

PPP Update

December 2020



Guidance included in this webinar is subject to change based on further rulings or guidance issued by the U.S. Treasury, the Small Business Administration and other U.S. Government Agencies.

Today's Presenter



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Agenda

- ▶ Program Statistics
- ▶ Timeline from Program Inception
- ▶ IFR & Other Updates
- ▶ Process Overview
- ▶ Key Dates for Measurement Periods
- ▶ Key Concepts
- ▶ Questions



PPP Forgiveness Program Statistics

PPP Statistics

- ▶ As of August 8, 2020
 - » \$659B authorized
 - » \$525B released
 - » 5,460 lenders
 - » 5.212M loans
 - » Overall average loan size is \$101K



PPP Statistics, cont'd.



▶ As of August 8, 2020

» Top sectors:

- Health care & social assistance (12.9%)
- Professional, scientific & technical services (12.7%)
- Construction (12.4%)
- Manufacturing (10.3%)
- Accommodation & food services (8.1%)
- Retail trade (7.7%)

PPP Comments



- ▶ Program closed on August 8, 2020
- ▶ Rules are relatively stable since June 24, with clarifications via IFRs
- ▶ Forgiveness calculations remain very complicated: 25-30 metrics (per employee) + ~8 logic tests
- ▶ SBA now has three forgiveness forms (3805, 3805EZ and 3805S)

PPP Forgiveness

Timeline from Program Inception

Timeline from Inception

- ▶ March 27, 2020 – CARES Act signed into law
- ▶ April 2, 2020 – PPP Loan Application
- ▶ April 24, 2020 – PPP and Healthcare Enhancement Act authorizes additional PPP funding
- ▶ May 15, 2020 – Forgiveness Application
- ▶ May 22, 2020 – Interim Final Rule (“IFR”) on Forgiveness
- ▶ June 5, 2020 - Paycheck Protection Program (PPP) Flexibility Act signed into law



Timeline from Inception, cont'd.

- ▶ June 11, 2020 – Revised PPP Loan Application
- ▶ June 16, 2020 – Revised Forgiveness Application
- ▶ June 17, 2020 – revised earlier IFR (April 14, 2020) related to individuals with self-employment income
- ▶ June 22, 2020 – SBA issues IFR on revisions to loan forgiveness & Loan review procedures
- ▶ June 26, 2020 – IFR on revisions to loan forgiveness & loan review procedures



Timeline from Inception, cont'd.

- ▶ July 4, 2020 – Law S.4116 reauthorized PPP lending through 8/8/2020
- ▶ August 4, 2020 – SBA issues FAQs
- ▶ August 11, 2020 – SBA and U.S. Treasury issue FAQs (revised October 7, 2020)
- ▶ August 26, 2020 – SBA issues IFR on Treatment of Owners and Forgiveness of Certain Nonpayroll Costs
- ▶ October 8, 2020 – IFR on loan forgiveness & review procedures, including new Form 3805S



PPP Forgiveness IFR Updates

- ▶ Addresses ownership percentage that triggers applicability of owner compensation rules for forgiveness purposes
- ▶ Also addresses limitation on eligibility of certain nonpayroll costs for forgiveness

IFR Update: August 26, 2020, cont'd.



- ▶ Initially, all owners' compensation was capped, regardless of percentage of ownership (\$20,833 for a 24-week covered period or \$15,385 for an 8-week covered period)
- ▶ This IFR exempts C-corp or S-corp employees with a less than 5% ownership stake
- ▶ Intended to cover owner-employees with no meaningful ability to influence decisions over allocation of loan proceeds

IFR Update: August 26, 2020, cont'd.



- ▶ Nonpayroll expense limitation: amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrowers are not eligible for forgiveness
- ▶ Neither are household expenses for home-based businesses
- ▶ Rent payments to a related 3rd-party are only eligible up to the amount of mortgage interest owed on the property during the Covered Period that's attributable to the space being rented. Lease/mortgage had to be entered into before Feb 15, 2020.

IFR Update: October 8, 2020



- ▶ Simplifies forgiveness and loan review procedures for PPP loans of \$50K or less
- ▶ SBA issued new Form 3508S for loans of \$50K or less (unless affiliation rules cause total loans of \$2MM or greater)
- ▶ For all PPP loans, simplifies lender responsibilities regarding review of borrower documentation of eligible costs for forgiveness in excess of the borrower's PPP loan amount

IFR Update: October 8, 2020, cont'd.



- ▶ Borrowers eligible for Form 3508S are exempt for reduction in loan forgiveness based on [1] reduction in FTEs or [2] reductions in salary or wages
- ▶ Rationale: SBA estimates that there are 3.57MM loans of \$50K or less, totaling ~\$62B of the \$525B in total PPP loans
- ▶ 1.71MM loans made to business reporting no employees (not counting the owner)
- ▶ ~9% of outstanding loans made to businesses with 1 EE other than owner

IFR Update: October 8, 2020, cont'd.



- ▶ Changes to Loan Review Rules covers three areas:
 - » Introduction of new Form 3805S
 - » Loan Forgiveness Process for Lenders: confirm receipt of certifications and documentation. Places burden of correctly calculating the forgiveness amount and providing required documentation squarely on the borrower.
 - » Only requires documentation of eligible costs up to the amount required to reach forgiveness of the loan amount.

Form 3509

- ▶ SBA release two new standard form questionnaires (Form 3509 and Form 3510) relating to loan necessity for certain loan recipients:
 - » Over \$2MM (entity plus affiliates)
 - » The questions ask about borrower's circumstances *at the time it applied* for its PPP loan and afterward

Form 3509, cont'd.



- ▶ Some key questions relating to how PPP funds may have been spent:
 - » Approximate additional cash outlays resulting from government-ordered or voluntary changes to operations due to COVID-19;
 - » Whether borrower paid dividends or other capital distributions (other than for pass-through estimated tax payments) to its owners;
 - » Whether borrower prepaid any outstanding debt;
 - » Whether any of the borrower's employees were compensated in excess of \$250,000 on an annualized basis.

Form 3509, cont'd.



- ▶ Also questions regarding ownership:
 - » Borrower must represent whether they or their parent companies are publicly-traded
 - » Also represent whether any publicly traded company or private equity firm, venture capital firm or hedge fund owns 20% or more of any class of their securities.

Forgiveness Application - 3508EZ

▶ Applies if:


- ↳ Self employed, independent contractor with no employees
- ↳ No more than 25% reduction in salary or hourly wage or headcount from January 1, 2020 through Covered Period – Rehire exception
- ↳ No more than 25% reduction in salary or hourly wage and unable to operate at same level of business **during the Covered Period.**

▶ Payroll costs + qualified nonpayroll expenses

▶ Test for Payroll cost 60% requirement



Forgiveness Application - 3508

- ▶ Application has been modified to comply with new rules
 - ▶ PPP Loan Interest
 - ▶ Safe harbors extend to earlier of:
 - » December 31, 2020 or
 - » Forgiveness Application Date
 - ▶ When to apply?
 - » Are you ready?
 - » After December 31, 2020?
 - » Borrowers with 8 week covered period?
- 


PPP Forgiveness Process Overview

Process Overview (Form 3508-Loan Forgiveness Cover Page)


- ▶ Determine payroll and nonpayroll costs
- ▶ Make adjustments for FTE and salary/hourly wage reductions
- ▶ Determine potential forgiveness amounts
- ▶ Test for 60% payroll requirement
- ▶ Subtract any EIDL emergency grant amounts to get to net loan forgiveness amounts



Process Overview (Form 3508, Schedule A)

- ▶ Table 1 (EE's < \$100K) calculations
 - ↳ Cash compensation
 - ↳ Capped depending on length of covered period
 - ▶ Table 2 (EE's > \$100K) calculations
 - ↳ Cash compensation
 - ↳ Average FTE test
 - ▶ Questions on reductions in employees or average paid hours
 - ▶ FTE reduction calculation
- 

Process Overview (Form 3508, Schedule A, cont'd.)

- ▶ Owner Compensation
 - ↳ 5% or greater
 - ↳ Average FTE test
 - ↳ Determine salary/hourly wage reduction (if any)
 - ▶ Table 2 (EE's > \$100K) calculations
 - ↳ Cash compensation
 - ↳ Average FTE test
 - ▶ Non-cash compensation
 - ↳ EE contributions for health insurance, retirement, SUTA
- 

PPP Forgiveness

Key Dates for Measurement Periods

Key Dates

► **Loan Disbursement Date**

- » Beginning of Covered Period
- » Alternate Covered Period: next regular pay period after loan disbursement

► **February 15, 2019 – June 30, 2019**

- » Measurement period for FTE Reduction, Option 1 (lookback period)

► **January 1, 2020 – February 29, 2020**

- » Measurement period for FTE Reduction, Option 2 (lookback period)

► **May 1, 2019 – September 15, 2019**

- » Alternative measurement period for FTE Reduction, Seasonal Employers (any consecutive 12-week period)

► **February 15, 2020**

- » “In-service date” for covered lease agreements, debt, mortgage obligations and utilities
- » Measurement date for FTE Reduction Safe Harbor
- » Measurement date for Salary/Hourly Wage Reduction Safe Harbor
- » Measurement date for Exemption based on Employee Availability



Key Dates

- ▶ **February 15, 2020 – April 26, 2020**

- » Comparative period for FTE Reduction Safe Harbor
- » Comparative period for Salary/Hourly Wage Reduction Safe Harbor

- ▶ **January 1, 2020 – March 31, 2020**

- » Measurement period for Salary/Hourly Wage Reduction

- ▶ **Forgiveness Application Date or December 31, 2020**

- » Safe Harbor date for FTE Reduction and Salary/Hourly Wages Reduction
- » Safe Harbor date for Exemption based on Employee Availability



PPP Forgiveness Key Concepts

Covered Period

- ▶ Begins on the date the lender makes the first disbursement of a PPP loan to the borrower
- ▶ Term
 - » 8 weeks - Original
 - » 24 weeks - Revised
- ▶ Alternate: Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 24-week or 8-week (56-day) period) beginning on first day of first pay period following PPP Loan Disbursement Date.
- ▶ Ending period extended from June 30, 2020 to December 31, 2020

NOTE: Existing borrowers as of June 4, 2020 may use 8 weeks or 24 weeks.

Incurred or Paid – Non-payroll

Non-payroll costs include:

- ▶ Interest on covered mortgage obligations on real or personal property
- ▶ Covered rent obligations for real or personal property
- ▶ Covered utility payments for a service for the distribution of electricity, gas, water, transportation, telephone or internet access
- ▶ Prepayments are not allowed unless they will be incurred during the covered period
- ▶ Forgiven expenses likely not deductible on tax return

“Covered” includes all agreements or services in place prior to February 15, 2020.

Table 1 versus Table 2

- ▶ Select the 2019 pay period with the highest compensation (including bonuses and commissions)
- ▶ Annualize the result
- ▶ <\$100K on Table 1; >\$100K on Table 2
- ▶ Reminder: 5%+ owners go on their own separate table
- ▶ Cash compensation is capped based on length of (alternate) covered period

Incurred or Paid – Payroll



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.



For employees, cash compensation is limited to \$100,000 prorated for the Covered Period

\$15,385 – Eight Week Covered Period.

\$46,154 - 24 Week Covered Period



For any owner-employee or self-employed individual/general partner, cash compensation is limited to the lesser of:
\$100,000 annualized or similar period from 2019. Also, limited to \$20,833 for 24 week covered period.

Incurred or Paid – Payroll (cont.)



Cash compensation includes:

- » Gross salary, gross wages, gross tips, gross commissions, bonuses and hazard pay
- » Paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act)
- » Allowances for dismissal or separation



Other payroll costs include:

- » Employee health insurance
- » Employee retirement plans
- » State and local taxes on wages

Loan Forgiveness Reductions

Forgiveness amount is reduced if:

- ▶ Borrower reduces average annual salary or hourly wages for **any** employee by more than 25 percent

Then...

- ▶ Borrower reduces average FTEE during Covered Period or APCP as compared to elected Measurement Period
- ▶ The following slides describe the tests used to determine possible forgiveness reductions

Tests on Table 1

- ▶ Step 1 involves a comparison of compensation for the (Alt.) Covered Period versus that of Q1-2020 (looking for reduction of more than 25%)
- ▶ If Step 1 is failed, Step 2 involves a comparison of compensation as of 2/15/20 versus average compensation from 2/15/20 to 4/26/20. If average is larger, goto box 3; otherwise perform another test using the earlier of 12/31/20 or the date of the forgiveness application
- ▶ Step 3 (3a and 3b) involves calculating the salary/hourly wage reduction. NOTE: only take into account decreases in salaries or wages. Don't consider other forms of compensation.
- ▶ Step 3c involves converting that reduction to the length of the covered period using the lower of average weekly hours in Q120 versus during the covered period.

Tests on Table 2 and Owners' Comp

- ▶ Table 2: just a salary cap based on covered period length
- ▶ Owners' comp: capped at 2.5 months of 2019 compensation or \$20,833
- ▶ However, lots of wrinkles to consider

Full Time Equivalent Employee (FTEE)

- ▶ FTEE is based on a **40 hour** work week
- ▶ For each employee, take the **average number of hours paid per week** during the Covered Period (or APCP); **divide by 40**, and round to the nearest tenth
- ▶ The maximum for each employee is capped at **1.0**
- ▶ A **simplified method** of 1.0 for employees that work at least 40 hours or more and 0.5 for all other employees is available at the election of the Borrower



Note: Calculation is weekly vs. pay period



FTEE Example

Employee	Hours	Standard Method	Simplified Method
A	50	1.0	1.0
B	40	1.0	1.0
C	10	0.3	0.5
D	30	0.8	0.5
E	25	0.6	0.5
F	10	0.3	0.5
G	25	0.6	0.5
H	38	1.0	0.5
Total	228	5.6	5.0

FTEE Analysis/Tests

- ▶ Calculate Average FTE from 2/15/20 to 4/26/20
- ▶ Calculate FTE inclusive of 2/15/20
- ▶ Calculate FTE at earlier of 12/31/20 or date of forgiveness application
- ▶ Calculate FTE during (alt.) Covered Period
 - ↳ These are used on the Table 1 FTE tests


FTEE Analysis/Tests, cont'd.

- ▶ Calculate FTE during two lookback periods:
 - ↳ 2019: 2/15 to 6/30
 - ↳ 2020: 1/1 to 2/29
 - ↳ Seasonal: either of above periods or consecutive twelve-week period between May 1, 2019 and September 15, 2019
- ▶ Pick the minimum lookback period.
- ▶ The ratio of the (Alt.) Covered Period to the minimum (above) is the FTE Reduction quotient that goes on Schedule A

Average is determined weekly. Borrower needs to do FTEE calculation for each week of the covered period.

Reductions & Safe Harbors Additional Comments

SBA IFR Forgiveness

- ▶ SBA clarified that borrowers are not doubly penalized for the salary/wage reduction and FTE reduction
 - ▶ The salary/wage reduction applies only to the portion of the decline in employee salary and wages that is not attributable to the FTE reduction
- 

Salary / Wage Reduction Safe Harbor

Borrowers will be
exempt from
**Salary/Hourly
Wage Reductions**
to eligible
forgiveness if the
borrower:

- ▶ Reduces average annual salary or hourly wages for any employee between February 15, 2020 and April 26, 2020

and

- ▶ Restores average annual salary or hourly wages for the employee to February 15, 2020 levels **by the earlier of December 31, 2020 or Application Date**



FTEE Reduction - Exceptions

▶ FTEE Reduction Exceptions (Hiring):

- » During the Covered Period or APCP:
 - Fired for cause,
 - Voluntarily resigned
 - Voluntarily requested and received a reduction of hours
 - Good-faith, **written** offer to re-hire was rejected
- » Only if position was not filled by new employee
 - Enter into Table 1 of Schedule A Worksheet
 - Restore employee to pre-reduction FTEE

FTEE Reduction - Exemption Based on Employee Availability

▶ FTEE Reduction Exemption (Hiring):

- » During the Period from February 15 to December 31, 2020, borrower must, in good faith, show:
 - An inability to rehire individuals who were employees on February 15, 2020; **and**
 - An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.

► Example:

[illegible]

FTEE Reduction Safe Harbor

The borrower is exempt from the reduction in loan forgiveness based on FTEE if both of the following conditions are met: (1) the borrower reduced its FTEE levels in the period beginning **February 15, 2020 and ending April 26, 2020**; and (2) the borrower then restored its FTEE levels **by the earlier of December 31, 2020 or Application date** to its FTEE levels in the borrower's **pay period that included February 15, 2020**.

FTEE Reduction - Exemption Based on Government Mandate

► FTEE Reduction Exemption (Government):

- » Borrower is able to document an inability to operate at the same level of business activity **during the Covered Period** as such business was operating at before **February 15, 2020**, due to compliance with requirements established or guidance issued 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 during the period beginning on March 1, 2020, and ending December 31, 2020, related to the **maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.**

Most borrowers will be able to benefit!

FTEE Reduction - Exemption Based on Government Mandate (cont'd.)

- ▶ How can the borrower plan for this relief?
- ▶ How is business activity measured?
 - ↳ Sales?
 - ↳ EBITDA (cash flow)?
 - ↳ Customer interactions?
 - ↳ Customer closures or reduction in purchases?

FTEE Reduction - Exemption Based on Government Mandate (cont'd.)

- ▶ Exception doesn't include a reduction in business activity due to COVID-19 but unrelated to maintenance of standards for sanitation, social distancing or any worker or customer safety requirement.
 - ↳ How to segregate reduction in business activity from one cause versus another?
 - ↳ How account for reduction in business activity due to compliance with suppliers' or customers' compliance efforts?

FTEE Reduction - Exemption Based on Government Mandate (cont'd.)

- ▶ June 24, 2020 IFR may provide guidance:
- ▶ “Borrowers than can certify that they have documented in good faith that their reduction in business activity during the covered period stems **directly or indirectly** from compliance from such COVID Requirements are exempt from any reduction in their forgiveness amounts stemming from a reduction in FTE employees during the covered period.”
- ▶ Documentation includes the COVID Requirements or Guidance and “relevant” borrower financial records.
- ▶ The SBA Administrator & Treasury Secretary are attempting to interpret the exemption to include both direct and indirect compliance because “a significant amount of the reduction in business activity ... is the result of state and local shutdown orders that are based in part on guidance from the three federal agencies.”

Polling Question

Are you ready to file your forgiveness application?

- Understand all the required calculations?
- Know what documentation and certifications to provide?

Forgiveness Timeline

August 8, 2020 – last day for approval of PPP loans

+ 24 weeks – Covered Period

+ 10 months – to apply for forgiveness

+ 60 days – lender review and approval

+ 90 days – SBA review and approval

~ March 2022!

+ 6 years – document retention period!



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Questions?



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