



What's Next for PPP Recipients – Navigating the Forgiveness Process and (Finally) Planning for the Close of 2020 for Income Tax Purposes

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Introductions



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Paycheck Protection Program (PPP)

- Enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) signed into law March 27, 2020.
 - Funding of \$349 billion
- Amended by the Paycheck Protection Program and Health Care Enhancement Act on April 24, 2020.
 - Funding of \$310 billion
- Second amendment, the Paycheck Protection Program Flexibility Act of 2020, was signed into law on June 5, 2020.

Allowable Uses of PPP Loan Proceeds-Payroll Costs



- Must comprise 60%
 - Payroll costs (as defined in the Act)
 - Employee salaries, commissions, and similar compensation on a gross basis, including furloughed employees (for salary, wages, commissions, bonuses and hazard pay or similar compensation and all other cash compensation, such as housing stipends and allowances).
 - Vacation, parental, family, medical, or sick leave (other than leave for which the employer was reimbursed under the Families First Coronavirus Response Act)
 - Allowance for separation or dismissal
 - Group healthcare benefits and insurance premiums
 - Employer contribution for employee retirement plans
 - Payment of state and local taxes assessed on employee compensation

Allowable Uses of PPP Loan Proceeds-Nonpayroll Costs



- No more than 40%
 - Mortgage interest payments (with no prepayment allowed)
 - Rent, including under a lease agreement
 - Utilities-including power, gas, water, transportation, telephone, and internet access

Loan Forgiveness Application

- Form 3508/Form 3508-EZ
- Four key parts:
 - PPP Loan Forgiveness Calculation Form
 - PPP Schedule A
 - PPP Schedule A Worksheet
 - PPP Borrower Demographic Information Form (optional)
- Form 3508S
- Form 3509/Form 3510 – “Loan Necessity Questionnaire”

Form 3508 Example:



Paycheck Protection Program
Loan Forgiveness Application Revised June 16, 2020

OMB Control Number 3245-0407
Expiration Date: 12/31/2020

PPP Loan Forgiveness Calculation Form

| | | | |
|----------------------------------|--|---------------------------------|----------------|
| Business Legal Name ("Borrower") | | DBA or Tradename, if applicable | |
| Business Address | | Business TIN (EIN, SSN) | Business Phone |
| | | () - | |
| | | Primary Contact | E-mail Address |
| | | | |

SBA PPP Loan Number: _____ Lender PPP Loan Number: _____

PPP Loan Amount: _____ PPP Loan Disbursement Date: _____

Employees at Time of Loan Application: _____ Employees at Time of Forgiveness Application: _____

EIDL Advance Amount: _____ EIDL Application Number: _____

Payroll Schedule: The frequency with which payroll is paid to employees is:

Weekly Biweekly (every other week) Twice a month Monthly Other _____

Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____

If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10): _____

Line 2. Business Mortgage Interest Payments: _____

Line 3. Business Rent or Lease Payments: _____

Line 4. Business Utility Payments: _____

Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3): _____

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5: _____

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13): _____

Potential Forgiveness Amounts

Line 8. Modified Total (multiply line 6 by line 7): _____

Line 9. PPP Loan Amount: _____

Line 10. Payroll Cost 60% Requirement (divide line 1 by 0.60): _____

Forgiveness Amount

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10): _____



Paycheck Protection Program
Loan Forgiveness Application Revised June 16, 2020

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By Signing Below, You Make the Following Representations and Certifications on Behalf of the Borrower:

The authorized representative of the Borrower certifies to all of the below by **initialing** next to each one.

- _____ The dollar amount for which forgiveness is requested:
- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
 - includes all applicable reductions due to decreases in the number of full-time equivalent employees and salary/hourly wage reductions;
 - includes payroll costs equal to at least 60% of the forgiveness amount;
 - if a 24-week Covered Period applies, does not exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual; and
 - if the Borrower has elected an 8-week Covered Period, does not exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

_____ I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.

_____ The Borrower has accurately verified the payments for the eligible payroll and nonpayroll costs for which the Borrower is requesting forgiveness.

_____ I have submitted to the Lender the required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.

_____ The information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

_____ The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.

_____ I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

_____ If the Borrower has checked the box for FTE Reduction Safe Harbor 1 on PPP Schedule A, the Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as 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 of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

Signature of Authorized Representative of Borrower _____ Date _____

Print Name _____ Title _____

Form 3508 Example - Continued:



Paycheck Protection Program
Loan Forgiveness Application Revised June 16, 2020

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PPP Schedule A

PPP Schedule A Worksheet, Table 1 Totals

Line 1. Enter Cash Compensation (Box 1) from PPP Schedule A Worksheet, Table 1: _____

Line 2. Enter Average FTE (Box 2) from PPP Schedule A Worksheet, Table 1: _____

Line 3. Enter Salary/Hourly Wage Reduction (Box 3) from PPP Schedule A Worksheet, Table 1:
If the average annual salary or hourly wage for each employee listed on the PPP Schedule A Worksheet, Table 1 during the Covered Period or the Alternative Payroll Covered Period was at least 75% of such employee's average annual salary or hourly wage between January 1, 2020 and March 31, 2020, check here and enter 0 on line 3.

PPP Schedule A Worksheet, Table 2 Totals

Line 4. Enter Cash Compensation (Box 4) from PPP Schedule A Worksheet, Table 2: _____

Line 5. Enter Average FTE (Box 5) from PPP Schedule A Worksheet, Table 2: _____

Non-Cash Compensation Payroll Costs During the Covered Period or the Alternative Payroll Covered Period

Line 6. Total amount paid or incurred by Borrower for employer contributions for employee health insurance: _____

Line 7. Total amount paid or incurred by Borrower for employer contributions to employee retirement plans: _____

Line 8. Total amount paid or incurred by Borrower for employer state and local taxes assessed on employee compensation: _____

Compensation to Owners

Line 9. Total amount paid to owner-employees/self-employed individual/general partners:
This amount may not be included in PPP Schedule A Worksheet, Table 1 or 2. If there is more than one individual included, attach a separate table that lists the names of and payments to each.

Total Payroll Costs

Line 10. Payroll Costs (add lines 1, 4, 6, 7, 8, and 9): _____

Full-Time Equivalency (FTE) Reduction Calculation

If you satisfy any of the following three criteria, check the appropriate box, skip lines 11 and 12, and enter 1.0 on line 13; otherwise, complete lines 11, 12, and 13:

No reduction in employees or average paid hours: If you have not reduced the number of employees or the average paid hours of your employees between January 1, 2020 and the end of the Covered Period, check here .

FTE Reduction Safe Harbor 1: If you were unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as 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, check here .

FTE Reduction Safe Harbor 2: If you satisfy FTE Reduction Safe Harbor 2 (see PPP Schedule A Worksheet), check here .

Line 11. Average FTE during the Borrower's chosen reference period: _____

Line 12. Total Average FTE (add lines 2 and 5): _____

Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if any of the above criteria are met: _____



Paycheck Protection Program
Loan Forgiveness Application Revised June 16, 2020

OMB Control Number 3245-0407
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PPP Schedule A Worksheet

Table 1: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of less than or equal to \$100,000 for all pay periods in 2019 or were not employed by the Borrower at any point in 2019.

| Employee's Name | Employee Identifier | Cash Compensation | Average FTE | Salary / Hourly Wage Reduction |
|----------------------------------|---------------------|-------------------|--------------|--------------------------------|
| | | | | |
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| | | | | |
| | | | | |
| | | | | |
| FTE Reduction Exceptions: | | | | |
| Totals: | | Box 1 | Box 2 | Box 3 |

Table 2: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of more than \$100,000 for any pay period in 2019.

| Employee's Name | Employee Identifier | Cash Compensation | Average FTE |
|-----------------|---------------------|-------------------|--------------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Totals: | | Box 4 | Box 5 |

Attach additional tables if additional rows are needed.

FTE Reduction Safe Harbor 2:

Step 1. Enter the borrower's total average FTE between February 15, 2020 and April 26, 2020. Follow the same method that was used to calculate Average FTE in the PPP Schedule A Worksheet Tables. Sum across all employees and enter: _____.

Step 2. Enter the borrower's total FTE in the Borrower's pay period inclusive of February 15, 2020. Follow the same method that was used in step 1: _____.

Step 3. If the entry for step 2 is greater than step 1, proceed to step 4. Otherwise, FTE Reduction Safe Harbor 2 is not applicable and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.

Step 4. Enter the borrower's total FTE as of the earlier of December 31, 2020, and the date this application is submitted: _____.

Step 5. If the entry for step 4 is greater than or equal to step 2, enter 1.0 on line 13 of PPP Schedule A; the FTE Reduction Safe Harbor 2 has been satisfied. Otherwise, FTE Reduction Safe Harbor 2 does not apply and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.

Form 3508 Example - Continued:



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Loan Forgiveness Application Revised June 16, 2020

OMB Control Number 3245-0407
Expiration Date: 12/31/2020

PPP Borrower Demographic Information Form (Optional)

Instructions

- Purpose.** Veteran/gender/race/ethnicity data is collected for program reporting purposes only.
- Description.** This form requests information about each of the Borrower's Principals. Add additional sheets if necessary.
- Definition of Principal.** The term "Principal" means:
 - For a self-employed individual, independent contractor, or a sole proprietor, the self-employed individual, independent contractor, or sole proprietor.
 - For a partnership, all general partners and all limited partners owning 20% or more of the equity of the Borrower, or any partner that is involved in the management of the Borrower's business.
 - For a corporation, all owners of 20% or more of the Borrower, and each officer and director.
 - For a limited liability company, all members owning 20% or more of the Borrower, and each officer and director.
 - Any individual hired by the Borrower to manage the day-to-day operations of the Borrower ("key employee").
 - Any trustee (if the Borrower is owned by a trust).
 - For a nonprofit organization, the officers and directors of the Borrower.
- Principal Name.** Insert the full name of the Principal.
- Position.** Identify the Principal's position; for example, self-employed individual; independent contractor; sole proprietor; general partner; owner; officer; director; member; or key employee.

| Principal Name | | Position |
|------------------------------------|---|----------|
| Veteran | 1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not Disclosed | |
| Gender | M=Male; F=Female; X=Not Disclosed | |
| Race (more than 1 may be selected) | 1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed | |
| Ethnicity | H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed | |

Disclosure is voluntary and will have no bearing on the loan forgiveness decision

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 180 minutes. Comments about this time or the information requested should be sent to Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503. **PLEASE DO NOT SEND FORMS TO THESE ADDRESSES.**

SBA Form 3508 (06/20)
Page 5

Loan Forgiveness

- Payroll
 - Alternative Payroll Covered Period
 - Default Covered Period

Loan Forgiveness – “Paid” or “Incurred”

- Payroll
 - Deemed paid on date paychecks are distributed or payroll ACH credit transactions are originated
 - Incurred on the date earned by employees
 - Furloughed employees

Loan Forgiveness – “Paid” or “Incurred”

- Nonpayroll
 - Paid during the covered period or incurred during the covered period and paid on or before the next regular billing date if such date is after the covered period
 - No APCP
 - Must be timely made

Loan Forgiveness

- All forgiveness is not lost!
- 60% payroll cost “use” threshold required to meet full forgiveness
- Sliding scale proportion
- Partial approvals

Loan Forgiveness-Loan Reduction Rules

- Allowable uses of proceeds
- Reduction of greater than 25% in wages paid to employees
 - Safe harbor if restore wages by December 31, 2020
- Reduction in the number of employees
 - Rehire exemption
 - Safe harbor if restore FTE level by December 31, 2020
- Unable to return to same level of business activity

PPP Loan Reviews by the SBA

- PPP Certifications
- \$2 million threshold

PPP Loans-Record Keeping Requirements



- Payroll
 - Bank account statements, third-party payroll service provider reports, tax filings (Form 941), state quarterly wage reporting, unemployment insurance tax filings, cancelled checks, payment receipts, transcripts of accounts, account statement documents specific to payment of employer contributions to employee health insurance and retirement plans
 - Number of FTEs and pay rates for all periods pertaining to application

PPP Loans-Record Keeping Requirements

- Nonpayroll
 - Amortization schedules, cancelled checks, lender account statements, lessor account statements, utility invoices, account statements

Public Disclosures

- Publicly released limited data for loan amounts greater than \$150,000
 - Business names, addresses, NAICS codes, and zip codes
 - Business type, demographic data, and if applicable, non-profit information;
 - Number of jobs supported;
 - And loan amount range.
- For loans less than \$150,000, borrower's business name and address excluded.

What If Not Forgiven?

- Principal and interest must be repaid
- No prepayment penalty
- Loans originating after June 5, 2020 – 5-year term
- Loans originating before June 5, 2020 – 2-year term unless lender and borrower agree to extend maturity to 5 years
- 1% interest rate

Tax Considerations – Summary

- For federal purposes, PPP loan forgiveness may be excluded from gross income
- Expenses associated with the tax-free income are nondeductible
- Expenses nondeductible for 2020 or 2021?
- Nondeductible expense allocation
- Other considerations
 - Tax estimates
 - Record keeping
 - Up-to-date information
- Extending 2020 tax return may be advisable

Expense Deductibility

- Deductibility depends on the forgiveness determination
- Forgiveness determination subject to a relatively lengthy timeline
- Revenue Rule 2020-27 states that taxpayers that reasonably expect forgiveness cannot deduct expenses paid with loan proceeds even if they have not applied for forgiveness at the end of the year.
- Detailed calculation of expected deductibility can give taxpayers an estimate of tax adjustment – but any revisions will need to be on an amended return.
- Extending 2020 tax return may be advisable

Tax Planning – General CARES Act Changes

- Reinstated Qualified Improvement Property (“QIP”) definition
 - Method change would be required to take advantage of bonus depreciation over multiple years
- Revised NOL rules to allow carryback
 - Taxpayers can carryback losses up to five years – helping generate cash tax refunds sooner than previous rules allowed
 - Corporate taxpayers can super-charge their refund by carrying back to years with 35% tax rate
- CARES Act modified AMT rules, making credits 100% refundable for tax years ending on or after December 31, 2018
 - Can also elect to get quick refund of AMT credits by filing Form 1139

Tax Planning – Accrual Basis Taxpayers

- Opportunities under any previous recurring item exemption election
 - Accrued bonuses or other wages
 - Payroll taxes
 - Real property taxes
 - Others...
- Be mindful of exceptions for expenses where payment is performance under Reg. §1.461-4(g)
- Capital expenditures, coupled with favorable tax expensing alternatives under §§179 and 168(k) (bonus depreciation)

Tax Planning – Cash Basis Taxpayers

- Capital expenditures available to accrual basis taxpayers also work for cash basis taxpayers
- Pay year-end expenses and any 2020 bonuses in advance of year end
 - For closely-held businesses, wages may be combined with loans back to the company to facilitate cash management concerns
 - Once wages are paid, very little possibility to revise

Tax Considerations – Principles to Remember

- Cash management may need to take precedence over tax mitigation
- If tax mitigation is not a possibility, for passthrough taxpayers, distribution options / requirements may need to be considered based on the terms of the operating or partnership agreement
- Extending 2020 tax return may be advisable
 - Aforementioned accounting method changes may take time to coordinate
 - Possibility exists that legislative intervention may provide additional guidance, or may pass rules retroactive to 2020 allowing deductibility – so that the perceived legislative intention of the CARES Act is restored.

PYA and Other Resources



Please visit the links below for important information and resources as we continue to navigate the everchanging COVID-19 pandemic.

www.pyapc.com/covid-19-hub/

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

Questions & Answers



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