

Question and Answer with SBA on Paycheck Protection Program Loan Forgiveness Process

Updated November 2020

Q. When will the SBA be accepting forgiveness applications?

SBA Forgiveness Platform was open and accepting Lender submissions on August 10, 2020.

Q. If a Borrower selected to only include payroll costs on their PPP loan application, can they still use non-payroll costs in the forgiveness application?

Yes. Borrowers are not restricted by boxes checked in their initial application, and may use any eligible costs to support their forgiveness application.

Q. What kind of proof is acceptable to demonstrate use of funds?

Documentation verifying the eligible costs were incurred and paid during the covered period.

For Eligible Payroll Costs, documentation needs to report amount of cash compensation paid to employees and non-cash benefit payments. Most third party payroll service provider reports will work. Bank statements showing payroll payment amounts must be included with internally generated payroll reports. Detailed payroll reports with employee level detail will need to be retained by the Borrower, but only a summary payroll report needs to be provided to the Lender. Tax forms are also required (*see application instructions for full list of required documentation*).

For Eligible Non-Payroll Costs, documentation must include bank statements showing payments were made, as well as support the cost was incurred during the covered period. All eligible non-payroll costs must also have supporting documentation that proves existence of the obligations/services prior to February 15, 2020. This may be a service agreement with utility provider, rent or lease contract, or mortgage agreement with Lender (*see application instructions for full list of required documentation*).

Borrower only needs to provide the pages that are necessary to prove service, payment, etc. For example: A Borrower doesn't need to include all pages of a monthly cell phone bill; a summary page that includes service dates and billed amount is probably enough.

Borrowers need to provide documentation that shows the cost incurred and paid. If an amount was paid for a whole year, provide documentation to prove existence of the cost, and support to show the amount incurred specific to the covered period. In conclusion, the key is to provide Lenders a "reasonable" level of documentation to support all eligible costs.

Reminder: Borrowers must retain ALL documentation in their files for 6 years after the date the loan is forgiven or repaid in full.

Q. Will expenses included for PPP loan forgiveness be tax deductible?

PPP loan forgiveness is not to be considered taxable income, but whether expenses supported by the loan will remain excluded from tax exemption, i.e. no longer deductible, will be determined by the IRS.

Q. If all or part of the loan is forgiven, will all or part of the loan be included in taxable income?

No. The IRS is allowing a different treatment of the PPP loan forgiveness than would be typical for other forgiven loans. It should be noted that eligible costs claimed for PPP loan forgiveness may no longer be considered tax deductible. Borrowers should seek tax advice from their tax advisors.

Q. Should you complete the forgiveness application with eligible costs significantly greater than the loan amount?

No. There is no need to submit eligible costs in excess of loan amount to support forgiveness.

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Q. Can 100% of the loan be forgiven by using payroll costs only, if it takes 10 or more weeks of payroll? Do you then still need to include non-payroll costs in the application?

Yes, that is an acceptable strategy. If the Borrower elects to use only eligible payroll costs to support their application, they would not be required to gather supporting documentation beyond eligible payroll costs. Borrowers are not required to include all eligible costs.

Q. How to determine the best covered period for full loan forgiveness?

1. Start with the big picture – Borrower should consider the business need and current situation
 - What is the status of the Borrower?
 - How has the Borrower's business been impacted by COVID?
 - Is the business stable?
 - Is there a concern for future layoffs?
 - Are people still being brought back?
 - Has the Borrower incurred and paid eligible costs equal to the PPP loan amount and/or exhausted their maximum covered period?
 - This will require a detailed business review.
 - Now is the time to start calculating your eligible costs and assembling your supporting documentation.
2. Put together the employee figures for FTE calculations and wage levels
 - This will help a Borrower decide when the right time is to apply
 - Ask yourself - Do you need to use a Safe Harbor and/or exemptions?
 - Ask yourself - Do you qualify to use the EZ form? Or now the 3508S form?

In some situations it might be beneficial to accelerate applying for forgiveness because you have spent eligible costs equivalent to your PPP loan amount. There is plenty of time for the Borrower to submit their maximum forgiveness request *at the right time*.

Note: December 31, 2020 is the final covered period date for eligible expenses. For loans being disbursed July 16th or later, this means regardless of the date you received funds you will need to note the ending Covered Period (including Alternative Payroll Covered Period) is 12/31/2020.

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Q. How should a company enter covered period dates if they are claiming eligible costs for longer than 8 weeks but shorter than 24 weeks? Can a forgiveness application be submitted before 24 weeks?

A Borrower does not have to wait for the covered period to expire to submit their forgiveness application.

- All PPP loans are eligible to use the 24-week covered period.
- A borrower may submit a Loan Forgiveness Application before the end of the 24-week covered period, provided that the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness and the borrower's loan forgiveness application accounts for any salary reduction in excess of 25 percent for the full covered period.
- Loans approved by SBA before June 5th retain the option of an 8-week covered period. These Borrowers have the option to use whichever covered period fits best.
- Submission of a forgiveness application is really driven by when the Borrower can maximize the forgiveness request.
- The Borrower has up to 10 months after the end of the selected covered period to apply for forgiveness. If the Borrower does not apply for forgiveness by this date, they must begin making payments of principal, interest, and fees by this date instead.

Regarding the application itself, the covered period dates entered in the form should be either the 8 or 24-week period.

The FTE safe harbor and calculations are also based on the dates a Borrower applies (not necessarily the end of their covered period).

Q. What supporting documentation is required with a Forgiveness Application?

Each application (3508, 3508EZ, and 3508S) includes detailed instructions on what supporting documents **MUST** be submitted to the lender with their Forgiveness Application Form and what additional documentation a borrower must retain but it is not required to submit to their lender. At any time SBA could ask for the additional documentation the borrower was required to prepare.

Q. Do supporting documents need to go through the 24 week covered period, the period costs were claimed or when the application is submitted?

Documents supporting eligible costs must be provided through the period costs were claimed. In addition, documents supporting FTE/headcount, typically tax forms (or equivalent third-party payroll service provider reports) must be provided at the end of the 24 week covered period or when the application is submitted.

Q. What supporting documents are required for FTE analysis?

Borrowers need supporting documents to prove cash compensation, non-cash compensation, and FTE (see application instructions for full list of acceptable documentation).

Q. Can you pick the starting date of your eligible payroll or non-payroll costs?

No, eligible costs must start on the first day of disbursement/first day of covered period. Only those who qualify for Alternative Payroll Covered Period can defer the starting date of payroll costs to the following payroll period (limited to weekly and biweekly payroll frequencies). Specific instructions are provided in each Forgiveness Application Instructions.

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Q. Can you further describe eligible payroll costs?

Borrowers are generally eligible for forgiveness for the payroll costs paid and incurred during their elected covered period. For each individual employee, the total amount of *cash compensation* (gross wages before taxes) may not exceed an annual salary of \$100,000, as prorated for the covered period (or shorter if less than the full covered period is utilized).

The employer cost of a housing stipend or allowance (i.e. cell phone, vehicle, etc.) provided to an employee would be considered cash compensation and must be included in payroll costs. No pre-tax or after-tax contributions by employees are allowed.

Non-cash compensation and benefits including Health Insurance, employers' contribution to retirement accounts (401k or pension), etc. are not subject to the cash compensation limitation of \$100,000 per employee. They may be included as non-cash compensation in addition to the cash compensation figure. S-corps and owners need to be careful regarding what is included in cash compensation, so as not to double count eligible compensation expenses.

Additional instructions on how to calculate eligible payroll costs may be found in the PPP Loan Forgiveness Application Instructions for Borrowers.

Q. How does the \$100,000 salary limitation get allocated if forgiveness is requested for a cost period other than either 8 week (\$15,385) or 24 weeks (\$46,154)?

The \$100,000 would be prorated for the cost period of the application. If the application costs cover 16 weeks, the prorated salary limitation would be \$30,770 ($\$100,000 / 52 \text{ weeks} \times 16 \text{ weeks}$; or $\$100,000 / 365 \text{ days} \times 112 \text{ days}$). Any cash compensation above the prorated limitation for the cost period would need to be adjusted in eligible payroll costs calculations. This is not a limit by pay period, but a limitation on the maximum that can be submitted for the cost period the application covers.

Q. Can you explain the level of detail required for supporting payroll documentation?

Short answer is: Whatever is reasonable to show that the Borrower paid its employees.

Borrowers need to provide documentation verifying the eligible cash compensation and non-cash benefit payments paid to employees. The Lender is required to confirm certain borrower calculations and determine supporting documentation sufficiently supports all eligible payroll costs claimed.

Tax forms such as Federal payroll tax filings (typically Form 941) and State quarterly business and individual employee wage reporting may and likely would overlap the Covered Period. This is big picture data and the customized payroll reports documenting the amount of cash compensation paid to employees provide the detail.

Q. We submit ACH payments via a file so no bank statements or cancelled checks are available. What alternative supporting document meets this requirement?

ACH payments should have an electronic record that show eligible payroll costs or eligible non-payroll costs were paid. Borrowers should highlight or circle the amounts to prove eligible costs were paid via bank statement, account statement, or provide cancelled checks.

Reminder that borrowers that do not use a qualified third-party payroll service provider must provide their lender bank statements or other proof of payment employees were paid during the covered period.

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Q. Company funds their employer match portion of 401(k) contributions once a year and this occurred during the covered period. Can the entire amount paid be included?

No. Borrowers may only use the portion considered incurred during the covered period.

Q. Are one-time pension catch up pension payments eligible if they occur in covered period?

Yes, but not the entire amount. SBA issued specific guidance in a recent FAQ that places limitations on eligible retirement expenses dependent on an owner or non-owner employee.

Q. Does the \$100,000 limit include overtime or bonus?

Yes. Cash compensation for each individual employee is limited to \$100,000 (gross wages before taxes) or as prorated for the covered period.

Q. Can a Borrower include hazard pay as an eligible cost on the forgiveness application?

Yes. Hazard pay can be included, subject to the per employee cash compensation limit.

Q. Should we deduct COVID-19 related tax credits from IRS for when employees are out on COVID related sick leave or FMLA under the Families First Coronavirus Response Act (ex. FFCPF, FFCSD, FFCSS)?

Yes. These government tax credits should be deducted from your eligible payroll costs.

Q. If the company had a FTE reduction (employee(s) left or retired and not covered by a safe harbor or replaced), can the reduction quotient or salary/hourly wage reduction be offset by eligible costs from existing employees for a covered period longer than 8 weeks to achieve full forgiveness?

A Borrower can have typical employee turnover and still achieve comparable FTE levels. If a Borrower is eligible to use a safe harbor, they would be required to document the change in FTE. A Borrower can use up to 24 weeks of covered period to eliminate or reduce the FTE reduction quotient through exceptions or safe harbor rules allowed under the forgiveness rules. The salary/hour reduction is calculated per employee, so other employees' wages cannot be used to offset those employees whose wages were reduced. Essentially FTE calculations and salary/hourly wage reduction calculations, and their associated safe harbors, are separate and distinct.

Q. How is the average FTE calculated for an employee who was terminated for cause during the covered period?

Borrower needs to retain documentation supporting the situation, but they don't have to count the reduction (safe harbor exception calculation for add backs would apply). Refer to SBA webinar that discusses safe harbor process and exceptions.

Q. Can we apply for forgiveness with only eligible non-payroll costs because the documentation is easier to organize?

No. At least 60% of your loan forgiveness request must be for eligible payroll costs. However, it is acceptable to apply for forgiveness using only eligible payroll costs.

Q. Would interest expense on lines of credit secured by mortgages be included in eligible mortgage interest expense?

Likely not. Lines of credit are primarily used for operating needs, and not principally building/real estate assets so it does not meet SBA's "interest on mortgage" original intent.

Eligible business mortgage interest must be for financing real or personal property and loan obligations must exist prior to February 15, 2020.

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Q. Are operating leases on equipment or vehicles eligible?

Yes, they are eligible if the lease contracts were established and in service prior to February 15, 2020.

Q. Can you define what is included in eligible transportation costs, and would fuel costs be included?

Yes, transportation costs include vehicle fuel costs (gasoline or diesel), but not vehicle repair costs –Please see Federal Register Volume 85, No. 76/ Monday, April 20/ Rules and Regulations 21747. Transportation utility refers to transportation utility fees assessed by state and local governments. Payment of such fees are eligible for loan forgiveness.

A rule of thumb to consider is the transportation costs that are absolutely necessary to keep the business open.

Q. Is a SBA review the same for loans above and below \$2 million?

For loans under \$2 million, the review will look at certain documentation already submitted to the Lender. This will not be a review of economic impact, just required documentation.

For loans over \$2 million, the review will include additional documentation from the Borrower. These will be primarily reviewed for eligibility. The documentation required is the same at the time of Application and supporting documentation requirements at the time of Forgiveness Application. SBA will require borrowers to complete an additional questionnaire once they apply for forgiveness. Lenders will forward the notification letter when available in the SBA Forgiveness Portal.

Note: Lenders are required to promptly communicate to borrowers their loan is in review status within 5 business days of SBA notice. A PPP loan forgiveness request under review is considered *denied without prejudice due to a pending SBA review* to provide SBA a timeframe longer than 90 days for review. Borrowers are required to respond with the additional supporting documentation requested within 10 business days. Failure to respond to this SBA inquiry on a timely basis may result in a delay of SBA's remittance of the loan forgiveness amount, if any, or in a determination that the Borrower was ineligible for the loan or ineligible to receive the loan amount of forgiveness amount claimed.

Q. Has SBA started reviewing any \$2 million or larger PPP loans?

Yes, the SBA has recently begun to review loans over \$2 million. SBA provided review notifications and additional borrower questionnaires to Lenders starting October 29, 2020.

Q. What happens if the SBA does not provide their forgiveness decision in 90 days?

Uncertain at this time. Recommend to stay in touch with your lender to make sure any questions about your forgiveness application from SBA are responded timely.

Q. Why is a Borrower required to deduct the EIDL advance amount from their PPP Loan Forgiveness Request when the Borrower has sufficient eligible costs to cover both?

It was written into the CARES Act legislation section 1110(e)(6). There it expressly states that the EIDL advance amount is deducted from the amount forgiven under the PPP loan program. The EIDL advance came under CARES legislation.