

THE SMALL BUSINESS ADMINISTRATION'S PPP LOAN FORGIVENESS APPLICATION AND INSTRUCTIONS

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Thank you for joining today's webinar!

Reminders:

- Submit any questions using the Q&A Chat in the Zoom platform. We will address as many as we can during the webinar.
- The presentation slides will be shared following the event.

OVERVIEW

- Highlights of the CARES Act and PPP
- PPP Loan Forgiveness Application
- Loan forgiveness questions answered



HSB REFERENCES

- HSB COVID Resources <https://hsblawfirm.com/HSB-COVID-19-Resources>
- HSB Summary of Loan Forgiveness Application and Instructions <https://hsblawfirm.com/Summary-of-SBA-PPP-Loan-Forgiveness-Application>
- HSB Checklist for Forgiveness Documentation <https://hsblawfirm.com/HaynsworthSinklerBoyd/media/MediaLibrary/PDFs/HSB-Checklist-PPP-Forgiveness-Application.pdf>
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ADDITIONAL REFERENCES

- CARES Act <https://www.congress.gov/bill/116th-congress/house-bill/748/text>
- Forgiveness Application and Instructions <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>
- Treasury FAQs <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- Interim Final Rules and Other Treasury Guidance/Documents <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

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OUTLINE

- I. Potentially Forgivable Expense
 - A. Covered Period and New Alternative Payroll Covered Period
 - B. "Incurred and Paid"
 - C. New Limitations for Owners?
- II. Full-Time Equivalent (FTE) Calculations
 - A. The Mechanics
 - B. FTE Safe Harbor
 - C. New FTE Safe Harbor?
- III. Salary/Hourly Wage Calculations
 - A. The Mechanics
 - B. Salary/Hourly Wage Safe Harbor
- IV. Documentation

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CARES ACT AND THE PAYCHECK PROTECTION PROGRAM

- Part of the CARES Act, a \$2 trillion stimulus package
- Administered by the Small Business Administration (SBA) through private institutions
- Provides forgivable loans to businesses in order to maintain payroll/keep workers employed at or near current wage levels
- Can use up to 25% of the loan for rent, interest payments, or utilities
- Very favorable loan terms if the loan is not entirely forgiven

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THE APPLICATION

1. PPP Loan Forgiveness Calculation Form
2. PPP Schedule A
3. PPP Schedule A Worksheet
4. Optional Demographic Information Form



- Items (1) and (2) must be submitted to the applicable lender

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ESTIMATED TIME TO COMPLETE

"The estimated time for completing this application, including gathering data needed, is 180 minutes."



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COVERED PERIOD VS. ALTERNATIVE PAYROLL COVERED PERIOD

- Prior guidance – "Covered Period" is 8-week period beginning on loan disbursement date
- New - "Alternative Payroll Covered Period" - Borrowers with biweekly or more frequent payroll may elect to calculate payroll costs in 8-week period beginning on first day of first pay period after loan disbursement
- Alternative Payroll Covered Period applies for
 - Calculating payroll costs
 - Including health insurance, retirement benefits, and unemployment tax
 - Measuring FTEs
 - Evaluating salary/wage reductions
- Even if electing Alternative Payroll Covered Period, Covered Period still applies for other forgivable expenses (rent, utilities, interest)

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"INCURRED AND PAID"

- Major source of confusion
- CARES Act ¶ 1106(b):
 - FORGIVENESS – An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period:
 - Payroll costs
 - Covered mortgage interest
 - Covered rent
 - Covered utility payments
 - Does this mean costs must be both incurred and paid?
 - Or does it mean costs incurred plus payments made are eligible?
 - Problems with either interpretation

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FORGIVENESS APPLICATION – PAYROLL COSTS

- Page 1 – Instructions for Loan Forgiveness Application Line 1:
"Enter total eligible payroll costs incurred or paid during the Covered Period of Alternative Payroll Covered Period."
- Page 2 – Summary of Costs Eligible for Forgiveness:
 - Item 1, Eligible Payroll Costs
 - "Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred" **[suggests that both included]**
 - "Payroll costs are considered incurred on the day that the employee's pay is earned."
 - "Payroll costs incurred but not paid during the Borrower's last pay period . . . are eligible for forgiveness if paid on or before the next regular payroll date." **[but if both included, why is this necessary?]**
 - "Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period)." **[suggests not both]**
- Open issues – bonuses, profit-sharing



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FORGIVENESS APPLICATION – NONPAYROLL COSTS

- Application confirms inclusion of:
 - covered mortgage interest payments (debt incurred on or before February 15, 2020)
 - rent* obligations for real and personal property (lease in place on or before February 15, 2020), and **[Personal property inclusion is new.]**
 - utility payments (electricity, gas, water, transportation, telephone, and internet) (service began before February 15, 2020)
- Page 2 – Summary of Costs Eligible for Forgiveness
 - Item 2, Eligible Nonpayroll Costs
 - "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."
 - Note: Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount.
- What is "rent"?

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"INCURRED AND PAID" – TAKE-AWAY

- The forgiveness application seems to provide the best of both worlds.
 - Cash basis on the front end
 - Accrual basis on the back end
- This is consistent with reading the CARES Act language to mean that both costs incurred and costs paid within the applicable 8-week period are eligible.
- CAUTION: Further guidance probably forthcoming. It would not be surprising for the SBA to change course again to prohibit capturing costs beyond an 8-week period.

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LIMITATIONS ON CASH COMPENSATION

- Cash compensation limited to \$100,000 per employee on an annualized basis (\$15,385)
 - 4/24 interim final rule provided special rules for self-employed filing Form 1040, Schedule C
 - Compensation for self-employed individual limited to "owner compensation replacement" (8/52 of 2019 net profit or \$100,000, whichever is lower)
 - Plus, covered benefits not included for self-employed individual

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LIMITATIONS ON CASH COMPENSATION EXPANDED?

- Forgiveness application seems to be expanding these limitations to "owner-employees, a self-employed individual, or general partners."
 - Appears to exclude such individuals from Schedule A worksheet (FTEs/salary/wage reductions)
 - Instructions for Schedule A, Line 9: "Enter any amounts paid to owners (owner-employees, a self-employed individual, or general partners). This amount is capped at \$15,385 . . . or the eight-week equivalent of their applicable compensation in 2019, whichever is lower."
 - Certification: "The dollar amount for which forgiveness is requested . . . does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual."
- Note: Interim final rule applicable to self-employed provides in 1.f., "What amounts shall be eligible for forgiveness?, A: Covered benefits for employees (but not owners)
 - Does this apply beyond self-employed business owners who file 1040 Schedule C?
 - I would argue no.

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CERTIFICATIONS

- Forgiveness amount used for eligible expenses
- Takes into account all applicable reductions due to decreases in headcount, salary, or hourly wages and does not include nonpayroll costs in excess of 25%
- For owner-employees or self-employed individuals and general partners, forgiveness amount does not exceed eight weeks of 2019 compensation, capped at \$15,385 per individual
- Submitted required documentation to lender
- While not a certification, instructions provide that borrower must retain all documentation for six years after the date the loan is forgiven or repaid in full and make available to the SBA on request.

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REDUCTION IN FULL-TIME EQUIVALENTS

- FTE Reduction applies if FTEs in Covered Period or Alternative Covered Period are lower than FTEs in Base Period
- Base Period = Feb 15-June 20, 2019 or Jan 1-Feb 29, 2020 (seasonal employers may also select any 12-week period from May 1-Sep 15, 2019)



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WHAT IS A FULL-TIME EQUIVALENT?

- The Instructions assign an FTE value to each employee
- FTE value is the average number of hours paid per week, divided by 40, and rounded to the nearest tenth, but not to exceed 1.0
 - Simplified method:
 - Assign 1.0 to each employee who works 40 hours+
 - Assign 0.5 to each employee who works less than 40 hours (could be valuable where many employees work less than 20 hours per week)
- We assume salaried employees can be estimated at 40 hours per week (if a reasonable assumption for such employee)



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REDUCTION IN FULL-TIME EQUIVALENTS

- FTE reductions will not be taken into account for positions vacated but not filled by a new employee where:
 - within the covered period, the borrower made a good-faith, written offer to rehire any employee who rejected such offer, or **[per prior guidance]**
 - where an employee was fired for cause, voluntarily resigned, or voluntarily requested and received a reduction in hours **[new in forgiveness application]**

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REDUCTION IN FULL-TIME EQUIVALENTS

- FTE Reduction Safe Harbor (Sch A Worksheet)
 - Borrower reduced the number of FTEs between February 15 (using payroll period that includes February 15) and April 26, 2020, and
 - Eliminated that reduction no later than June 30, 2020 (borrower's total FTE as of June 30 (presumably following same methodology)
- Instructions imply owner-employees, general partners, self-employed are excluded.
- New FTE Safe Harbor?
 - "If you have not reduced the number of employees or average paid hours of your employees between January 1, 2020 and the end of the Covered Period [does not say "Covered Period or Alternative Payroll Covered Period], skip lines 11 and 12 and enter 1.0 on line 13 [of Schedule A].

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SALARY/HOURLY WAGE REDUCTIONS

- Reduction in forgiveness if borrower reduces salaries or hourly wages by more than 25%
 - but not applicable to any employee who received \$100,000 or more in annualized compensation in any 2019 pay period
- Borrower must first break out employees between those who did and did not receive \$100,000 or more in annualized compensation in any 2019 pay period.

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SALARY/HOURLY WAGE REDUCTIONS

- Salary/Hourly Wage Reduction Safe Harbor
 - Borrower reduced salaries/hourly wages between February 15 and April 26, 2020, and
 - Eliminated the reduction no later than June 30, 2020.
 - For salaried employees, use annualized salary. For hourly employees, use hourly wages.
- The Application and Instructions apply these tests on an employee-by-employee basis, meaning that a borrower may qualify for the Salary/Hourly Wage Reduction Safe Harbor for some or all employees.

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DOCUMENTATION REQUIRED TO REQUEST LOAN FORGIVENESS

- PPP Loan Forgiveness Calculation Form
- PPP Schedule A
- Payroll Documentation
- Full-Time Equivalent (FTE) Documentation (time period elected by borrower must match period used for Schedule A, Line 11)
- Nonpayroll Documentation (establishing existence of obligations/services prior to 2/15/20 and eligible payments within covered period)



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PAYROLL DOCUMENTATION

- Bank statements or third-party payroll service provide reports documenting payroll
- Tax forms or third-party payroll service reports
 - payroll tax filings reported or that will be reported on IRS Form 941
 - state quarterly business and individual wage reporting (state income tax withholding)
 - state unemployment tax filings
- Receipts, cancelled checks, or statements documenting health insurance payments
- Receipts, cancelled checks, or statements documenting retirement payments

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FTE DOCUMENTATION

- Determination of number
 - average FTEs per month 2/15/19-6/30/19, or
 - average FTEs per month 1/1/20-2/29/20, or
 - if seasonal employer, average FTEs per month 2/15/19-6/30/19, 1/1/20-2/29/20, or any consecutive 12-week period 5/1/19-9/15/19
- Documents may include payroll tax filings reported or that will be reported on IRS Form 941 and state quarterly business and individual employee wage reporting and unemployment tax filings reported or that will be reported



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NONPAYROLL DOCUMENTATION

- For business mortgage interest:
 - copy of lender amortization schedule and receipts or cancelled checks verifying payments made; 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
- For business rent or lease payments:
 - copy of current lease agreement and receipts or cancelled checks verifying eligible payments from covered period; OR
 - lessor account statements from February 2020 and the months of the covered period through one month after the end of the covered period verifying eligible payments
- For business utility payments:
 - copy of invoices from February 2020 and covered period and receipts, cancelled checks, or account statements verifying eligible payments

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DOCUMENTATION

- Not required to submit, but must maintain:
 - PPP Schedule A Worksheet and
 - Documentation supporting the FTE and salary/wage reduction calculations
 - any job offers and refusals,
 - firings for cause,
 - voluntary resignations, and
 - voluntary requests and reductions in hours
 - as well as the safe harbor calculations
- Borrower should maintain related documents for six years after the date the loan is forgiven or repaid in full



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PPP BORROWER DEMOGRAPHIC INFORMATION FORM

- The Application includes an optional demographic information form that would be used for program reporting purposes only

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