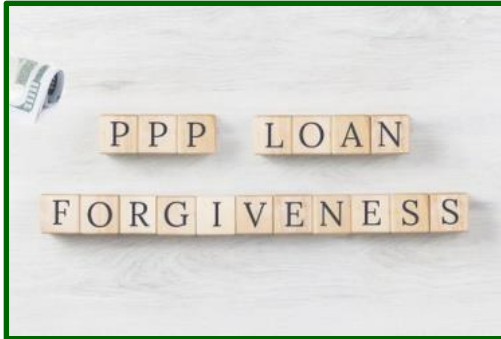


SBA Issues FAQs for PPP Loan Forgiveness



Earlier in August, the SBA issued a new set of FAQs devoted solely to PPP loan forgiveness questions. The complete FAQs are available [here](#).

For the most part, the FAQs provide the same information that has been published in prior guidance, although there are a few topics with new or more detailed information.

Here are some highlights of the guidance that contains important answers for PPP borrowers.

General Forgiveness FAQs

- **Sole proprietors, independent contractors and self-employed individuals** who had no employees at the time of PPP application and did not include any employee salaries in the calculation of average monthly payroll automatically qualify to use the **Loan Forgiveness Application Form 3508EZ** or lender equivalent.

Loan Forgiveness Payroll Cost FAQs

- Employer expenses for employee **group health care benefits** that are paid or incurred by the borrower during the Covered Period (or Alternative Covered Period) are eligible payroll costs for forgiveness. BUT - insurance premiums paid or incurred during the Covered Period (or Alternative Covered Period) qualify as "payroll costs" only if paid during the applicable period or by the next premium due date after the end of the applicable period. **Only the portion of premiums paid by borrower for coverage during the Covered Period (or Alternative Covered Period) is an eligible payroll cost.** Any portion paid by the borrower during the applicable period for coverage outside the Covered Period (or Alternative Covered Period) is NOT included.
- Similarly, employer contributions for **employee retirement benefits** that are paid or incurred during the Covered Period (or Alternative Covered Period) are eligible payroll costs for forgiveness. **HOWEVER - employer contributions for retirement benefits paid during the Covered Period but accelerated from periods outside the Covered Period (or Alternative Covered Period) are NOT included.**
- The amount of **owner-employee compensation** that is eligible for loan forgiveness depends on the business type and whether the borrower is using an 8-week or 24-week Covered Period. However, the amount is capped across all businesses in which the individual has an ownership stake - either \$20,833 (for a 24-week Covered Period) or \$15,385 (for an 8-week Covered Period). Borrowers using a 24-week Covered Period should keep in mind, **health insurance and retirement costs are treated differently depending on business type.**
 - **C Corporation:** Owner-employee cash compensation is eligible for forgiveness up to an amount equal to 2.5/12 of his or her 2019 cash compensation. In addition, costs paid by the borrower in connection with the owner-employee for payroll taxes, employee health insurance and employee retirement (limited to 2.5/12 of 2019

employer retirement contribution) are eligible for forgiveness. (Payments for eligible non-cash compensation should be included on lines 6-8 of Schedule A of Loan Forgiveness Application.)

- **S Corporation:** Owner-employee cash compensation is eligible for forgiveness up to an amount equal to 2.5/12 of his or her 2019 cash compensation. In addition, costs paid by the borrower in connection with the owner-employee for payroll taxes and employee retirement (limited to 2.5/12 of 2019 employer retirement contribution) are eligible for forgiveness. However, employer contributions for health insurance are not eligible for forgiveness for employees with at least a 2% stake in the business, including family members of an at least 2% owner because those contributions are included in cash compensation. (Payments for eligible non-cash compensation should be included on lines 7-8 of Schedule A of Loan Forgiveness Application.)
- **Self-Employed Schedule C filers:** Compensation of self-employed individuals (including sole proprietors and independent contractors) is eligible for forgiveness up to an amount equal to 2.5/12 of his or her 2019 net profit as reported on the IRS Form 1040 Schedule C line 31. Payments for health insurance, retirement or payroll taxes are not eligible for additional forgiveness because they are paid out of net self-employment income.
- **General Partners:** Compensation of general partners is eligible for forgiveness up to an amount equal to 2.5/12 of his or her 2019 net earnings from self-employment that is subject to self-employment tax (amount from 2019 IRS Form 1065 Schedule K-1 box 14a multiplied by .9235). Eligible compensation must be paid during the Covered Period (or Alternative Covered Period). Employer payments for health insurance, retirement or payroll taxes are not eligible for additional forgiveness.
- **LLC Owners:** Follow the instructions for entity type used for tax filing purposes.

Loan Forgiveness Nonpayroll Cost FAQs

- Interest on **unsecured credit** is **not eligible** for loan forgiveness.
- Payments on **renewed leases or refinanced mortgage loans are eligible** for loan forgiveness if the original lease or mortgage existed prior to February 15, 2020.
- Under the CARES Act, covered utility payments eligible for forgiveness include "service for the distribution of...transportation." Per the new FAQs, "a service for the distribution of transportation refers to **transportation utility fees** assessed by state and local governments." The SBA's original Interim Final Rule (IFR) for self-employed individuals suggested that "transportation" was much broader, and included gas for company vehicles. This FAQ significantly restricts the category.

Borrowers are directed to:

https://www.fhwa.dot.gov/ipd/value_capture/defined/transportation_utility_fees.aspx for more information about transportation utility fees.

- **Both electricity supply charges and electricity distribution charges** are eligible nonpayroll costs, even if invoiced separately.

Loan Reduction FAQs

- If a borrower wants to exclude a reduction in FTE due to an inability to rehire an employee or similarly qualified person, the borrower must retain the following documents: written offer to rehire an individual, written record of offer's rejection, and **written record of efforts to hire a similarly qualified individual**.
- If a **seasonal employer** elects to use a 12-week period between May 1, 2019 and September 15, 2019 to calculate its PPP loan amount, it must **use the same 12-week period as the reference period for calculating any reduction** in loan forgiveness.
- **Employees with annualized income greater than \$100,000** must be counted for FTE reduction purposes, but not for any calculation of salary/wage reductions.
- In FAQ #4 there are several detailed examples explaining **how to calculate the applicable reduction in salary/wages**. It is helpful to refer to the Forgiveness Application, Schedule A Worksheet, Table 1. To be clear, **the reduction test compares an employee's average annual salary rate or hourly wage rate during the Covered Period to his or her annual salary or hourly wage during the period January 1 to March 31, 2020**. Any reductions in excess of 25% will reduce the amount of loan forgiveness unless the pay reduction is "restored" by December 31, 2020. For example, if an employee's hourly wage is reduced from \$20 per hour to \$15 per hour during the Covered Period, there is no reduction in loan forgiveness because the wage reduction was not more than 25%. (This is so even if the employee worked fewer hours during the Covered Period than during the comparison period; **it is the rate of pay that is being compared, not total compensation during the period**. However, the reduction in hours would affect the FTE calculation.) If the hourly wage was reduced to \$14 per hour during the Covered Period, the excessive reduction of \$1 per hour (for all hours worked during the Covered Period) would be deducted from the allowable amount of forgiveness, unless the wage reduction is "restored" by December 31, 2020. (Note: The Forgiveness Application provides that the safe harbor "restore by" date is the earlier of the date of application or December 31, 2020, but that is not mentioned in the FAQ. The IFR regarding Loan Forgiveness issued on June 22, and this FAQ, state that if a borrower applies for forgiveness prior to the end of its 24-week Covered Period, it must account for the wage reductions for the full 24-week period. Apparently the safe harbor cannot be used in that situation.)

This memo is intended only as a summary and general overview. If you have any questions or would like legal advice regarding the above or any other employment issue, please contact [David A. Lawrence](#) or [Sarah Gidley](#).