

What the PPP Forgiveness Guidelines Mean For You

May 18, 2020

The PPP Loans were meant to provide emergency relief to businesses in the form of forgivable loans. Businesses welcomed the more than \$500 billion in loans that have been disbursed, but needed timely and clear guidelines on how to use those funds and plan for forgiveness so that they could make critical decisions. The Treasury and SBA guidance has been delayed and confusing with 'rules' continuing to change as we progress through the forgiveness period.

The long awaited forgiveness procedures have been released after much delay and offer new details, yet leave many questions open. Here is an overview of what we know so far. Look for more specifics to be released soon.

PPP Loan Forgiveness Application and Instructions

On May 15, 2020, after much anticipation, the SBA released the Paycheck Protection Program ("PPP") Loan Forgiveness Application and Instructions for Borrowers (the "Application"). This 11-page document provides guidance on how to calculate loan forgiveness and answers several questions that were, until now, unanswered.

Yet there are still some open questions regarding how to handle certain portions of the calculation of loan forgiveness. These include how to treat bonus payments and front ended retirement payments, to name a couple. In addition, new questions arise since just recently it was announced that additional PPP loan proceeds can be obtained by partnerships and seasonal employers as addressed in the Interim Final Rule dated May 13, 2020. The Application does not address whether Borrowers who received two loan disbursements will be treated as having one loan or two distinct loans.

What New Information and Clarification Does the Application Provide?

The Covered Period is the 8-week (56-day) period that starts on the day the PPP loan funds were received by the Borrower. Initial guidance required Borrowers to

use the Covered Period to determine amounts spent for loan forgiveness purposes. The SBA is now permitting the use of an alternate 8-week period to determine amounts spent on payroll costs for loan forgiveness purposes (the “**Alternative Payroll Covered Period**”). Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 8-week period that begins on the first day of their pay period following their PPP Loan Disbursement Date. The Alternative Payroll Covered Period is **not used** to determine the amounts spent on non-payroll costs for loan forgiveness purposes.

Expenses Paid or Incurred: The Application provides that Borrowers are generally eligible for forgiveness of payroll costs paid and incurred during the 8-week Covered Period or Alternative Payroll Covered Period. Payroll costs incurred, but not paid, during the Borrower’s last pay period of the 8-week Period are eligible for forgiveness if they are paid on or before the next regular payroll date.

Borrowers can calculate payroll costs using either the Covered Period or the Alternative Payroll Covered Period at the Borrower’s election. However, the instructions then indicate that the non-wage payroll costs include only costs paid for health insurance, the employer portion of employee retirement contributions, and state and local taxes on employee compensation, suggesting but not explicitly stating, that these items should not be included if they have been incurred, but have not been paid. Further clarification on this point may be needed.

Full Time Employee Equivalent Defined: The Application is clear that **one FTE is based on a 40-hour work week for one employee**. To determine average FTEs, the Borrower should calculate the average number of hours worked per week by each employee, divide by 40, and round the total to the nearest tenth. The Borrower then adds up all of the average FTEs for a particular period. An employee working more than 40 hours per week is capped as 1.0 FTE. For employees working on average less than 40 hours per week, the SBA offers a practical solution - the Borrower can elect to use a **simplified method** that assigns 0.5 FTEs for any employee who works fewer than 40 hours per week.

Order of Calculating Reductions in Loan Forgiveness: The following order of calculation issues were clarified with the issuance of the Application:

After summing the total of Payroll Costs and Non-payroll costs, the first adjustment applied to the total eligible costs is the reduction for employee salary/wage reductions.

Next, the borrower calculates the “Modified Total” by further reducing eligible costs for a decrease in FTEs.

To determine the forgiveness amount, the Borrower uses the **smallest** amount of:

- The PPP Loan Amount
- The Modified Total (Eligible Costs minus the Reduction for Reduced Salaries minus the Reduction for Reduced FTEs)
- Payroll Cost 75% Requirement (Payroll costs divided by 75%). Note: This now indicates that the 75% requirement does not result in a further reduction in loan forgiveness after reducing the amount for reductions in salaries and FTEs. The Application form also makes clear that eligible non-payroll costs cannot exceed 25% of the total forgiveness amount (as opposed to 25% of the total PPP loan amount).

Calculation of Eligible Payroll Costs

The Application did not change the definition of “Payroll Costs.” One issue that this Application helped illuminate was whether Payroll Costs include compensation paid to owner-employees, partners in a partnership, or self-employed individuals. The Application clearly designates a separate line item for Compensation to Owners on PPP Schedule A, Line 9 (See App Form page 6). Compensation for owners is calculated as the lower of \$15,385 (the 8-week equivalent of \$100,000 per year) for each individual or the 8-week equivalent of their 2019 compensation. Owners’ compensation appears to include their health insurance.

Calculation of Eligible Non-payroll Costs

The definitions of Eligible Non-payroll Costs did not change with the issuance of the Application. These costs are comprised of the following items that were in force before February 15, 2020: (1) Interest on mortgage obligations on real or personal property, (2) business rent or lease payments pursuant to lease agreements for real or personal property, and (3) utility payments including payments for a service for

the distribution of electricity, gas, water, transportation, telephone or internet access. An eligible non-payroll 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.

Of note: We have yet to see guidance as to what costs should be included as “transportation” or why “oil” is not included as a category for utilities.

FTE Reduction Exceptions

In specific circumstances, Borrowers can include an FTE as part of the FTE Reduction calculation for an employee no longer employed during the Covered Period or Alternative Payroll Covered Period as long as the position was not filled by a new employee. These circumstances include:

- Any positions where the Borrower made a good-faith, written offer to rehire an employee during the 8-week period which was rejected by the employee; and
- Any employees who during the 8-week period: (a) were fired for Cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours.

Calculation of Reduction for Salaried/Hourly Worker

Borrowers are required to calculate a reduction in loan forgiveness for reductions in employees’ annual salaries or, in the case of hourly employees, their hours.

FTE and Salary Reduction Safe Harbor

The FTE and salary reduction safe harbors remain unchanged. There is no reduction in loan forgiveness for reductions in FTEs or salaries if those reductions are eliminated by June 30, 2020.

Documentation

Borrowers will need to submit specific documentation to support the amounts of qualified spending listed. The Application also requires that each Borrower must maintain, but is not required to submit, documents that support the following: (a)

the salary and hourly wage reduction calculation; (b) employees that received compensation of more than \$100,000 during any single pay period at an annualized rate in 2019; (c) employee job offers and refusals; (d) terminations for cause, voluntary resignations, and written requests for reductions in work schedules, and the FTE reduction safe harbor.

The Borrower must retain all such documentation supporting (i) the PPP Loan application, (ii) the Borrower's certification as to the necessity of the loan request and its eligibility for a PPP loan, and (iii) the loan forgiveness application for six years after the date the loan is forgiven or repaid in full.

Anchin will be presenting a webinar to provide more detailed, step-by-step direction on the loan forgiveness application. Stay tuned for details, and in the meantime, contact your Anchin Relationship Partner or our Anchin COVID-19 Resource Team at COVID19@anchin.com for additional support.

PPP Loan Application Form is at this link:

https://content.sba.gov/sites/default/files/2020-05/3245-0407_SBA_Form_3508_PPP_Forgiveness_Application.pdf

PPP Loan Information and Rules and Guidelines is at this link:

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

Disclaimer: Please note this is based on the information that is currently available and is subject to change.