

CARES Act
Paycheck Protection Program
Loan Forgiveness Key Provisions
As of June 1, 2020
“PPP”

The Paycheck Protection Program (“PPP”) provides SBA loans to Small Businesses with a potential for some, or all, of the loan proceeds being forgiven. The purpose of the program is to help employers retain their employees at their current base pay.

On May 15, 2020, the SBA released the PPP Loan Forgiveness Application and guidance regarding calculation of the amounts eligible for forgiveness. Below we have provided some of the key points we noted in this guidance we feel will have the biggest impact on our clients. This information is current as of June 1, 2020, but there is currently legislation pending in Congress that would alter and extend many of the current requirements under the PPP Forgiveness Application.

1. When does the 8-week period begin for payroll costs?

Answer: Generally, the 8-week period (56 days) begins the day the funds are received (deposited) into the borrower’s account. However, if the borrower has a payroll schedule of bi-weekly (every two weeks) or more frequently, then the borrower can start their 8-week period on the first day of the next payroll cycle after receiving their funding. This is referred to as the “**alternative payroll covered period**”. This would be the first day of the 8-week period. Note: Every two weeks is not the same as twice a month. Every two weeks means you are paid 26 times a year (52 weeks divided by 2). Twice a month means you are paid 24 times a year.

Note: Nonpayroll costs follow the 8-week schedule based on date loan proceeds were received, no the alternative payroll covered period.

2. Do I have to pay or disburse all payroll expenses during the 8-week period? Is there an allowance for wages earned during the 8-week period but paid after the end of the 56 days?

Answer: Payroll costs “paid”, and payroll costs “incurred”, during the 8-week period are eligible for forgiveness. However, **payroll costs incurred and not paid by the end of the 8-week period must be paid by the next regular payroll date following the end of the 8-week period**. Payroll costs are considered paid on the date the paychecks are distributed or the date the employer initiates an ACH transaction (direct deposit). Payroll costs are considered incurred on the day the employee earns the pay.

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Payroll costs include wages, benefits, and state unemployment taxes for NC employers.

Note: Many employers do not pay their state unemployment until they file their quarterly returns. Therefore, it is unclear how you pay this amount in advance of filing quarterly returns to comply with the terms of the 8-week period.

3. What if my employee(s) refused to come back to work and therefore, my number of full-time equivalent employees is reduced, will my loan forgiveness be reduced?

Answer: No, as long as you meet the following requirements:

- The employer made a good faith, **written** offer to rehire the employee or restore the employee’s reduced hours back to normal levels during the 8-week period
- The offer was made for the same salary or wages and the same number of hours as earned for the immediately preceding pay period prior to furlough/layoff/reduction in hours
- The employee rejected the offer
- The employer maintained the records documenting the offer and rejection, and
- **The employer informed their state unemployment system of the employee’s rejected offer to return to work within 30 days of the rejection**

4. Are bonuses and other compensation outside of normal salary and compensation allowable?

Answer: Yes. Amounts paid for salaries, wages, commissions, bonuses, and hazard pay are allowable payroll costs and eligible for forgiveness. These amounts are subject to the annual compensation cap of \$100,000. (i.e. – Would the employee be paid in excess of \$100,000 annually, if these compensation levels were maintained throughout the year?)

5. **Are there special rules for owners who are also W-2 employees of the company?**

Answer: **Yes.** There are two separate limitations on an owner/employee’s compensation. The first is the annual compensation limit of \$100,000. The second is the overall owner/employee forgiveness amount is limited to 8/52 of the amount reported on their 2019 W-2. (2019 W-2 wage

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capped at \$100,000 / 52 weeks x 8 eligible weeks or 15.38%.) This applies to shareholders in a C Corporation, as well as S Corporation shareholders.

6. Are an owner’s family members, who are W-2 employees, treated as owner/employees for purposes of the PPP forgiveness calculation?

Answer: The legislation and subsequent interpretation is silent regarding the definition of an owner/employee and family attribution rules for owner family members who are employees. The general consensus is, the family members will not be considered employees for purposes of the additional limitation in item 5 above. However, further clarification is expected in the coming weeks.

7. How are full-time equivalent employees calculated?

Answer: The legislation specifically states that full-time for purposes of this calculation is an average of 40 hours per week. Any employee whose average hours are 40 hours per week would be counted as 1 employee. If the employee works overtime and their average exceeds 40 hours per week, their employee count is capped at 1. For any employee who is paid for less than an average of 40 hours per week, the employer can calculate the full-time equivalency for those employees in one of the following two ways.

- Calculate the average number of hours each employee worked during the 8-week period and converting that to a decimal – i.e. an employee that averages 30 hours per week would count as a .75 employee.
- Treat all employees who are paid for less than 40 hours average per week as a .5 employee.

The method chosen must be consistent for all employees and must be used for calculating your average for the prior period and the current period.

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8. What rent costs are eligible for forgiveness?

Answer: Rents paid for real and personal property are eligible for forgiveness, as long as the contract or rent agreement was entered into prior to February 15, 2020. This would be interpreted to include rent or leases of machinery and equipment, automobiles, office equipment, etc.

9. What are eligible transportation costs referred to in the legislation?

Answer: The reference to transportation costs is included in the section allowing for utilities to be eligible as an offsetting cost for forgiveness. There has not been a formal definition published for transportation costs in this section. However, some experts are interpreting this to include the cost of gas used in company vehicles. Others are interpreting this to be any transportation or delivery costs associated with receiving your utilities, such as when you have to purchase bottled gas or truck in water in rural areas. We hope the SBA will further define and clarify this in the future.

10. Are telephone and internet eligible utility costs?

Answer: Yes, both telephone and internet are specifically referred to in the guidance. The legislation and guidance are silent at this time regarding cell phone service, but many assume it is eligible.

11. Do all “nonpayroll” eligible expenses need to be paid during the 8-week period to qualify?

Answer: No.

- Any eligible nonpayroll amount paid during the 8-week period are eligible for forgiveness, and
- Any eligible amount incurred during the 8-week period and paid on or before the next regular billing date are eligible for forgiveness

Example: 8-week period begins on June 1 and ends July 26. The company pays its utility bill for May services in June and its utility bill for June services in July. Additionally, the company can

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seek forgiveness for the portion of the utility bill paid in August that covers its service days through July 26, as long as the bill is paid before the September billing date.

12. Will I have a reduction in loan forgiveness if I have a reduction in workforce (full-time equivalent employees) or reduction in salary and wage rates?

Answer: Potentially, but you have until June 30th to correct it. As long as, wages are restored to previous levels and full-time equivalent employee levels are restored by June 30, 2020, you will not be penalized. As referenced in number 3 above, employees who refuse to return to work will not result in a penalty because of a reduction in the number full-time equivalent employees, if the employer meets the listed requirements.

13. Will my loan forgiveness amount be doubly penalized if I have a full-time employee who now works a reduced schedule and as a result has a reduced weekly average pay, only because of the reduced hours?

Answer: No. The guidance does not penalize the employer for a reduction in hours and a second time for a reduction in wages for the same employee, **as long as** the employee’s overall hourly rate of pay has not decreased.

14. Will my forgiveness be reduced if I terminated an employee for “cause”, they voluntarily resigned, or voluntarily requested a reduction in hours?

Answer: No. The employer under these circumstances will be able to count the employee in the same manner as before the change in status.

15. If I received an EIDL loan and a PPP loan, do I have to repay the advance EIDL payment?

Answer: No. However, the amount of your PPP loan forgiveness is reduced by the amount of the EIDL advance payment received.

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16. Do I have to submit a copy of a written lease agreement to substantiate the lease agreement?

Answer: No. The instructions state the documentation required to be submitted include:

- a copy of the current lease agreement and receipts or cancelled checks verifying the eligible payments for the covered period
OR
- a lessor (landlord) account statements showing payments from February 2020 through the month following the end of the covered period.

17. Can I prepay nonpayroll expenses and use those payments towards my loan forgiveness calculation?

Answer: This has not been formally addressed in any of the guidance issued. However, it has been noted that in the section regarding using mortgage interest, amounts prepaid are specifically spelled out as being disallowed. Therefore, many are assuming it will allowable to use prepaid expenses for other qualifying costs.