

**CARES Act**  
**Paycheck Protection Program**  
**Use of Funds and Forgiveness**  
*Updated June 5, 2020*

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**1. Q: When must I spend my Paycheck Protection Program (“PPP”) loan proceeds? (Updated June 5, 2020)**

**A:** In order to be considered for forgiveness, PPP funds must be spent during the 24-week period commencing on the day you receive your first disbursement of funds from your lender or December 31, 2020, whichever occurs first.

**2. Q: What are permitted uses of the PPP loan proceeds? (Updated June 5, 2020)**

**A:** PPP loan proceeds may be used for:

- a. Payroll Costs for employees whose principal place of residence is in the United States (Exclusions apply – see Question 4 below);
- b. Owner compensation replacement (See Question 5 below);
- c. Mortgage interest payments for real and personal property mortgage obligations in effect on February 15, 2019 (but not mortgage prepayments or principal payments)\*;
- d. Interest on other debt obligations incurred before February 15, 2020\*\*;
- e. Rent payments for real and personal property rent or lease obligations in effect on February 15, 2020\*;
- f. Utilities (electricity, gas, water, transportation, telephone or internet access)\*; and
- g. Refinancing of qualifying Economic Injury Disaster Loans (“EIDL”).

\* The Paycheck Protection Program Flexibility Act of 2020 requires that no more than 40% of the total forgiveness amount may be used for non-payroll expenses (interest, rent, utilities).

\*\* The SBA has advised interest on “other debt obligations” may be paid with PPP loan proceeds, but such payments are not qualified for forgiveness.

**3. Q: *What Payroll Costs are permitted to be paid with PPP funds? (Updated May 19, 2020)***

**A:** PPP funds may be used to pay the following payroll costs:

- a. Salary, wage, commission or similar compensation;
- b. Payment of cash tip or equivalent;
- c. Housing stipend/allowance;
- d. Payment for vacation, parental, family, medical or sick leave;
- e. Allowance for dismissal or separation;
- f. Payment required for the provisions of group health benefits, including insurance premiums;
- g. Payment of any retirement benefit;
- h. Payment of State or local tax assessed on the compensation of employees (but not federal taxes); and
- i. Payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar (but which shall not be in excess of \$15,385 per individual for the covered period).

**4. Q: *What Costs cannot be paid with PPP funds? (Updated May 19, 2020)***

**A:** PPP funds may not be used for:

- a. Cash compensation<sup>1</sup> in excess of \$15,385 per individual for the covered period;
- b. Federal taxes imposed on compensation;
- c. Compensation of employees whose principal residence is outside of the U.S.;
- d. Qualified sick leave or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act (FFCRA);
- e. Debt interest (mortgage or otherwise) on debt obligations arising after February 15, 2020;
- f. Rent or lease payments for leases entered into after February 15, 2020; and
- g. For limited liability companies filing taxes as a partnership, partnerships, and individuals with self-employment income who file a form 1040, Schedule C, expenses that are not deductible on your 2019 Form 1040 Schedule C.

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<sup>1</sup> PPP Loan FAQ #7 provides that the exclusion of compensation in excess of an annual salary of \$100,000 (\$15,385 for the covered period) only applies to cash compensation, not to non-cash benefits (such as employer contributions to retirement plans, group health insurance, etc.)

**5. Q: What is “Owner Compensation Replacement” and how do I pay using PPP funds?**  
(Updated May 19, 2020)

**A:** Limited liability companies taxed as partnerships, partnerships and individuals with income from self-employment who file a 2019 Form 1040, Schedule C, may be able to recover a portion of net profits. Currently, such sum is based on 2019 net profits as reported on Form 1040, Schedule C for 2019 (and, presumably K-1s for partnerships). If you have not filed your 2019 taxes, you should prepare a Schedule C to determine the net profit (line 31). To the extent line 31 is over \$100,000, reduce this amount to \$100,000. Divide the adjusted line 31 amount by 12 to determine the allowable average monthly compensation replacement. This amount multiplied by 2 is the amount for which you may apply PPP funds paid to owners. Such amount may not exceed \$15,385. (NOTE: We anticipate additional guidance on this topic.)

**6. Q: What are the requirements to have the PPP loan proceeds forgiven?** (Updated June 5, 2020)

**A:** PPP loan proceeds may be forgiven provided:

- a. Proceeds were paid during the period commencing on the date loan funds are disbursed and ending on the *earlier* of (i) the last day of the following 24<sup>th</sup> week; or (ii) December 31, 2020 (the “Use Period”).
- b. Proceeds were used for permitted uses (See Question 2).
- c. Payments for permitted uses during the Use Period are documented.

See FAQ #s 23-26.

**7. Q: Will the entire amount of the PPP loan proceeds be forgiven?** (Updated June 5, 2020)

**A:** The entire amount of PPP loan proceeds may be forgiven if:

- a. If you use the entire amount of your PPP loan proceeds during the Use Period (See FAQ #6) for *incurred and paid* permitted uses;
- b. No more than 40% of the forgiveness amount is for non-payroll permitted uses;
- c. You satisfy certain FTE and wage requirements.

See FAQs #23-26.

**8. Q: What if I do not satisfy the safe harbor employment requirements for forgiveness?**  
(Updated June 5, 2020)

**A:** If you do not satisfy the safe harbor employment requirements for loan forgiveness, the amount of PPP loan proceeds that may be forgiven will be reduced as follows.

- a. If you have not restored reductions in FTEs that took place between February 15 and April 26, 2020 by December 31, 2020 (i.e. you do not employ the same number of FTEs on December 31, 2020, as on February 15, 2020), the forgivable amount is reduced by a percentage calculated, at borrower's option, in one of the following ways:

(i)

$$\frac{\text{Average Monthly FTE During Use Period}}{\text{Average Monthly FTE 02/15/2019 – 06/30/2019}}$$

or

(ii)

$$\frac{\text{Average Monthly FTE During Use Period}}{\text{Average Monthly FTE 01/01/2020 – 02/29/2020}}$$

- b. If you have reduced wages by more than 25% per employee (earning \$100,000 or less per year) as compared to the most recent full quarter before you first received loan proceeds and have not restored such wages to at least 75% of wages earned the prior quarter by December 31, 2020 (i.e. on December 31, 2020, your employees are making less than 75% of their wages earned during the most recent full quarter before receipt of loan proceeds), the forgiveness amount will be reduced by that amount of reduction in wages in excess of 25%.

*For Example:* An employee earning \$50,000 annually during the immediately preceding quarter has wages reduced by 30% to \$35,000 and wages are not restored by December 31, 2020. The forgiveness amount would be reduced by \$2,500 (5% of \$50,000).

See FAQs #23-26.

**9. Q: What is a Full Time Equivalent Employee and how do I calculate? (Updated May 19, 2020)**

**A:** A full time equivalent employee (FTE) calculation may allow you to aggregate part time hours to total a full time employee. For purposes of loan forgiveness, a full time equivalent employee works 40 or more hours per week. To calculate your total FTE employees for a given period, calculate the total number of employees working 40 hours or more per week and assign each a value of 1.0. For each employee working fewer than 40 hours per week, take the total number of hours worked, divide by 40 and round to the nearest tenth. For an employee working 10 hours per week, their FTE allocation is 0.3 ( $10 \div 40 = 0.25$ , rounded to 0.3). To calculate the total FTE employee count for a period, take the total of each employee FTE allocation. Alternatively, the SBA permits you to assign 1.0 to each employee working 40 or more hours per week and 0.5 for each employee working fewer than 40 hours per week. The following is an example of each form of calculation for 10 employees.

Employee	Total Hours	Total Hours ÷ 40	FTE Allocation		Alternative Allocation (1.0 or 0.5)
1	40	1.0	1.0		1.0
2	45	1.0	1.0		1.0
3	36	0.9	0.9		0.5
4	34	0.85	0.9		0.5
5	28	0.7	0.7		0.5
6	27	0.675	0.7		0.5
7	20	0.5	0.5		0.5
8	16	0.4	0.4		0.5
9	12	0.3	0.3		0.5
10	8	0.2	0.2		0.5
<b>TOTAL FTE</b>			6.6		6.0

**10. Q: May I pay a bonus during the Use Period with PPP funds? (Updated June 5, 2020)**

**A:** Yes. The forgiveness application allows you to include bonuses as payroll expense so long as they satisfy all other program requirements.

**11. Q: May I increase wages during the Use Period and pay increased wages with PPP funds?**

**A:** Payment of increased wages would fall within the definition of payroll expenses under “salary, wage, commission or similar compensation.” You should note, however, that an increase in wages may allow you to use all PPP funds during the Use Period, but you will still need to satisfy the FTE requirements on June 30 to avoid any reduction in forgivable amounts.

**12. Q: My employees are currently receiving unemployment insurance benefits. If I use PPP funds to partially pay them, will this affect their benefits?**

**A:** Yes. If an employee is receiving wages from their employer, whether the wages come from a PPP loan or elsewhere, the employee must disclose the wages. Disclosure of such wages may reduce such employee’s unemployment insurance benefits.

**13. Q: My employees refuse to return to work because it is beneficial to them to continue to receive unemployment insurance benefits. What can I do to recall them? (Updated May 4, 2020)**

**A:** You may recall employees that were laid off. You should advise your employees that their failure to return to work may be grounds for reporting their refusal to the Department of Workforce Development. In the event they continue to refuse to return to work, and they have no legitimate basis for such refusal, you may complete a Notice of Work Recall Refusal (Employer) form, State Form 56951, found at <https://www.in.gov/dwd/2406.htm>. The Department of Workforce Development will then evaluate the reasons for refusal and will make a determination on the employee’s continued eligibility for unemployment insurance benefits. It is imperative that you recall your employees in writing and document their refusal to return for purposes of loan forgiveness. See FAQ #18.

**14. Q: What documentation will I need to provide in my application for forgiveness? (Updated May 19, 2020)**

**A:** The PPP Loan Forgiveness Application requires that borrowers:

- a. Provide the following:
  - i. Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation *paid* to employees;

- ii. Tax forms for the periods overlapping the Covered Period or the Alternative Payroll Covered Period (Form 941, state quarterly business and individual wage reporting and unemployment insurance tax filings, etc.);
- iii. Payment receipts, cancelled checks or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness amount;
- iv. Documentation showing the average number of FTE employees on payroll per month employed by the borrower during its chosen comparison period (February 15, 2019 – June 30, 2019 or January 1, 2020 – February 29, 2020 or periods permitted for seasonal employers);
- v. Copies of lender amortization schedule, receipts or cancelled checks and account statements verifying eligible mortgage interest payments;
- vi. Copies of current lease agreement(s), receipts or cancelled checks and account statements verifying eligible rent or lease payments; and
- vii. Copies of invoices from February 2020 and those paid during the Covered Period for eligible utilities and receipts, cancelled checks or account statements verifying those eligible payments.

*b.* Maintain the following:

- i. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1 or Table 2;
- ii. Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations and written requests by any employee for reductions in work schedule; and
- iii. Documentation supporting the PPP Schedule A “FTE Reduction Safe Harbor”.

**15. Q: What if I don’t use all of my PPP funds? (Updated June 5, 2020)**

**A:** In the event you do not use all of your distributed PPP funds, the amount will be converted to a loan with interest at the rate of 1%. For loans disbursed after June 5, 2020, the term of the loan will be 5 – 10 years. For loans disbursed prior to June 5, 2020, the term will be for not more than 2 years unless lender and borrower mutually agree (though there is no obligation to do so). No principal or interest payments will be required until such time as the forgiveness amount has been determined and such amount has been paid to the lender by the SBA. However, interest will accrue on any amount that is not forgiven. Therefore, to the extent loan funds are not forgiven, interest will accrue commencing on the date of disbursement. You may prepay your loan at any time without penalty.

**16. Q: I received PPP funds but have since determined that I do not need them or, in light of recent guidance, I will not be considered to have certified in good faith that the economic uncertainty necessitated the PPP loan. May I return the loan proceeds? (Updated May 14, 2020)**

**A:** You may prepay (return) your loan proceeds at any time without penalty. It is possible, however, that you will still need to pay 1% interest on funds between the date of disbursement and the date of repayment. Further, the SBA has created a safe harbor for those borrowers who have since determined that the economic uncertainty does not necessitate receipt of the PPP loans or otherwise upon further reflection any such borrowers believe they are no longer eligible recipients. Any borrower who repays their PPP loan on or before May 18, 2020, will be deemed to have made all certifications in good faith. See also FAQ 19 and 20 below.

**17. Q: Will the SBA review individual loan files? (Updated May 19, 2020)**

**A:** Yes. In the Question 31 of the SBA and U.S. Department of the Treasury's [FAQ](#), the SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Additional guidance implementing this procedure will be forthcoming. The outcome of SBA's review of loan files will not affect SBA's guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the Paycheck Protection Program Rule (April 2, 2020). It should be noted that the PPP Loan Forgiveness Application requires the borrower to disclose if borrower, together with its affiliates, received in excess of \$2 Million. This may expose borrower to a review even if borrower received less than \$2 Million.

**18. Q: Will my loan forgiveness amount still be reduced if my employees refuse to return? (Updated June 5, 2020)**

**A:** Not necessarily. If you have recalled an employee in writing to return to work at the same wage and hours, and you have done so in writing, their refusal to return will not be included in forgiveness reduction calculations. It is important that you make your offer to return in writing and document the employee's refusal. Certain additional exemptions were added by the Paycheck Protection Program Flexibility Act of 2020. (See FAQ #27 below.)

**19. Q: How will the SBA determine if I certified the necessity of my loan application in good faith in light of recent guidance regarding the ability to access other liquidity? (Added May 14, 2020)**

**A:** The SBA has issued guidance that it will deem all recipients of \$2 million or less in PPP funds to have made their certification of need in good faith. All borrowers with loans greater than \$2 million that have not returned funds prior to the expiration of the safe harbor period, will be audited and are subject to a review of this certification. You may still have a valid basis for the borrowing of PPP funds. All borrowers, especially those receiving more than \$2 million in PPP funds, are strongly encouraged to document their analysis and need for PPP funds as quickly as possible and preferably prior to May 18. Documentation could include:

- (i) Document the economic uncertainty that makes the loan necessary (at time of application and again at time of receipt of funds).
  - a. Financial modeling and budget projections
  - b. Analysis of contract modifications, lost opportunities, decreased productivity, aging accounts receivables, slow-pays, fixed and variable costs.
  - c. Analysis of how, but for the PPP loan, borrower would be required to lay off, furlough or otherwise reduce employment or substantial wage reductions.
  - d. Internal emails, minutes of meetings, resolutions, etc. of the empowered decision-makers at the highest possible level.
  - e. Reauthorization of loan and determination to keep the PPP funds
  
- (ii) Identify alternative sources of liquidity and whether accessing such liquidity would be significantly detrimental to the business.
  - a. Alternative Sources of Capital
    - i. Review cash on hand
    - ii. Identify available lines of credit or other debt facilities
    - iii. Determine whether you are able to make forced capital calls
  - b. Would use of such liquidity be significantly detrimental to the business?
    - i. Determine whether use of available liquidity is at a cost to borrower (unable to continue business model, committed obligations, etc.)
    - ii. Would accessing debt in light of financial projections result in violation of loan covenants?
    - iii. What restrictions exist regarding use of existing sources of funds?
    - iv. Ability to repay draws on debt facilities given financial projections

- v. Are sources sufficient to fund eight weeks of payroll and other operating expenses?

It is advisable to perform such analysis prospectively rather than retrospectively (i.e. at the time of forgiveness application).

**20. Q: What if the SBA determines that I made the certification of need in bad faith, or otherwise determines that I did not need the PPP funds, after safe harbor period? (Added May 13, 2020)**

**A:** The SBA advises that, in the event it determines that a borrower lacked an adequate basis for its certification of need, it will seek repayment of the PPP loan balance and will advise the lender that borrower is not eligible for loan forgiveness. If the borrower repays the funds upon SBA determination, the SBA advises it will not pursue administrative enforcement or referrals to other agencies. We note that the SBA does not advise if repayment of the funds would include accrued interest or expenses related to the review and determination.

**21. Q: May my partnership increase the PPP loan amount to include compensation for partners? (Added May 14, 2020)**

**A:** Yes. The SBA issued an Interim Final Rule on May 13 that permits partnerships to modify their loan amount, even if they have already received their loan funds. However, if your lender has submitted SBA Form 1502 to the SBA reporting your loan, you may not qualify for such increase. You should contact your lender directly to determine whether you qualify for the increase and to have your lender submit the request to the SBA.

**22. Q: I submitted my application before May 5, 2019 and did not include employee counts for my foreign affiliates. Am I now disqualified from the PPP loans? (Added May 19, 2020)**

**A:** No. Generally, a borrower must include all affiliate employees, including those of foreign affiliates, when determining if it satisfies the limitation on number of employees (500 or fewer). However, in an Interim Final Rule issued by the SBA on May 18, 2020, the SBA acknowledged confusion in its guidance. The SBA advises it will not find any borrower that applied for a PPP loan *prior to May 5, 2020* and who has foreign affiliate employees that were not included in the employee count provided in the borrower's application to be ineligible based on the borrower's exclusion of non-U.S. employees from the headcount so long as the borrower has fewer than 500 employees whose principal place of residence is in the United States and satisfies all other eligibility

requirements. You may not use PPP loan funds to support non-U.S. workers or operations.

**23. Q: I received my PPP loan funds, but my payroll periods do not align with my Use Period. May I request an extension of the Use Period? (Updated June 5, 2020)**

**A:** Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 56-day period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (“Alternative Payroll Covered Period”). Borrowers adopt the Alternative Payroll Covered Period in the Loan Forgiveness Application and do not need to make a separate request to their lender or the SBA. It is important to note that the Paycheck Protection Program Flexibility Act of 2020 addressed this concern by extending the Use Period to 24 weeks (but not later than December 31, 2020). We anticipate additional guidance on whether the Alternative Payroll Covered Period will remain.

**24. Q: How do I request forgiveness of my PPP loan funds? (Added May 19, 2020)**

**A:** Borrowers must submit SBA Form 2508 (or lender’s version of the same). The application consists of (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) PPP Schedule A Worksheet; and (4) optional PPP Borrower Demographic Information Form (the “Forgiveness Application”).

**25. Q: What additional information do I need to submit with my Forgiveness Application? (Added May 19, 2020)**

**A:** See FAQ #14.

**26. Q: If I pay payroll or non-payroll expenses after the end of the Covered Period but incurred during the Covered Period, are such payments eligible for forgiveness? (Added May 19, 2020)**

**A:** Eligible payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction. Eligible payroll costs are 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. However, the payroll cost must be incurred during the Covered Period or Alternative Payroll Covered Period to be eligible for forgiveness. Eligible nonpayroll costs 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. Forgiven nonpayroll costs may not exceed 25% of the total forgiveness amount.

**27. Q: *Will I be penalized if I am not able to rehire all of my employees by December 31 due to government requirements or because of a loss of business activity? (Added May 19, 2020)***

**A:** No. If you are able to document that you aren't able to rehire those who were employees on February 15, 2020 (or unable to hire replacement employees with similar qualifications), or you are unable to restore employment to February 15 levels due to a loss of business activity due to compliance with requirements or guidance established by HHS, CDC or OSHA, you may not be penalized in forgiveness calculations.