



PAYCHECK PROTECTION PROGRAM | LOAN FORGIVENESS APPLICATION

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WELCOME

- Welcome
- COVID-19 Response Team Introduction
- Bodman's COVID-19 Resources Webpage (<http://www.bodmanlaw.com/practices/covid-19-response-team>)
- Bodman is following the fast-moving developments associated with the COVID-19 pandemic and the related governmental action and analyzing the impacts on our clients.

COVERED PERIOD – NON-PAYROLL COSTS

■ What We Knew

- PPP forgiveness based on “payroll costs” and non-payroll costs incurred and/or paid within an 8-week **OR** 24-week covered period (“CP”) starting with funding of PPP loan
- CP starts on the date Borrower receives PPP loan
- Non-Payroll Costs: mortgage interest payments, rent/lease payments, utility payments (water, power, internet, telephone) – costs must be under agreements existing prior to February 15, 2020

■ Previously Unanswered Questions:

- Does expense need to be both incurred and paid during CP?
- Expenses incurred prior to CP, but paid during CP?
- Expenses incurred during CP, but not paid until after CP?

COVERED PERIOD – NON-PAYROLL COSTS

- What We Know Now:
 - Non-Payroll Costs: Paid or Incurred during CP
 - If incurred during CP, but payment not due until after CP, expense counts toward forgiveness so long as payment made with PPP loan proceeds on or before next regular billing date
 - Note: will need to submit statements/evidence showing:
 - The cost is from a lease/mortgage/utility service agreement in effect prior to February 15, 2020
 - Payment of expenses during CP
 - Statements for one month after CP



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Forgiveness Amount Calculation (see Summary of Costs Eligible for Forgiveness below):

Line 1: Enter total eligible payroll costs incurred or paid during the Covered Period or the Alternative Payroll Covered Period. To calculate these costs, complete PPP Schedule A. Enter the amount from PPP Schedule A, line 10.

Line 2: Enter the amount of business mortgage interest payments paid or incurred during the Covered Period for any business mortgage obligation on real or personal property incurred before February 15, 2020. Do not include prepayments.

Line 3: Enter the amount of business rent or lease payments paid or incurred for real or personal property during the Covered Period, pursuant to lease agreements in force before February 15, 2020.

Line 4: Enter the amount of business utility payments paid or incurred during the Covered Period, for business utilities for which service began before February 15, 2020.

NOTE: For lines 2-4, you are not required to report payments that you do not want to include in the forgiveness amount.

Line 5: Enter the number from PPP Schedule A, line 3. This amount reflects the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees as described in PPP Schedule A.

Line 6: Add lines 1 through 4, subtract line 5, enter the total. If this amount is less than zero, enter a zero.

Line 7: Enter the number from PPP Schedule A, line 13.

Line 8: Enter the amount on line 6 multiplied by the amount on line 7. This calculation incorporates the loan forgiveness reduction required for any full-time equivalency (FTE) employee reductions as described in PPP Schedule A.

Line 9: Enter the PPP Loan Amount.

Line 10: Divide the amount on line 1 by 0.60, and enter the amount. This determines whether at least 60% of the potential forgiveness amount was used for payroll costs.

Line 11: Enter the smallest of lines 8, 9, or 10. Note: If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender.

Summary of Costs Eligible for Forgiveness:

Borrowers are eligible for loan forgiveness for the following costs:

- 1. Eligible payroll costs.** Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the 24-week (168-day) or 8-week (56-day) Covered Period (or Alternative Payroll Covered Period) (“payroll costs”). Payroll costs are considered paid on the day that paychecks are distributed or the Borrower originates an ACH credit transaction. 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 of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period). For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period. Count payroll costs that were both paid and incurred only once. For information on what qualifies as payroll costs, see Interim Final Rule on Paycheck Protection Program posted on April 2, 2020 ([85 FR 20811](#)) (as amended by the Revisions to First Interim Final Rule, posted on June 11, 2020). Include only payroll costs for employees whose principal place of residence is in the United States.
- 2. Eligible nonpayroll costs.** Nonpayroll costs eligible for forgiveness consist of:
 - (a) covered mortgage obligations: payments of mortgage interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payments”);
 - (b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 (“business rent or lease payments”); and
 - (c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, telephone, transportation, or internet access for which service began before February 15, 2020 (“business utility payments”).

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. Eligible nonpayroll costs cannot exceed 40% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once.

The amount of loan forgiveness the Borrower applies for may be subject to reductions as explained in PPP Schedule A.
SBA Form 3508 (06/20)



(ALTERNATIVE PAYROLL) COVERED PERIOD

■ What We Knew

- Payroll Costs include (i) salary/wages up to \$100k, (ii) health insurance, (iii) retirement plans, and (iv) Borrower state and local taxes assessed on employee compensation

■ Previously Unanswered Questions:

- What counts towards the \$100k cap?
- Treatment of pay periods that don't line up with CP?

(ALTERNATIVE PAYROLL) COVERED PERIOD

■ What We Know Now:

- \$100k cap on “Cash Compensation”: salary, wages, tips, commissions, paid leave, severance
- Contributions to health insurance, retirement plans, and employer taxes are in addition to (and not counted towards) the \$100k Cash Compensation cap
- Alternative Payroll Covered Period (“APCP”)
 - May use APCP for calculating “payroll costs” during 8 or 24-week period if pay periods are bi-weekly (or more frequent)
 - Starts: 1st day of 1st pay period after receiving PPP loan
 - Ends: 8 weeks or 24 weeks later

REDUCTIONS AND SAFE HARBORS – SALARY/HOURLY WAGE REDUCTION

- Max Forgiveness Amount reduced by: (i) **Wage Reductions** and (ii) Reductions in average weekly Full-Time Equivalent Employees
- General Rule: Reduce forgiveness based on any employee:
 - Who received no more than \$100k Cash Compensation (annualized) during 2019; and
 - Whose average annualized salary/wages (“AAS/W”) during CP/APCP were reduced by more than 25% of AAS/W in Q1-2020

SALARY/HOURLY WAGE REDUCTION SAFE HARBOR

- For any employee meeting this test, no reduction in forgiveness (despite >25% reduction in AASW)
- Safe Harbor met if:
 - AAS/W from 2/15/20 to 4/26/20 \leq AAS/W as of 2/15/20; and
 - AAS/W as of 6/30/20 \geq AAS/W as of 2/15/20 (i.e. AAS/W restored to 2/15/20 levels)
- COVID impact exemption:
 - Safe Harbor 1 – if you cannot restore the jobs and certify accordingly, you may avoid a penalty
 - Safe Harbor 2 – restoring employment by 12/31/20

REDUCTIONS AND SAFE HARBORS – FTE REDUCTIONS

- Max Forgiveness Amount reduced by: (i) Wage Reductions and (ii) **Reductions in average weekly Full-Time Equivalent Employees** (“AWFTE”)
- General Rule: Reduce forgiveness amount based on “FTE Reduction Quotient” of: (A) AWFTE during CP/APCP divided by (B) AWFTE during “Reference Period”
 - Reference Period selected by Borrower:
 - 2/15/19 to 6/30/19;
 - 1/1/20 to 2/29/20; or
 - For seasonal businesses, any 12-week period between 5/1/19 and 9/15/19



FTE REDUCTION EXCEPTIONS

- Goal to avoid penalizing Borrower who tries to restore its FTE during CP/APCP
- FTE Reduction Quotient is not impacted by reduced FTE from:
 - Former employees to whom Borrower made good faith, written offer to re-hire during CP/APCP
 - AND Borrower informs state unemployment insurance office of such rejected offer within 30 days of rejection
 - Employees who, during CP/APCP were: (i) fired for cause, (ii) voluntarily resigned, (iii) voluntarily requested/received reduction in hours
 - In each case, if position was later filled by a new employee, cannot “double count” to include that new employee and the vacant position fitting one of the above exceptions



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c. Enter the average number of hours worked per week between January 1, 2020 and March 31, 2020:
_____.

d. Multiply the amount entered in 3.b. by the amount entered in 3.c. _____. Multiply this amount by 24 (if Borrower is using a 24-week Covered Period) or 8 (if Borrower is using an 8-week Covered Period): _____. Enter this value in the column above box 3 for that employee.

If the employee is a salaried worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

e. Multiply the amount entered in 3.b. by 24 (if Borrower is using a 24-week Covered Period) or 8 (if Borrower is using an 8-week Covered Period): _____. Divide this amount by 52: _____. Enter this value in the column above box 3 for that employee.

FTE Reduction Exceptions: Indicate the FTE of (1) any positions for which the Borrower made a good-faith, written offer to rehire an individual who was an employee on February 15, 2020 and the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020; (2) any positions for which the Borrower made a good-faith, written offer to restore any reduction in hours, at the same salary or wages, during the Covered Period or the Alternative Covered Period and the employee rejected the offer, and (3) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours. In all of these cases, include these FTEs on this line only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness.

Boxes 1 through 5: Enter the sums of the amounts in each of the columns.

FTE Reduction Safe Harbors

Two separate safe harbors exempt certain borrowers from any loan forgiveness reduction based on a reduction in FTE employee levels:

1. The Borrower is exempt from the reduction in loan forgiveness based on a reduction in FTE employees described above if the Borrower, in good faith, is able to document that it 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 for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
2. The Borrower is exempt from the reduction in loan forgiveness based on a reduction in FTE employees described above if both of the following conditions are met: (a) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (b) the Borrower then restored its FTE employee levels by not later than December 31, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

MISCELLANEOUS

- Requirement that **60%** of forgivable amount must come from “payroll costs” is handled in the Application step-by-step instructions (i.e. no need for Borrower to calculate itself)
 - Borrower may omit certain non-payroll costs to help ensure they meet this requirement
- Documentation to Accompany Loan Forgiveness Application
 - Spelled out in detail on Page 10 of Application
 - Generally intuitive and consistent with past guidance
 - Four categories of documents not required to be submitted with application, but that Borrower must maintain for **6 years**
 - Note especially: documentation regarding job offers/refusals, firings for cause, voluntary resignations/requests for hour reductions (i.e. for the FTE Reduction Exceptions above)



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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



PPP LOAN FORGIVENESS APPLICATION FORM 3508EZ INSTRUCTIONS FOR BORROWERS

Checklist for Using SBA Form 3508EZ

You (the Borrower) can apply for forgiveness of your Paycheck Protection Program (PPP) loan using this SBA Form 3508EZ if you can check at least one of the three boxes below. Do not submit this Checklist with your SBA Form 3508EZ.

The Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form (SBA Form 2483).

The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);

AND

The Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period. (Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee’s hours that the Borrower offered to restore and the employee refused. See [85 FR 33004](https://www.federalregister.gov/2020/06/01/33007), 33007 (June 1, 2020) for more details.

The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);

AND

The Borrower was unable to operate during 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.

If you can check at least one of the three boxes above, complete this SBA Form 3508EZ in accordance with the instructions below, and **submit it to your Lender** (or the Lender that is servicing your loan). Borrowers may also complete this application electronically through their Lender. If you are unable to check one of the boxes above, you cannot use SBA Form 3508EZ and instead you must apply for forgiveness of your PPP loan using SBA Form 3508.

Instructions for PPP Loan Forgiveness Calculation Form 3508EZ

Business Legal Name (“Borrower”)/DBA or Tradename (if applicable)/Business TIN (EIN, SSN): Enter the same information as on your Borrower Application Form (SBA Form 2483 or lender’s equivalent).

Business Address/Business Phone/Primary Contact/E-mail Address: Enter the same information as on your Borrower Application Form, unless there has been a change in address or contact information.

SBA PPP Loan Number: Enter the loan number assigned by SBA at the time of loan approval. Request this number from the Lender if necessary.

Lender PPP Loan Number: Enter the loan number assigned to the PPP loan by the Lender.

PPP Loan Amount: Enter the disbursed principal amount of the PPP loan (the total loan amount you received from the Lender).

Employees at Time of Loan Application: Enter the total number of employees at the time of the PPP Loan Application.

Employees at Time of Forgiveness Application: Enter the total number of employees at the time the Borrower is applying for loan forgiveness.

PPP Loan Disbursement Date: Enter the date that you received the PPP loan proceeds from the Lender. If loan proceeds were received on more than one date, enter the first date on which you received PPP loan proceeds.



CONTACT INFORMATION

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