

## Toolkit for Small Business Borrowers with Employees as of May 5, 2020

The Paycheck Protection Program (PPP) provides for forgiveness of up to the full principal balance and accrued interest for loan proceeds used for covered purposes so long as employee head count and compensation levels were also maintained during the covered period. This toolkit is intended to help provide borrowers with information and calculations related to the forgiveness phase of the PPP program, and is current as of the date of publication (5/5/2020). **Since guidance is still pending, it is subject to change at any time.**

### » Borrower Frequently Asked Questions

#### ***What amount may be forgiven?***

The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on covered mortgage obligations incurred before February 15, 2020, rent payments on covered lease obligations dated before February 15, 2020, and covered utility payments under service agreements dated before February 15, 2020, over the 8-week period following the date of the loan. **At least 75% of PPP loan proceeds must be used for payroll costs.**

**IT IS YOUR RESPONSIBILITY TO TRACK YOUR USE OF PPP LOAN PROCEEDS. YOU WILL BE REQUIRED TO PROVIDE DOCUMENTATION WHEN APPLYING FOR PPP LOAN FORGIVENESS.**

#### ***What amounts are included as “payroll costs?”***

Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave;
- Allowance for separation or dismissal;
- Payments required for the provisions of group health care benefits including insurance premiums;
- Payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

#### ***Are dental insurance premiums included in the definition of “payroll costs?”***

It does not appear that dental insurance premiums, or other type of insurance premiums paid by an employer are covered as a “payroll costs” other than insurance premiums for the purpose of continuing group health care benefits.

#### ***What is excluded from the definition of “payroll costs?”***

The CARES Act expressly excludes the following from the definition of “payroll costs:”

- i. Any compensation of an employee whose principal place of residence is outside of the United States;
- ii. The compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary;
- iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employer’s share of FICA and Railroad Retirement Act taxes; and
- iv. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Public Law 116-127).

***The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?***

No. The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

#### ***What is meant by “covered mortgage obligations?”***

A “covered mortgage obligation” is any indebtedness or debt instrument incurred in the ordinary course of business that is a liability of the borrower, is a mortgage on real or personal property, and incurred before February 15, 2020.

» **Borrower Frequently Asked Questions – *continued***

**What is meant by “covered lease (or rent) obligation?”**

A “covered lease (or rent) obligation” means rent February 15, 2020.

**What is meant by “covered utility payments?”**

The term “covered utility payments” means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

**The amount of forgiveness of a PPP loan depends on the borrower’s payroll costs over an eight-week period; when does that eight-week period begin?**

The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval. **Consequently, if the borrower has no payroll costs during some or all of the 8 week period that begins upon first disbursement of the loan, it will affect the forgiveness amount of the loan proceeds.** Remember, all borrowers certified in the application, among other things, that the funds will be used to retain workers and maintain payroll.

**What if borrowers still need to lay off employees even after receipt of the funding?**

Loan forgiveness will be reduced if borrower’s decrease their full-time employee headcount. Loan forgiveness will also be reduced if the borrower decreases salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019. Borrowers have until June 30, 2020 to restore the business to full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.


**Will a borrower’s PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA’s implementing rules and guidance) be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?**

No. As an exercise of the Administrator’s and the Secretary’s authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act’s limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to rehire (for the same salary/wages and same number of hours) from the CARES Act’s loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee’s rejection of that offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.


**How can the SBA restrict the amount of loan forgiveness?**

If you use PPP loan proceeds for unauthorized purposes, SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP loan proceeds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.


» **Documentation Checklist**

 Documentation verifying BOTH the number of FTE employees on payroll **and** the pay rates for the 8 week period beginning on the date of origination of the PPP loan, including:


- Payroll tax filings reported to the IRS (Form 941); and
- State income, payroll and unemployment insurance filings.

 Documentation verifying payments on covered mortgage obligations, payments on covered lease (or rent) obligations, and covered utility payments, including:

- Cancelled checks;
- Payment receipts;
- Transcripts of accounts; or
- Other documents

 A certification from an individual authorized to act on behalf of the borrower that:

- The documentation presented is true and correct; and
- The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and

 Any other documentation deemed necessary.

» **Timeline**

- ✓ 8 weeks from loan closing, a borrower can begin to submit a request to lender for PPP loan forgiveness, completing all required paperwork and submitting all required documentation.
- ✓ Lender has 60 days from receipt of forgiveness request to make a decision regarding forgiveness.
- ✓ No later than 90 days from the date of a forgiveness determination, SBA will reimburse Lender an amount equal to the amount of forgiveness, plus any accrued interest through date of payment.

- ✓ 6 months from loan closing, Borrower begins making first P&I monthly payment due for remaining unforgiven portion of loan.
- ✓ 2 years from loan closing, final P&I payment due from Borrower (unless prepaid earlier; no prepayment penalties on PPP loans).

**PAYCHECK PROTECTION PROGRAM – Forgiveness Calculation<sup>1,2</sup>**

**Step One:** Amount of actual payroll costs incurred during the covered 8 week period: ..... \$ \_\_\_\_\_

**Step Two:** Actual costs incurred during the covered 8-week period for any payment of interest only on any covered mortgage obligation (may not include any prepayment of or payment of principal on a covered mortgage obligation): \$ \_\_\_\_\_

**Step Three:** Actual costs incurred during the covered 8-week period for any payment of rent on any covered rent obligation: ..... \$ \_\_\_\_\_

**Step Four:** Actual costs incurred during the covered 8-week period for any payment of covered utilities: ..... \$ \_\_\_\_\_

**Step Five:** ADD together all numbers in Steps 2-4 for a non-payroll costs SUBTOTAL of: ..... \$ \_\_\_\_\_

**Step Six:** ADD together all numbers in Steps 1-4 for a GRAND TOTAL of: ..... \$ \_\_\_\_\_

**Step Seven:** Divide the amount in Step 5 by the amount in Step 6. If the amount in Step 5 is more than 25% of the amount in Step Six, then the amount forgiven will be reduced accordingly such that the non-payroll costs equal no more than 25% of the total amount forgiven. If the amount is equal to or less than 25% then there will be no adjustment to the forgiveness amount at this phase so the Adjusted Grand Total equals the Grand Total from Step Six. Put applicable ADJUSTED GRAND TOTAL here: ..... \$ \_\_\_\_\_

(Steps Eight through Fifteen continued on pg. 4)

# PAYCHECK PROTECTION PROGRAM – Forgiveness Calculation<sup>1,2</sup>

(Continued from pg. 3)

**Step Eight**<sup>3</sup>: Divide the average number of full-time equivalent employees per month employed by borrower during the 8-week covered period by one of two numbers, at the election of the borrower:

- a. The average number of full-time equivalent employees per month employed by the borrower during the period beginning on 2/15/2019 and ending on 6/30/2019<sup>4</sup>; OR
- b. The average number of full-time equivalent employees per month employed by the borrower during the period beginning on 1/1/20 and ending on 2/29/20. . . . . Place quotient here: \_\_\_\_\_

If the quotient equals “1” or is greater than “1” then skip to **Step Ten**.

If the quotient is less than “1” then move on to **Step Nine**

**Step Nine**: If the quotient in Step 8 is less than “1,” the loan forgiveness amount will be reduced accordingly unless no later than June 30, 2020, the borrower has eliminated the reduction in the number of full-time equivalent employees. If the borrower is unable to eliminate the reduction in the number of FTEs by June 30, 2020, then multiply the ADJUSTED GRAND TOTAL from Step Seven, by the number in Step Eight to calculate your ADJUSTED FORGIVENESS AMOUNT: . . . . . \$ \_\_\_\_\_

**Step Ten**: For every FTE paid during the covered 8-week period, individually determine if any one or more of these employees’ salary or wages during the covered 8-week period were reduced by more than 25% of the total salary or wages of each of those same employees during the most recent full quarter the employees were employed before the covered period.

- ✓ If no reduction occurred for any employee, then skip to **Step Twelve**.
- ✓ If any individual employee’s total salary or wages were reduced by more than 25%, and the borrower is able by June 30, 2020 to eliminate the reduction in salary or wages of such employees, then skip to **Step Twelve**.

For all individual employees’ total salary or wages that were reduced by more than 25%, where the borrower is **unable** to eliminate the reduction in salary or wages of such employees by June 30, 2020, enter the amount equal to the excess salary or wages greater than 25% here: . . . . . \$ \_\_\_\_\_

**Step Eleven**: Subtract the amount in Step 10 from the amount in Step Nine (or Step Seven if Nine was skipped) to calculate the NEW ADJUSTED FORGIVENESS AMOUNT: . . . . . \$ \_\_\_\_\_

**Step Twelve**: Enter PPP Loan Amount . . . . . \$ \_\_\_\_\_

**Step Thirteen**: Enter the amount in Step Eleven (or Step Nine if Eleven was skipped; or Step Seven if Nine and Eleven were skipped) here: . . . . . \$ \_\_\_\_\_

**Step Fourteen**: To determine borrower’s ANTICIPATED FORGIVENESS AMOUNT, place the lesser of Step 12 or Step 13 here: . . . . . \$ \_\_\_\_\_

**Step Fifteen**: Subtract Step Fourteen from Step Twelve to calculate the borrower’s ANTICIPATED REMAINING PRINCIPAL LOAN BALANCE: . . . . . \$ \_\_\_\_\_

*(Remember, interest accrues from date of loan closing and any amount not forgiven will continue to accrue interest throughout the 24 months of the loan.)*

<sup>1</sup>A specific calculator has not been created by SBA or Treasury; nor has guidance around forgiveness been finalized as of the date of this publication. As a result, the guidelines mentioned here, and the calculations described here are subject to further change. This information is current as of the date of this publication based on the law and rules in existence at this time.

<sup>2</sup>This calculation process assumes no EIDL grant received by borrower. If an EIDL grant was received and used for the same purposes as the PPP loan, then the forgiveness amount will be further reduced by the amount of the EIDL grant.

<sup>3</sup>If a borrower has employees whom the borrower laid off, extended a written offer to return at the same salary/wages and same number of hours, but the employees refused in writing the offer to return to work, then the borrower should not lower its FTE count for such employees. In other words, only for this subset of employees, the borrower may consider such employees to be employed during the 8-week covered period for purposes of this forgiveness calculation.

<sup>4</sup>For seasonal employers, use the average number of full-time equivalent employees per month employed by borrower during the period beginning on 2/15/19 and ending on 6/30/19.