

PPP Loan Forgiveness - Clarification Provided by the SBA

McKONLY & ASBURY
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On August 4th, the Small Business Administration (SBA) released its latest round of FAQs on Paycheck Protection Program (PPP) Loan Forgiveness. McKonly & Asbury hosted a webinar to explain all of the latest clarification and changes from the SBA. Included in this document are various questions that came in during the webinar, along with our answers. If you have further questions, you can always contact us at covid19@macpas.com and visit our COVID-19 Resource Center at www.macpas.com/covid-19.

QUESTIONS & ANSWERS

Q: What documentation is needed if a person voluntarily offers to reduce their hours for their own reasons.

A: While there is no specific guidance in this area, we would suggest retaining any and all documentation of discussions with the employee where a voluntary reduction of hours is requested, including notes taken by a supervisor or HR representative and/or email communications.

Q: If COVID has created a situation that there is not enough work for staff, is that an approved exemption for fte test for forgiveness?

A: COVID creating a situation where there is not enough work for staff is being interpreted very broadly based on the following guidance provided by the Treasury and SBA: "Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19 (COVID Requirements or Guidance). Specifically, borrowers that can certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with such COVID Requirements or guidance are exempt from any reduction in their forgiveness amount stemming from a reduction in FTE employees during the covered period. Such documentation must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records. The Administrator, in consultation with the Secretary, is interpreting the above statutory exemption to include both direct and indirect compliance with COVID Requirements or Guidance, because a significant amount of the reduction in business activity stemming from COVID Requirements or Guidance is the result of state and local government shutdown orders that are based in part on guidance from the 3 federal agencies."

Q: Is the \$10k EIDL advance forgivable? If so, how do I apply for forgiveness?

A: EIDL grants in the context of a PPP loan are not forgivable and will need to be repaid in that they will reduce your PPP loan forgiveness amount. If you only got an EIDL loan/advance and did not receive a PPP loan, the advance does not need to be repaid.

Q: Have there been any current updates on whether there will be automatic forgiveness under a particular amount? Had also heard there might be another form for that.

A: We have not received guidance on either of these areas.

Q: Do we need to do the FTE analysis for businesses who (1) use the short form application or, (2) businesses who qualify under an exception (i.e. forced government closure or employees won't come back to work)?

A: Yes. The analysis should be done in order to document shortfalls you had (if one existed) and why you qualify for one of the exceptions.

Q: We are self insured, do we use bills paid in the covered period that are for services provided before the covered period and/or bills paid after the covered period for services provided in the covered period?

A: Current guidance states that: "Employer expenses for employee group health care benefits that are paid or incurred by the borrower during the Covered Period...are payroll costs eligible for loan forgiveness" and "Forgiveness is not provided for expenses for group health benefits accelerated from periods outside the Covered Period or Alternative Payroll Covered Period." and "If a borrower has an insured group health plan, insurance premiums paid or incurred during the Covered Period or Alternative Payroll Covered Period qualify as "payroll costs," as long as the premiums are paid during the applicable period or by the next premium due date after the end of the applicable period. As noted, only the portion of the premiums paid by the borrower for coverage during the applicable Covered Period or Alternative Payroll Covered Period is included, not any portion paid by employees or beneficiaries or any portion paid for coverage for periods outside the applicable period." Taken together, this leads us to recommend that only payments made for the coverage provided during the covered period be included. Unfortunately, we have not seen guidance specifically referring to self-insured plans.

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Q: I thought the cap for owners or anyone who is over \$100,000 was \$15,385 for 8 weeks and ~\$45,000 for the 24 weeks?

A: The amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at \$20,833 per individual in total across all businesses in which he or she has an ownership stake. For borrowers that received a PPP loan before June 5, 2020, and elect to use an eight-week Covered Period, this cap is \$15,385.

Q: If we needed a few extra weeks (say 10 weeks rather than 8 weeks) to spend all of the proceeds, do we have to wait for the entire 24 weeks to apply for forgiveness, even if we have no reduction in employees?

A: A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan—including before the end of the covered period—if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness. The mechanics of this are not clear however, since in order to attest that there was no reduction in salaries, hourly wages, or FTEs, that must be true for the entire covered period. However, if it is stated that there was a reduction, but one of the exceptions applies, you clearly do not have to wait until the end of the covered period.

Q: Is there a minimum percentage of ownership that this applies?

A: There is no minimum ownership percentage provided in the guidance. Thus we are left to conclude that any ownership percentage would apply.

Q: If you use 110% of your loan in payroll costs in 15 weeks, we could have 10% reduction resulting from FTE reduction and still get 100% of the loan forgiven.

A: Technically, in this scenario you would need less than a 10% reduction to receive full forgiveness, but we agree with the premise of the question. Through the mechanics of the application, if your total payroll costs, after being reduced by any FTE quotient reduction are higher than your loan amount, you would receive full forgiveness.

Q: Concerning the Checklist for utilizing Form 3508EZ, it sounds like you could not have had a reduction in wage, employees, or hours during the entire covered period. Is this true or does it mean restored by the end of the period?

A: If you did not reduce salaries, hourly wages, and FTEs during the covered period, you should be able to use the EZ form. Similarly, if you did reduce FTEs but one of the exceptions applies, you should be able to use the EZ form as well.

Q: Is a lease on a printer/copy machine covered?

A: Yes.

Q: So if the loan origination date was April 20 and the payroll period started April 16, you can pro-rate the calculation?

A: In this example you should be able to use all payroll from April 16th through April 20th assuming that this payroll was paid during the covered period beginning April 20th. The proration would apply to amounts paid immediately after the covered period for payroll that was incurred both during and after the covered period.

Q: Is the forgiveness application provided by the bank or can it be found elsewhere?

A: Many banks have their own application and application process, but all applications can also be found here - <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

Q: Are owners' salaries included in the payroll forgiveness?

A: Yes, subject to the limitations of \$15,385 for an 8-week covered period and \$20,833 for a 24-week covered period.

Q: Are owners' benefits included in the payroll forgiveness?

A: Yes, subject to the limitations outlined in question 8 of the FAQs here - <https://home.treasury.gov/system/files/136/PPP-Loan-Forgiveness-FAQs.pdf>

Q: If we use the 24-week period and have full forgiveness with payroll only, does it matter if the FTE's have been reduced?

A: As long as one of the exceptions applies, there should be no reduction in loan forgiveness for a decrease in FTEs.

Q: Does the compensation include owner distributions vs. owner wages?

A: Distributions are not included in the definition of payroll costs.

Q: Is leasing a company vehicle considered a leased item?

A: Yes, provided that the lease was in existence prior to February 15, 2020.

Q: If we opened and got confirmation of rehires and then were forced to shut down again. do we need to get the rehires done again?

A: For purposes of the FTE reduction test, it looks as if the market conditions exception would apply here.

Q: Can health care be prorated as well?

A: Yes.

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Q: Is there a clarification on the Payroll expenses that are able to be forgiven? Can I use my ADP reports for the accurate payroll expenses?

A: Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); 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; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation. The applicable ADP reports should provide the appropriate documentation.

Q: Has the SBA defined what should be reported as number of employees at the time of application and time of forgiveness?

A: This should be total employees (headcount), which in most cases would be more than your FTEs.

Q: is diesel fuel used for trucks an eligible non-payroll cost?

A: This is one area that remains unclear. Our recommendation is to focus on using the funds for payroll costs to get full forgiveness.

Q: Even if I used PPP funds for rent payments, I can exclude that from the forgiveness if my payroll costs get me to forgiveness?

A: Yes.

Q: What will be required to show that you fit into one of the exemptions (such as reduced business levels)?

A: While there is little specific guidance, our suggestion is to include documentation of offers and rejections for employment, requests for reductions in hours, termination for cause, and year-over-year revenue reductions to show that market conditions caused by COVID restrictions reduced the level of business activity.

Q: Has the SBA provided a definition of "transportation" yet?

A: The only specific guidance provided so far is as follows: "A service for the distribution of transportation refers to transportation utility fees assessed by state and local governments. Payment of these fees by the borrower is eligible for loan forgiveness."

Q: If you fired someone for just cause, isn't that an exemption?

A: Yes.

Q: Can an employer just elect the 8 or 24 week covered period?

A: The Covered Period is either (1) the 24-week (168-day) period beginning on the PPP loan disbursement date, or (2) if the borrower received its PPP loan before June 5, 2020, the borrower may elect to use an eight-week (56-day) Covered Period.

Q: How about profit sharing that's paid at the end of the year?

A: Generally, employer contributions for employee retirement benefits that are paid or incurred by the borrower during the Covered Period or Alternative Payroll Covered Period qualify as "payroll costs" eligible for loan forgiveness. The employer contributions for retirement benefits included in the loan forgiveness amount as payroll costs cannot include any retirement contributions deducted from employees' pay or otherwise paid by employees. Forgiveness is not provided for employer contributions for retirement benefits accelerated from periods outside the Covered Period or Alternative Covered Period.

Q: Using the 24 week period, our eligible payroll costs exceed the PPP loan amount. Do we need to use the other eligible costs like group health, rent, utilities, etc. at all? Cuts down on some complexity and recordkeeping!

A: As long as your payroll costs provide full loan forgiveness, we see no reason to include other eligible costs.

Q: If we weren't able to utilize the full loan in the 8 weeks but will utilize the loan inside the 24 weeks, what happens if we have to lay someone off? Do we have to wait until after the 24 weeks?

A: As long as one of the exceptions applies, there should be no reduction in loan forgiveness for a decrease in FTEs.

Q: For an LLC, is there a cap in what can be allocated to salaries?

A: For an LLC taxed as a partnership, owners will not have salaries, but net earnings from self-employment will be used instead.

Q: What about making the annual pension contribution - the employer portion?

A: Generally, employer contributions for employee retirement benefits that are paid or incurred by the borrower during the Covered Period or Alternative Payroll Covered Period qualify as "payroll costs" eligible for loan forgiveness. The employer contributions for retirement benefits included in the loan forgiveness amount as payroll costs cannot include any retirement contributions deducted from employees' pay or otherwise paid by employees. Forgiveness is not provided for employer contributions for retirement benefits accelerated from periods outside the Covered Period or Alternative Covered Period.