

Paycheck Protection Program – Loan Forgiveness Guidance

The Small Business Administration (SBA) has released guidance and the first rendition of the reporting form for small businesses seeking forgiveness of their Paycheck Protection Program (PPP) loan. The new SBA Form 3508 is available as a [fillable PDF](#). The form and its guidance helps to assure business owners that the loan is indeed forgivable provided the necessary steps of compliance are taken. Some question that have been commonly asked by contractors, now answered, are:

What forms are needed to request loan forgiveness?

SBA Form 3508 is a 4-part form to calculate and report the appropriate uses of PPP loans. The borrower must submit part 1, Loan Forgiveness Calculation Form and part 2, PPP Schedule A. Part 3, PPP Schedule A Worksheet should be used and kept as a record and Part 4, PPP Demographic Information Form is an optional part of the program.

What are eligible costs for loan forgiveness?

Borrowers are eligible for loan forgiveness for the following costs:

1. Eligible payroll costs.
 - a. Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or Alternative Payroll Covered Period) (“payroll costs”).
 - b. Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction.
 - c. Payroll costs are considered incurred on the day that the employee’s pay is earned.
 - d. 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 paid on or before the next regular payroll date.
 - e. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period).
 - f. Count payroll costs that were both paid and incurred only once.

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.

2. Nonpayroll costs eligible for forgiveness consist of:
 - (a) covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payments”);
 - (b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 (“business rent or lease payments”); and

(c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020 (“business utility payments”).

An eligible nonpayroll cost must be 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.

Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once

What makes up wages that are key to the loan forgiveness?

Lines 1 through 10 of PPP Schedule A walk an owner through the allowable wage items. Cash compensation for employees paid both over and under \$100,000 dollars are calculated on Worksheet A and reported on Schedule A.

Also reported are amounts paid by the borrower for employer contributions for health insurance (but not employee paid pre-tax or after tax portions of the plan), amounts paid by the borrower for employer state and local taxes assessed on employee compensation, amounts paid by borrowers for employer contributions to employee retirement plans.

Compensation for owners or highly compensated employees that have wages capped at \$15,385 (the 8 week portion of a \$100,000 salary) are reported on Schedule A.

When do paid wages count relative to the 8-week period after the origination of the loan?

This question is asked frequently, the origination of the loan does not necessarily line up with payday. PPP defines a “Covered Period”, this is the 8 weeks starting on the day of loan disbursement and lasting 56 days. For example, if the Borrower received its PPP loan proceeds on Monday, April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is Sunday, June 14.

SBA also allows an “Alternative Payroll Covered Period.” For administrative convenience, borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”).

For example, if the borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement 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, June 20.

Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in the application to “the Covered Period or the Alternative Payroll Covered Period.” However, borrowers

must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to “the Covered Period” only.

The workforce must be maintained at previous levels to maintain forgiveness, how are FTE’s calculated?

The borrower’s total average weekly full-time equivalency (FTE) reference period is, at the borrower’s election, either (i) February 15, 2019 to June 30, 2019; (ii) January 1, 2020 to February 29, 2020; or (iii) in the case of seasonal employers, either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019. For each employee, follow the same method that was used to calculate Average FTE.

Average FTE for each employee is calculated during the Covered Period or the Alternative Payroll Covered Period as follows:

- Divide the average number of hours paid per week, by 40, and round the total to the nearest tenth.
- The maximum for each employee is capped at 1.0.
- A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the borrower.

Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period provided the Average FTE in the Covered Period (or Alternate Payroll Covered Period) is equal to or greater than the Average FTE in the reference period. However, the actual loan forgiveness amount that the borrower will receive may be less, depending on this FTE comparison. The borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies.

FTE Reduction Exceptions: Any positions for which the borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (2) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours are exempt. In all of these cases, include FTEs for these employees as if they were working. Any FTE reductions in these cases do not reduce the borrower’s loan forgiveness.

FTE Reduction Safe Harbor: A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the borrower is exempt from the reduction in loan forgiveness based on FTE employees described above if both of the following conditions are met: (1) the borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the borrower’s pay period that included February 15, 2020.

How can salaries affect loan forgiveness?

Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. However, the actual amount of loan forgiveness the borrower will receive may be less, depending on whether the salary or hourly wages of certain employees during the Covered Period or the Alternative Payroll Covered Period was less than during the period from January 1, 2020 to March 31, 2020.

If the borrower restored salary/hourly wage levels, the borrower may be eligible for elimination of the Salary/Hourly Wage Reduction amount. Employees whose salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of January 1, 2020 through March 31, 2020 will reduce loan forgiveness.

The form instructs the borrower to divide the total payroll paid during the Covered Period (or Alternate Payroll Covered Period) by 0.75. The quotient of this calculation must equal or be greater than the PPP loan amount. If the quotient is less than the PPP loan amount, the shortfall would be non-forgiven.

Additionally, should the borrower have received a SBA Economic Injury Disaster Loan (EIDL) advance, the advance amounts will be deducted from the loan forgiveness of the PPP loan.

What about documentation for forgiveness?

Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application

PPP Loan Forgiveness Calculation Form

PPP Schedule A

Payroll: Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period:

- a. Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
- b. Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the Covered Period or the Alternative Payroll Covered Period:
 - i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
 - ii. State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.
- c. Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the Borrower included in the forgiveness amount (PPP Schedule A, lines (6) and (7)).

FTE: Documentation showing (at the election of the Borrower):

- a. the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
- b. the average number of FTE employees on payroll per month employed by the Borrower between January 1, 2020 and February 29, 2020; or
- c. in the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019. The selected time period must be the same time period selected for purposes of completing PPP Schedule A, line 11.

Documents may include 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.

Documents submitted may cover periods longer than the specific time period.

Nonpayroll: Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

- a. 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.
- b. 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.
- c. 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.

Documents that Each Borrower Must Maintain but is Not Required to Submit

PPP Schedule A Worksheet or its equivalent and the following:

- a. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary.
- b. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000.
- c. Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.

d. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.” All records relating to the Borrower’s PPP loan, including documentation submitted with its PPP loan application, documentation supporting the Borrower’s certifications as to the necessity of the loan request and its eligibility for a PPP loan, documentation necessary to support the Borrower’s loan forgiveness application, and documentation demonstrating the Borrower’s material compliance with PPP requirements.

The Borrower must retain all such documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.