

Saville's Guide to PPP Loan Forgiveness

Updated as of April 22nd, 2020

As a PPP applicant, you've likely been overwhelmed by the ever-changing rules and deluge of instruction over this past month. But, now that you've successfully navigated the application process and secured funding, we'd like to say thank you for doing your part to support your communities. We've prepared a guide to help you understand how these funds can be used and what to expect when it comes time to apply for forgiveness.

Guidance is being released almost daily by the Small Business Administration (SBA) and U.S. Treasury, but many unresolved issues remain. If guidance is unclear or lacking, you will see **⚠ Caution ⚠** at the start of the paragraph with feedback from Saville on how to proceed safely until further guidance is available. Helpful tips are marked with **! Remember !** next to the text.

Eligible Expenses for Loan Forgiveness

- **Payroll Costs: Cash Compensation** – wage/salary, cash tips, and vacation up to a maximum of \$15,385 per employee for the covered period (\$100,000 annual salary prorated for 8 weeks).
 - Generally, this is the employee's gross pay found on payroll reports.
 - State taxes imposed on employee payroll that are paid by the employer are included as a payroll cost.
 - For partnerships, the self-employment income of "active general partners" may be claimed by a partnership as a payroll cost, up to the \$15,385 limit.
 - Employers may give tipped workers a temporarily higher pay rate to make up for lost tips, up to the \$15,385 limit for the covered period.
 - **! Remember !** At least 75% of PPP loan proceeds must be used for payroll costs. See below.
- **Payroll Costs: Healthcare Benefits** – payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums.
 - **⚠ Caution ⚠** Guidance is not clear about how to calculate the forgiveness amount of healthcare benefits. Conservatively, we are recommending to use your annual health plan expense for all employees, divided by 52 and multiplied by 8 to pro-rate for the covered period.
 - Includes costs for the continuation of group health care benefits during periods of paid sick, medical, or family leave, as well as insurance premiums.
 - We recommend paying this 8-week portion of health plan costs with PPP loan proceeds during the 8-week forgiveness period to ensure qualification.
- **Payroll Costs: Retirement Contributions** – employer contributions to defined-benefit or defined-contribution retirement plans.
 - **⚠ Caution ⚠** Guidance is not clear about how to calculate the forgiveness amount of retirement contributions. Conservatively, we are recommending to use your annual expected 2020 retirement contribution for all employees, divided by 52 and multiplied by 8 to pro-rate for the covered period.
 - We recommend funding this 8-week portion of prorated contribution with PPP loan proceeds during the 8-week forgiveness period to ensure qualification.

- ***Non-Payroll: Rent** – payments of rent for leases on real estate, equipment, and cars/trucks beginning prior to February 15th, 2020.
 - Does not include rent prepayments.
- ***Non-Payroll: Utilities** – payments for electricity, gas, water, transportation, telephone, or internet service contracts entered into prior to February 15th, 2020.
 - **Δ Caution Δ** Some guidance released by SBA appears to allow gas used to drive a business vehicle to be included as an eligible utility expense. However, it is not clear whether this is supported by the legislation itself. Exercise caution if using business vehicle gas expense for forgiveness.
- ***Non-Payroll: Mortgage Interest** – payments of interest on mortgage payments for obligations entered into prior to February 15th, 2020.
 - Does not include mortgage prepayments or principal payments.
 - **Δ Caution Δ** There is some debate whether non-mortgage interest can be paid and subsequently forgiven. Recent guidance indicates that you may pay nonmortgage interest using PPP Loan Proceeds, but the same guidance only promises forgiveness for mortgage interest paid. We recommend a conservative approach, paying only mortgage interest with loan proceeds.
 - **Δ Caution Δ** Some recent guidance includes auto loan interest as eligible use of proceeds, but be cautious using PPP Loans for car payments. Guidance does not specify that forgiveness is allowed for these payments.

***! Remember !** No more than 25% of PPP loan proceeds may be used for rent, utilities, or mortgage interest to qualify for full forgiveness

Forgiveness Calculation/Considerations

Now that we've established the expenses generally eligible for forgiveness, it's important to understand the considerations that will affect the calculation of your PPP Loan forgiveness.

Generally, how is forgiveness calculated?

- Forgiven amount = Sum of eligible payroll costs (at least 75% of total) + eligible rent, utility, and mortgage interest payments (not more than 25% of total) incurred and paid during the 8-week period, reduced by the FTE employee reduction and salary reduction described below.
- **! Remember !** Payroll costs = cash compensation (maximum \$15,385 per employee) + healthcare benefits + retirement contributions
- If you would like help with calculating your forgiveness amount, please consult your Saville advisor.

How is the full-time equivalent (FTE) loan forgiveness reduction calculated?

- To determine your FTE reduction, compare your average monthly FTE employees for the months included in the 8-week PPP Loan disbursement period to your average monthly FTE employees during the periods February 15th - June 30th, 2019 or January 1st - February 29th, 2020 (whichever results in a smaller reduction).
- Note: Seasonal employers must use the February 25th - June 30th, 2019 comparison period.

- If you employ fewer FTE employees during the 8-week period following the funding of your PPP loan as compared to your comparison period, your forgiveness will be reduced proportionally.
- For example, let's say that last year a business employed an average of 10 FTE Employees. During the 8 weeks after they secured a PPP Loan, they employed an average of 9 FTE employees. The available forgiveness for this business will be reduced by 10% (1 fewer FTE Employees during the PPP covered period out of 10 FTE Employees in the comparison period).

How is my number of full-time equivalent (FTE) employees calculated?

- **Δ Caution Δ** The current guidance does not detail the method used to calculate an employer's number of FTE employees. We recommend calculating in a reasonable and conservative manner.
- Average FTE employees are determined based on the number of FTE employees on each pay period during a month.

What happens if my business reduces, or has already reduced, its number of FTE employees in the eight weeks following the funding of my PPP Loan?

- Your forgiveness will be limited. See calculation example above.
- **! Remember !** This reduction can be prevented by re-hiring employees. This means that, in terms of forgiveness, it may be most advantageous to pay employees not to work, if you do not have work for them to do right now. It may also mean rehiring previously furloughed and laid off workers to guarantee that forgiveness will be available in the following months.
- **Δ Caution Δ** The statutory language for this cure for reduction is confusing and inconsistent with the language regarding the reduction calculation itself. Guidance is needed from SBA to determine how employers should act to obtain the reduction cure. Currently, the statutory language is that a reduction of employees that occurs between February 15th, 2020 and April 26th, 2020 will not affect loan forgiveness if the reduction in employees is eliminated by June 30th, 2020. This is not the same calculation as the calculation of reduction. We do not have further guidance to clarify this yet.

How is the reduction relating to salary and wages calculated?

- Reduction of an individual employee's salary or wages in excess of 25%, as compared to the most recent full quarter that the employee was employed prior to PPP Loan funding, will result in a reduction of PPP Loan Forgiveness. For most PPP recipients, this means comparing wages paid to employees during the 4th quarter of 2019 to the 8-week period following the funding of their loan.
- The reduction amount appears to be equal, dollar-for-dollar, to the amount of salary reduction in excess of 25%. Whether this is based on a pay rate or total amount paid during the 8-week period is unclear.
- **Δ Caution Δ** More guidance is needed to properly calculate the reduction. Our interpretation is that the pay rate per pay period should be compared to determine if a reduction should be applied, but this point will likely be clarified in the coming weeks and may be interpreted differently.

- Employees who made more than \$100,000 annualized at any point during 2019 appear to be excluded from this rule. So, a salary reduction in excess of 25% for such employees does not appear to affect PPP Loan forgiveness.

What if I already decreased wages/salaries or laid off employees?

- Employers who experienced a reduction in FTE employees during the period February 15, 2020 through April 26, 2020 as compared to February 15th, 2020 have until June 30th to rehire employees. If this rehire requirement is met, then the forgiveness reduction can be eliminated.
- Employers who experienced a reduction in salary of any one employee (who earned an annualized salary of less than \$100,000 during 2019) of greater than 25% during the period February 15, 2020 through April 26, 2020 as compared to February 15th, 2020 have until June 30th to eliminate this salary reduction. If this requirement is met, then the forgiveness reduction can be eliminated.
- **Δ Caution Δ** As mentioned above, currently available guidance is not clear on how this will work in practice.

How will an EIDL loan affect the amount of loan forgiveness I will be eligible to receive?

- Please consult your banker and Saville advisor about EIDL loans received prior to April 3rd, 2020 that were refinanced into a PPP loan.

Does the amount eligible for forgiveness include both payments for eligible expenses that are made during the covered period and payments for eligible expenses that are incurred but not yet paid?

- **Δ Caution Δ** The current forgiveness guidance is not clear on this, but for now we recommend assuming forgiveness only includes payments that are made during the covered 8-week period for costs that relate to that 8-week period. In other words, prepayments and post-payments do not appear to be included. This is subject to change as guidance is released.

What happens if my business does not spend 75% of our PPP loan proceeds on payroll?

- The SBA and Treasury have not yet written guidance on how this will affect your loan forgiveness, but in the guidance issued since the CARES Act was signed, they state multiple times that “at least 75 percent of the PPP loan proceeds shall be used for payroll costs.” We believe that this means that a borrower who does not use 75% of the loan proceeds for eligible payroll expenses will not be able to have the difference forgiven.
- For instance, according to our interpretation of the guidance, an employer who receives a \$100,000 loan must spend 75% of that loan (\$75,000) on payroll costs in order to receive the full amount of forgiveness. As such, if that employer only spends 60% of the proceeds (\$60,000) on payroll costs, then they would need to be prepared to pay back the 15% (\$15,000) difference or have it rolled into a two-year loan (see the section below regarding unforgiven loan amounts).
- Because of this, if your payroll expenses for the 8 weeks following the funding of your loan will not equal at least 75% of your proceeds, you may consider contacting your lender to pay back this excess before it accrues interest.

What is the “perfect” scenario where my entire PPP Loan is forgiven?

- Salaries paid are greater than 75% of the loan proceeds.
- Rent, Utilities, and Mortgage Interest paid with loan proceeds are less than 25% of requested forgiveness.
- The business employs the same number of FTE employees as the comparable periods.
- The business ensures that no employees who earned less than \$100,000 annualized in 2019 receive a pay cut. Note that there is still uncertainty about this point, as discussed above.

Fund Disbursement Considerations

As outlined above, there are a number of things that borrowers must keep in mind as they use their PPP loan funds. In order to make this task a little easier, these are a few things you should consider as you begin spending your PPP Funds.

- The eight-week covered period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.
- There is no requirement for employers to have a separate bank account specifically for loan proceeds, however, we recommend setting up a new account for the loan proceeds to simplify the tracking of PPP Loan expenditures.
- To further simplify expense tracking, we also recommend that employers make payments for mortgage interest and mortgage principal separately.
- If expenses are paid using a credit card, make sure to track the eligible loan expenses paid using said credit card and apply a cash payment to the credit card bill before the 8-week covered period is over.
- According to the guidance, applications for forgiveness must be approved or denied by the lender within 60 days of the time that the forgiveness application is received.

What documentation will be required to obtain PPP loan forgiveness?

The CARES Act outlines the documentation required to be submitted to the lender for forgiveness. This includes:

- Payroll Tax Filings reported to the IRS, and State income, payroll, and unemployment insurance filings verifying the number of full-time equivalent employees for the following periods
 - February 15, 2019 – June 30th, 2019 **OR** January 1st, 2020 – February 29th, 2020
 - The eight weeks following funding of the loan

If such documentation cannot be obtained then equivalent payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions) may be used, as long as they are accepted by the lender.

- Cancelled checks, payment receipts, transcripts of accounts, and other documents providing evidence of business rent, business mortgage interest payments on real or personal property, or business utility payments during the covered period if you used loan proceeds for those purposes.
- Certification from an Officer/Owner of the borrower that the documentation is true and correct, and the amount for which forgiveness is requested was used appropriately
- Any other documents the administrator deems necessary

- You should communicate with your lender as early and often as possible to ensure that you can meet their requirements for loan forgiveness.

What are the terms for unforgiven loan amounts?

They must be repaid over 2 years, at an interest rate of 1%. Payments are deferred 6 months from the funding of the loan. Interest will accrue over the 6-month deferment period. Current guidance indicates that interest on the forgiven portion of the loan will also be forgiven.

The CARES and PPP rules are still very fluid. This information is based upon the most recent guidance issued as of writing. To ensure that you are following the most up to date guidance, please contact your Saville Relationship Manager. They will be happy to assist you.

