

**SUMMARY OF INFORMATION PROVIDED IN
THE PPP LOAN APPLICATION AND INSTRUCTIONS**

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I. SUMMARY OF COSTS ELIGIBLE FOR FORGIVENESS

A. Generally

1. Forgivable costs are generally the same as those set forth in the IFR: eligible payroll costs, and eligible NON-payroll costs.
2. Maintains requirement that eligible NON-payroll costs not exceed more than 25% of the amount that is forgiven.
3. For eligible NON-payroll costs (which are limited to (i) payments of interest on mortgage obligations incurred before February 15, 2020, (ii) rent payments on leases dated before February 15, 2020, (iii) and utility payments under service agreements dated before February 15, 2020), the forgivable costs are generally measured based on the eight-week period following the date of the loan origination. These costs cannot exceed 25% of the forgivable amount.
4. For purposes of determining forgivable payroll costs, the instructions allow a borrower to use a period OTHER than the default eight-week (56 day) period that begins on the date of the loan origination. This period is referred to as the “Alternative Payroll Covered Period” as is the eight-week (56 day) period that begins on the first day of the payroll period that begins after the loan origination date.

***NOTE:** There appears to be an error in the “PPP Loan Forgiveness Calculation Form” because where a borrower uses 100% of the loan amount for qualifying payroll costs, line 11 of the Form would appear to only allow 75% of the loan amount to be eligible for forgiveness even though it was entirely used for eligible payroll expenses.*

B. Regarding Eligible Payroll Costs

1. The Instructions state that “[b]orrowers **are generally eligible for the payroll costs PAID and payroll costs INCURRED**” during the eight-week default covered period or Alternative Payroll Covered Period.
2. Payroll costs are considered *paid* on the day the paychecks are distributed or the borrower “originates an ACH credit transaction.”

***NOTE:** This would appear to allow a borrower to count towards forgiveness payroll costs incurred BEFORE the start of the relevant covered period, but paid during the relevant covered period.*

3. Payroll costs are considered *incurred* on the date that the employee’s pay is earned.
4. Payroll costs that are incurred but *not* paid during the borrower’s last pay period of the relevant covered period are eligible for forgiveness *if paid on or before the next regular pay date* – “otherwise, payroll costs must be paid during the covered period.”

***NOTE:** This would appear to allow a borrower to count towards forgiveness payroll costs incurred during the relevant covered period but paid after the close of such covered period if meeting criteria.*

5. For each individual employee, total cash compensation eligible for forgiveness may not exceed an “annual salary of \$100,000, as prorated for the covered period.”

NOTE: *Includes clarifying information on how to apply proration rule for compensation exceeding an annual salary of \$100,000 – states: “do not enter more than \$15,385 in Table 1 or Table 2 for any employee.”*

6. No double counting of incurred and paid payroll; count only once.

C. Regarding Eligible NON-Payroll Costs

1. Capped at no more than 25% of forgivable amount.
2. The instructions state that these costs must be either (1) “paid during the Covered Period” or (2) “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.”

NOTES:

- *As with eligible payroll costs, the instructions would seem to allow borrowers to count towards forgiveness qualifying non-payroll costs that were incurred before the start of the covered period, but paid during the covered period. Additionally, can get credit for incurred amounts paid after the covered period.*
- *These non-payroll costs must be calculated using the DEFAULT eight-week covered period.*

II. SUMMARY OF REDUCTION FACTORS

A. Generally

1. The Loan Application materials include a series of formulas, calculations, definitions, etc., for implementing the two statutory reduction factors that apply in determining a borrower’s maximum forgivable amount.
2. The first reduction factor is referred to in the Loan Application materials as the “Salary/Hourly Wage Reduction” -- which requires that the forgivable amount be reduced to the extent that the borrower reduced an employee’s compensation by more than 25% (excluding compensation in excess of \$100,000).
3. The second reduction factor is referred to in the Loan Application materials as the “FTE Reduction Quotient,” which is derived by dividing the number of full-time equivalent (“FTE”) employees during the relevant covered period by the number of FTE employees during a past reference period. Generally, it looks at whether there has been a reduction in the number of full-time equivalent employees during the relevant covered period when compared to a historical reference period.
4. The Loan Application materials also include a series of reduction exceptions and safe harbors that may be helpful to borrowers, if applicable. These are described below.

NOTE: *Notwithstanding what appears to be a concerted effort to provide clear directions to borrowers and lenders regarding how to calculate the reduction factors, there appear to be a host of errors and/or remaining open questions, as noted in the following discussion. We suspect that additional issues/concerns/questions will be identified as stakeholders continue to work with the materials.*

B. Salary/Hourly Wage Reduction

1. The forgivable amount is subject to reduction if during the Covered Period or the Alternative Payroll Covered Period, the salary or hourly wages of employees listed in Table 1 was reduced by more than

25% during the period from January 1, 2020 to March 31, 2020. Any such employees will reflect a "Salary/Hourly Wage Reduction" amount.

2. However, if the borrower subsequently restores/ed salary/hourly wage levels, the borrower may be eligible for elimination of the "Salary/Hourly Wage Reduction" amount.
3. It appears from the Instructions that if an employee's salary/wages were not reduced more than 25%, their "Salary/Hourly Wage Reduction" is zero.

NOTE: *The application of this rule is somewhat confusing because in one place, it says "Complete the Salary/Hour Wage Reduction column only for employees whose salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of January 1, 2020 through March 31, 2020" but then in the next sentence it says "For each employee listed in Table 1, complete the [formula]" and then suggests that if no reduction in excess of 25%, the Salary/Hourly Wage Reduction is zero....*

4. For employees whose salary/wages were reduced more than 25%, the borrower will have to complete a formula set forth in the Instructions to the Worksheet to determine the amount of the reduction, but a safe harbor can apply if the salary/wages were subsequently increased (which would reset the "Salary/Hourly Wage Reduction" to zero).
5. The safe harbor determination looks at wages/salary as of June 30, 2020, which may be odd in application for borrowers depending on loan origination date as it may not correspond to end of covered period.
6. It appears that if a "Salary/Hourly Wage Reduction" applies for an employee, the total dollar amount of the reduction (i.e., the salary/wages the employee "lost" due to the reduction) over the eight-week period will be subtracted from the forgivable amount.

C. FTE Reduction Quotient

1. As noted above, a borrower's maximum forgivable amount is multiplied by the borrower's "FTE Reduction Quotient."
2. To the extent the FTE Reduction Quotient is less than 1.0, it will result in a reduction in the maximum amount that is eligible for forgiveness.
3. To determine the FTE Reduction Quotient, the borrower must first determine each employee's "Average FTE" status, which is equal to the employee's average "full-time equivalency" during the relevant eight-week period. This is determined by taking the average number of hours "paid per week," during the relevant covered period and dividing by 40 (rounded to the nearest tenth.)

a. Regarding the process/steps for determining an employee's Average FTE status:

- i. The Instructions provide: "[f]or each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth."

NOTE: *It would appear that one must perform the above calculation (i.e., average number of hours paid per week, divide[d] by 40) for each of the eight weeks in the covered period, to get a weekly average, and then sum the weekly averages and divide by eight, in order to arrive at an employee's final Average FTE score.*

- ii. No employee can have an Average FTE score of more than 1.0 FTE because "[t]he maximum for each employee is capped at 1.0." Thus, an employee that works 55 hours per week on average still has an FTE status of only 1.0.

- iii. Treasury has provided for a simplified method which may be used by borrowers, which, “assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours.”
4. The above process must be performed with respect to individuals employed during the relevant covered period to determine the borrower’s “Total Average FTE” (line 12 of Schedule A) and also with respect to individuals employed during the historical reference period to determine the borrower’s “Average FTE during the Borrower’s chosen reference period” (line 11 of Schedule A).
5. To determine the FTE Reduction Quotient, the borrower then divides its “Total Average FTE” by the “Average FTE during the Borrower’s chosen reference period.”
6. Significantly, the borrower may be able to invoke an “FTE Reduction Exception,” which generally will allow the borrower for purposes of determining the Total Average FTE (i.e., the numerator) to take account of certain FTE that otherwise would NOT be available.
 - a. Regarding the FTE Reduction Exception: the borrower can reflect the FTE in Total Average FTE for (1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (2) 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.
7. Additionally, borrowers may take advantage of an “FTE Reduction Safe Harbor,” if applicable. This Safe Harbor is effectively the statutory “re-hire rule” whereby if the borrower restores its employment levels by no later than June 30, there is no reduction; however, there is no requirement to rehire the same individuals – only to restore employment levels by June 30th.
 - a. Per the FTE Safe Harbor, the borrower may be exempt from a necessary FTE reduction factor “if the FTE Reduction Safe Harbor applies.” This safe harbor will apply if: (1) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the Borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower’s pay period that included February 15, 2020.
 - b. The worksheet contains a formula for determining whether the FTE Reduction Safe Harbor applies, that requires the employer to calculate its total average FTE between February 15, 2020 and April 26, 2020, its total FTE as of February 15, 2020, and possibly its total FTE as of June 30, 2020.

NOTES:

- *Significantly, the Safe Harbor does not appear to require that the borrower rehire the same employees, but merely restore FTE levels.*
- *The June 30 date may be odd in application for borrowers depending on loan origination date as it may not correspond to end of covered period.*

III. LOAN FORGIVENESS APPLICATION

A. Generally

1. Appears each application for forgiveness is with respect to each borrower/loan and is not bundled and/or applied on an affiliate basis.
2. There are four components to the loan application (however, only items 1 and 2 need to be submitted):
 1. PPP Loan Forgiveness Calculation Form

2. PPP Schedule A
 3. PPP Schedule A Worksheet (must be retained for 6 years)
 4. PPP Borrower Demographic Information Form (optional for submission)
3. Allows borrower to choose to use either the “covered period” – which is the eight-week (56-day) period from date of PPP loan disbursement **OR** an “Alternative Payroll Covered Period,” which allows borrowers with a biweekly or more frequent payroll period to elect to use the eight-week (56-day) period that begins on the first day of their first pay period following the PPP loan disbursement date.

NOTES:

- *Does NOT appear to allow for use of the Alternative Payroll Covered Period if the borrower’s payroll is monthly or otherwise less frequent than bi-weekly.*
 - *Unclear whether a borrower can use the Alternative Payroll Covered Period with respect to/and if some employees are paid on a qualifying payroll frequency (such as weekly) and others are not (such as monthly).*
 - *Appears to ONLY be allowed for use in calculating forgivable payroll costs; MUST use default covered period for calculating other forgivable expenses, such as business rent or lease and utility payments.*
4. Borrowers who received PPP loans in excess of \$2 million must indicate on the application by checking a box. Applies by adding up all loans disbursed to borrower and affiliates.

NOTE: *The \$2 million audit disclosure incorporates IFR, so look at amount of loan that was disbursed – i.e., cannot avoid audit/notice requirement by repaying portion of \$2+ million loan to get below \$2 million threshold.*

B. Certification/Attestation

1. Borrowers are required to make “representations and certifications” regarding a series of items, including, notably, that the dollar amount for which forgiveness is requested. The certification/attestations include a representation that states: **“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.”**

NOTES:

- *This language could cause concern for PEO client employers to the extent that the tax documents are being submitted by the PEO under the PEO’s EIN (such as regarding Forms W-2 and 941).*
- *In light of this language, the PEO industry may want to seek a clarifying Q&A from Treasury similar to the Q&A that was issued regarding the loan application itself.*

C. Documents that Must Be Submitted with the Application

1. The materials released by Treasury include a page that lists “Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application.”
2. Regarding “Payroll” information for use in completing Schedule A:
 - a. Bank account statements “or third-party payroll service provider reports” documenting the amount of cash compensation paid to employees.

NOTE: *No reference to PEOs, only “third party payroll service provider[s].”*

b. "Tax forms (or equivalent third-party payroll service provider reports)" for the relevant eight-week period," which appears to be an enumerated list of permissible forms/reports by reference to:

- i. "Payroll tax filings reported, or that will be reported to the IRS (typically, Form 941); and"
- ii. "State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state."

NOTE: *Should the industry consider requesting a clarifying Q/A regarding the permissible "[tax] forms"?*

- 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."

NOTE: *No clarifying guidance regarding what amounts so qualify.*

3. Regarding "FTE" information for use in completing Schedule A:

- a. Must provide "[d]ocumentation showing" the average number of FTE employees on payroll for the relevant periods of time.
- b. States that such "[d]ocuments may include payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state."

NOTE: *The list of permitted documents appears to be an exhaustive list. This list would seem less than ideal for PEOs and their client employers because of reliance on payroll tax filings. Should clarifying Q/A guidance be requested?*

- c. Documents submitted may cover periods longer than the specific time period.

4. Regarding "Nonpayroll" information for use in completing Schedule A:

- a. For use in substantiating business mortgage interest payments: copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments were made.
- b. For use in substantiating business rent or lease payments: copy of current lease agreement and receipts of cancelled checks verifying eligible payments were made.
- c. For use in substantiating business utility payments: copy of invoices from February 2020 and those paid during the covered period, and receipts and cancelled checks or account statements verifying eligible payments were made.