

PPP Loan Guidance - FAQs

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These answers are based on government guidance as of May 15, 2020. As additional guidance is being released regularly, it is important to consult with your Prager Metis advisor if you have any questions.

When does my eight-week period begin and end?

There is an 8-week [56-day] Covered Period that is used for purposes of the loan forgiveness period. It begins the day you receive your PPP funding (loan disbursement) and it ends 8 weeks later. There is also an Alternative Payroll Covered Period ("APCP") for borrowers with payroll that is biweekly or more frequent; they may elect to use the 8-week period that begins on the first day of the first payroll period after the PPP loan disbursement date. Borrowers electing this Alternative Payroll Covered Period must pay careful attention to the regular Covered Period as well, since both periods will be used in the calculations for forgiveness. Unless specified otherwise in the application, Covered Period refers to the 8-week period from the date of the loan disbursement.

What can I do with funds that were not used during the eight-week covered period?

These funds may continue to be utilized for allowable expenditures under the PPP. This will essentially be a low interest loan to assist with such costs, but it will not be eligible for forgiveness beyond any amounts now currently eligible if incurred in the 8-week covered period and paid by the next regular payroll or regular billing date following the end of the 8-week covered period.

What is an FTE?

The average Full Time Equivalency for each employee is determined by taking the average number of hours paid per week over the Covered Period (or Alternative Payroll Covered Period), dividing the average by 40 and rounding to the nearest tenth as capped at 1.0. There is a simplified method that may be used at the election of the Borrower whereby each employee with 40 or more hours counts as 1 FTE and each employee who works fewer than 40 hours counts as 0.5 FTE.

Note: Headcount treats full-time, part-time and temporary employees each as 1 for purposes of the count of number of employees – used for employee limits (think 500).

What is the forgiveness based upon?

It is calculated based upon 3 tests — FTEs, 75% of total wages over the most recent quarter, and at least 75% used for payroll costs with no more than 25% on other allowable costs.

Does the FTE count provided in the loan application play a part in the loan forgiveness, which was based upon 2019 annual totals?

Headcount (# of employees) was included to show eligibility. FTE count was not a consideration when *applying* for the PPP loan.

Note: FTE is a factor considered in forgiveness where one of two Base Periods may be selected by the taxpayer. These periods are from February 15, 2019 to June 30, 2019 or from January 1, 2020 to February 29, 2020. Seasonal employers may select either of these two periods, or a consecutive 12-week period between May 1, 2019 and September 15, 2019.

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There is wording in the act about receiving forgiveness, if employees are brought back by June 30th as long as we bring back the proper number of FTE's and then we would receive full forgiveness. How does this work?

Generally, all must be done within the 8-week Covered Period; however, if by June 30, 2020 you restore the FTE needed (i.e., to the FTE employee levels in the Borrower's pay period that included February 15, 2020) and the wages to at least 75% of prior quarter pay (if reduction occurred between February 15, 2020 and April 26, 2020), then the reduction to forgiveness for these two tests will be eliminated. You will need to wait until after June 30 then to apply for forgiveness.

Challenge: Satisfying the 75/25 rule would still require having significant workforce during the 8-week covered period.

Note 1: You do not have to rehire the same employee(s) and you must prepare a schedule of all employees by name, hours worked, and amounts paid. The forgiveness calculation needs to be done on an employee-by-employee basis.

Note 2: If an employee declines a written offer to rehire the employee during the Covered Period or Alternative Payroll Covered period, and rejected the offer to come back for the same salary/wages and # of hours, and refusal is documented; or the employee was fired for cause, voluntarily resigned, or voluntarily requested reduced hours, then there will be no reduction to loan forgiveness for this employee and you are to indicate FTE of (1); however, this is not applicable if the employee's position is refilled- see SBA FAQ#40.

Should employees be brought back as soon as possible, even if the company is not yet operating, or should I wait until closer to the end of the eight weeks?

If you wait until the end of the eight weeks, then you will be unlikely to benefit significantly from the forgiveness, unless restored as per above. However, you will benefit from a low-rate loan to cover payroll costs and other allowable expenses thereafter. Other relief provisions should be considered instead of PPP, such as Employee Retention Credit (saves up to \$5,000/employee) and deferral of employer social security tax (defers up to \$8,537.40/employee).

How do you determine the forgiveness percentage if you don't hit the 75/25 payroll costs/other costs requirement and how do the number of employees factor in?

The 75% for payroll costs is one of the 3 tests that you must meet. The 75/25 test is essentially prorated. The other two tests address the FTEs and gross compensation paid during the Covered Period and these are a prorated reduction and a dollar for dollar reduction, respectively. This includes the net payment that the company paid for health care and retirement benefits where allowed.

Can I give raises or bonuses to staff and have it count against forgiveness?

Pending additional guidance, it seems prudent to assume that only raises and bonuses that are in keeping with the ordinary course of business would be considered for forgiveness. One should document the reason as to why the expenditure is necessary to support your ongoing business operations.

Can payments for all allowable costs be prepaid or accelerated to be included in the forgiveness amount? What about funding a safe harbor match for 2019?

We do not believe that prepaid or accelerated costs will generally be forgiven, especially once the 75/25 rule is applied/calculated. Prepaid mortgage interest is specifically excluded. The instructions to the application specify that payroll costs are generally eligible for forgiveness for payroll costs paid and payroll costs incurred during the 8-week period (or APCP).

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Payroll costs are considered paid on the day that paychecks are distributed, or the Borrower originates an ACH credit transaction. Allowable payroll and non-payroll costs are generally eligible for forgiveness when:

- paid in the covered period, [Note that while the instructions 'may infer' that payroll costs are eligible for forgiveness if incurred prior to the covered period and where they are paid in the covered period – this is not specifically stated in law or clarified in the interim or other guidance available.]
- incurred and paid during the 8-week covered period, and/or
- when incurred in the covered period and paid by the next regular payroll date or regular billing date following the end of the 8-week period

When looking at non-payroll costs, does rent include property taxes? Also, does rent include copier leases, storage and auto rentals?

Property taxes are not included in rent. Business rent obligations include rent under a lease agreement in force as of February 15, 2020. This includes rent for a warehouse where you store business equipment and for the vehicle you use to perform your business.

Note: These expenses must have been deducted on your 2019 Schedule C for those with self-employment income.

What constitutes utilities? In addition to electric, gas, water, does it include telephone, cable, internet, e-fax, etc?

All of the above are included in utilities for which service began before February 15, 2020, with the exception of e-fax service (which is unclear).

Note: These expenses must have been deducted on your 2019 Schedule C for those with self-employment income.

I own a corporation which owns the building our business operates from and I pay myself rent. Will this be included in the rent paid in other costs?

Yes, but SBA may determine that the amount you are paying is not market value and may require a downward adjustment. Documentation for the lease must be submitted, which could include cancelled checks, rental bill, and a copy of the lease.

If I rent an apartment with a lease under my name and use a portion of the apartment as a home office space, can that percentage/amount of rent be eligible for forgiveness?

Yes, provided that the expense is incurred and paid within the 8-week covered period AND you deducted this home office expense on your 2019 Schedule C.

Does the cost of a housing stipend or allowance that is provided to an employee as part of the compensation count towards payroll costs?

Yes. Payroll costs include all cash compensation paid to employees, subject to the \$100,000 annual compensation per employee limitation.

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Can the unforgiven portion of the loan be used to pay down higher interest rate debt?

PPP monies may only be used for debt obligations existing before February 15, 2020 and only towards the interest on the loan (you cannot make prepayments of interest or make payments towards principle from PPP funds).

Note: Only interest paid on covered mortgage obligations is eligible for forgiveness.

If I can borrow money elsewhere can I still apply for a PPP?

Yes; however, if you did not have a need for the money or capital markets were available to you, you were not entitled to PPP. You can return the money under a limited safe harbor by May 18th (extended twice already) and suffer no consequences.

The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of \$100,000. Does that exclusion apply to all employee benefits of monetary value?

No, the exclusion in excess of \$100,000 annually applies only to cash compensation and not to non-cash employee benefits of non-owner-employees, which include the following:

- Employer contributions to defined benefit or defined contribution retirement plans;
- Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- Payment of state and local taxes assessed on compensation of employees (e.g., unemployment).

I presume any 401k matching contributions paid during the 8 weeks would count – correct?

Yes, but only employer payments for non-owner employees.

Can a partner/member who receives a K-1, an independent contractor, or a self-employed individual use PPP funds for their own Healthcare and medical premium benefits?

No. All such individuals are limited to \$100,000 “compensation” as prorated for the 8-week period or (8/52) of 2019 net profit.

Calculation: Salary for an independent contractor or self-employed person making \$100k prorated for 8 weeks would equate to $(\$100,000/52 \times 8) = \$15,845$. Additionally, the same calculation is applicable for salaries and wages of owner-employees, and for general partners (members).

How do I report on the income tax returns the PPP loan amounts forgiven, where I have used the funds for allowable expenses and cannot deduct them?

Unless further guidance is provided to allow deductions for expenses that are related to loan amounts forgiven, then the non-deductible expenses would be reported as M-1 adjustments. request without a business bank account, and some may require that you open a new business bank account with them.

Can I include amounts paid to subcontractors who receive Forms 1099 from me in my calculation of PPP payroll costs or for amounts forgiven?

No, this is not allowed. Independent contractors and self-employed persons must request their own PPP loans.

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Is a business bank account required to obtain a PPP?

A business bank account is not required in the Act. However, many banks will not process your PPP loan request without a business bank account, and some may require that you open a new business bank account with them.

Am I required to keep funds from the PPP in a separate bank account?

While not specifically required in current guidance, keeping a separate bank account may allow you to easily show that your business utilized the PPP funds for allowable expenses. However, for some business owners, a separate bank account may be inconvenient. For instance, if payroll is automatically direct debited and a portion includes an amount that is not allowable for PPP as it exceeds the \$100,000 limitation on employee compensation, as prorated, then the total payroll cannot be paid directly from a separate PPP funded bank account. Additionally, many businesses automatically pay utility, rent and other allowable expenses and would need to change each payment method to the new account, which could prove difficult.

Note: In any case, businesses should set up separate accounts in their books and records to track loan proceeds and expenses paid with PPP funds.

We are here to help you through the loan forgiveness process. For the latest information, or if you have any additional questions, please reach out to your Prager Metis advisor or our Crisis Management team.