Exemption

- The forgivable amount may be determined without regard to a reduction in FTEs if you, in good-faith, are able to document that you are:
 - (1) unable to rehire former employees (employees as of Feb. 15) and are unable to hire similarly qualified employees for those unfilled positions on or before December 31, 2020
 - » You are required to report the rejected rehire to the state unemployment insurance office within 30 days; OR
 - (2) unable to return to the same level of business activity due to compliance with **federal** requirements or guidance related to COVID-19
 - » You would certify that the reduction in business activity during the covered period stems directly *or indirectly* (*i.e.* through a local government shutdown orders that reference federal guidance) from such compliance; and
 - » Provide supporting documentation: applicable COVID-19 guidance and financial records.

Documentation To Submit With Forgiveness Application

- Payroll Documentation:
 - Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid.
 - Tax forms (or equivalent third-party payroll service provider reports) for periods overlapping with the covered period.
 - Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans.
- FTE: Documentation showing the average number of FTE employees on payroll per month employed during the relevant reference period.
- Non-payroll:
 - Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period. Examples include:
 - » Mortgage Interest: lender amortization schedule and receipts or cancelled checks verifying eligible payments.
 - » Rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments.

Documentation to Maintain

- Documentation To Maintain:
 - PPP Schedule A Worksheet
 - Documents supporting:
 - » The listing of each employee listed on PPP Schedule A Worksheet and their respective 2019 salaries
 - » Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule
 - » FTE Reduction Calculations
 - » All other records relating to the PPP loan
- Keep documents for **six years** after loan is forgiven or repaid (whichever is later).
 - SBA has the right to review these documents on request.
- SBA has indicated they will review all loans over \$2 million.
 - SBA will notify borrowers in writing if your application is under SBA review and borrowers will have an opportunity to respond.

Partners



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