

# The Paycheck Protection Program (PPP)-Loan Forgiveness

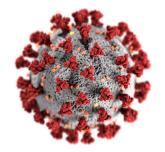
**Empire State Development** 

A Division of Empire State Development

As part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and subsequent amendments, the Paycheck Protection Program (PPP) provided \$659 billion of loan funds to support small businesses and other eligible entities impacted by the COVID-19 pandemic

Eligible expenses include funds to pay workers, interest on mortgage obligations, rent, insurance, paid sick or medical leave, utilities, and payroll related costs incurred from February 15, 2020 – December 31, 2020. Up to a maximum of \$10 million.

Up to twenty-four weeks of eligible expenses during the covered period can be forgiven from the loan principal as long as the employer attempts to maintain previous payroll counts during this emergency.





## PPP Loan Forgiveness – A Disclaimer for Borrowers

- Since the introduction of the Paycheck Protection Program on April 27<sup>th</sup>, 2020 there have been many revisions to the program rules often extending the benefits of the program as the COVID-19 pandemic has progressed.
- At the time of the creation of this document the information contained reflects the current interpretations of program rules and guidelines.
- Prior to filing for forgiveness, it is strongly suggested that you consult your lender and/or other financial advisors to determine the most beneficial course of action for you.
- Future legislation or changes to documentation requirements by the Small Business
   Administration and Treasury Department may alter these requirements and exemptions.



## **PPP Loan Forgiveness – Application Timing**

- A borrower may apply for loan forgiveness any time on or before the maturity date of the loan, including before
  the end of the covered period, if the borrower has used all of the loan proceeds for which they are requesting
  forgiveness (i.e., a borrower can file its loan forgiveness application before the end of the 8-week or 24-week
  period).
- If a borrower does not apply for loan forgiveness within 10 months after the last day of the covered period, the loan is no longer deferred, and the borrower must begin paying principal and interest. However, forgiveness can be requested at any time during the term of the loan, even after repayment has begun.
- You should consider whether you have restored your employee levels and compensation as part of determining when you apply for loan forgiveness.
- In order to receive loan forgiveness, a borrower must complete and submit a loan forgiveness application to their lender. SBA Form 3508, 3508EZ (if applicable), 3508S (if applicable), or lender's equivalent.
- Borrowers should check with their lender to determine whether the lender has their own form.
- The lender has up to 60 days to review the application and issue a decision to SBA, and request payment for the forgiven amount. The SBA then has up to 90 days to review the loan application and remit the appropriate forgiveness amount to the lender.



## **PPP Loan Forgiveness – Uncovered Expenses**

- If the full principal of the PPP loan is forgiven, the borrower is not responsible for the interest accrued in the 8 or 24-week covered period.
- Any remainder of the loan that is not forgiven will convert into 2-year loan at 1% interest for loans made prior to June 5, 2020 or a 5 to 10-year loan at 1% interest for loans made after June 5, 2020 dependent upon the lender's terms.
- Loan **repayments will be deferred** until the final forgiveness amount is calculated and remitted to lender by the Small Business Administration (or in the case of failure to request forgiveness, 10 months after the end of the borrowers covered period).
- Businesses that received SBA EIDL (Economic Injury Disaster Loan) grants will have their total forgiveness reduced by the amount of the grant (up to \$10,000).



## PPP Loan Forgiveness – Choosing 8- or 24-weeks

<u>Borrowers that initiated their loans prior to June 5<sup>th</sup>, 2020</u> have the option of choosing their forgiveness period. At first, having more time to spend your loan proceeds seems to make more sense. However, there are a few advantages and disadvantages of each.

#### Advantages of using an 8-week forgiveness period:

- **Faster forgiveness.** If you're able to qualify for full loan forgiveness after eight weeks, you can have the forgiveness process wrapped up within the current calendar year. Extending your forgiveness period from 8 to 24 weeks could lead to the loan forgiveness process extending into next year. If you apply for other loans or lines of credit during that time, you may have a hard time qualifying while the PPP forgiveness issue is up in the air.
- Easier to meet staffing requirements. One of the conditions for forgiveness is maintaining the number of employees on your payroll. Some small business owners may find it easier to maintain staffing levels for 8 weeks than 24 weeks.
- Take advantage of current rules and interpretations. The rules and guidelines for calculating PPP loan forgiveness are changing quickly and often unpredictably. The regulations in effect at the time of your application apply to your loan. If you qualify for full forgiveness after 8 weeks, you may be better off applying then. If you wait an additional 16 weeks, there's no telling how the guidelines might change and whether you'll still qualify.



### PPP Loan Forgiveness – Choosing 8- or 24- weeks (continued)

#### Advantages of using a 24-week forgiveness period:

- More of the loan can be spent on payroll costs. Under the original 8-week rules, you had to spend 75% of the loan on payroll costs. Under the new rules, that's been reduced to just 60%. Under the prior rules, many had trouble rehiring employees. By giving employers more time to spend their funds on wages, payroll taxes, and benefits, more businesses should be able to have their loans forgiven. Now, many businesses will be able to achieve full forgiveness just using payroll costs alone.
- **More time to plan.** By taking advantage of the extended forgiveness period, business owners have more time to talk to their advisors and strategize ways to achieve maximum loan forgiveness.

Depending on your situation, the shorter or longer term might be more beneficial. Weigh both options and consult your accountant, banker or other business advisors to help you determine the best course of action.

Borrowers that initiated their loans after June 5th, 2020 MUST choose 24- weeks



## PPP Loan Forgiveness – A Quick Overview

The act establishes that the borrower is eligible for loan forgiveness equal to the amount spent on forgivable expenses by the borrower during an 8- to 24-week period after the origination date of the PPP loan or the period until December 31, 2020 whichever is shorter.

To receive any forgiveness, 60% of the loan proceeds MUST be used for payroll related purposes (see next page for exemptions)

#### What can be included in the PPP loan forgiveness amount?

- Actual Payroll costs (salary, wages, etc., EXCLUDES PAYMENTS TO INDEPENDENT CONTRACTORS).
- Covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums).
- Interest payment on a mortgage that originated prior to February 15, 2020.
- Interest payment on a debt that originated prior to February 15, 2020.
- Payment of rent on lease that began prior to February 15, 2020.
- Payment on any utility for which service began before February 15, 2020.\*\*

\*\*For Form 1040 Schedule C firms, utilities must have been claimable in in 2019 to qualify. Amounts forgiven may not exceed the principal amount of the loan and accrued interest. Loan proceeds used for any other purposes will NOT be forgiven. No more than 40% of forgiven amount can be for non-payroll costs for any borrower.



SPECIAL NOTE: If the Borrower has elected an 8-week Covered Period, forgiveness cannot exceed 8 weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual. If a 24-week Covered Period applies, it cannot exceed 2.5 months' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$20,833 per individual.



## PPP Loan Forgiveness – Borrowers of less than \$50,000

Changes to the PPP Forgiveness rules now allow for special dispensation for loans under \$50,000

- Borrowers of less than \$50,000 have been granted an exemption from the employee and payroll reduction rules of the program.
- In addition, borrowers with these loans that used less than 60% of the funds for payroll expenses are now eligible for forgiveness.
- The 40% cap for the amount of forgiveness that is allowed to be used for non-payroll purposes remains in place. No more than 40% of the forgiven amount can be used on those expenses.
- Smaller borrowers may use the streamlined claim process (Form 3508S see "Choosing the Correct Form" for details).

If your loan in less than \$50,000, the information in the Employee Counts and Payroll Reductions section of this document does not apply to your loan.



## PPP Loan Forgiveness – Employee Counts and Pay Rates (loans over \$50,000)

The purpose of the Paycheck Protection Program was to help you retain your employees, at their current base pay.

- If you keep all of your employees and use at least 60% of your loan proceeds on payroll and related expenses, the entirety of the actual forgivable costs may be forgiven.
- If you still lay off employees, the forgiveness *may be reduced* by the percent decrease in the number of employees (there are exemptions).
- If your total payroll expense on workers making less than \$100,000 annually decreases by more than 25%, loan forgiveness may be reduced by the same amount.



### **PPP Loan Forgiveness – Employee Count Calculations**

#### You must maintain the number of employees on your payroll.

Here is the calculation you can use to determine if you've met this requirement:

First, determine the average number of full-time equivalent employees you had for:

- At the end of the 8-week (or 24-week) period following your initial loan disbursement, (A)
- Between February 15, 2019 to June 30, 2019, (B1)
- and January 1, 2020 to February 29, 2020. (B2)

Take **A** and divide that by **B1**. Do the same with **B2**. Take the largest number you obtain. If you're a seasonal employer, you must divide by **B1**.

- If you get a number equal to or larger than 1, you successfully maintained your headcount and meet this requirement.
- If you get a number smaller than 1, you did not maintain your headcount and your forgivable expenses will be reduced proportionately.



## PPP Loan Forgiveness – Reduction Example (Fewer Employees)

**Tasty Kakes Bakery, LLC** had nine full-time employees in 2019. They each made \$3,000 per month before the outbreak. Their PPP loan amount was \$67,500 (\$3,000 x 9 people x 2.5). They had to lay all employees off in February due to COVID-19.



- They only hire back six out of the nine employees by December 31, 2020. Therefore their workforce is 67% (two thirds) of their original headcount.
- Over the 24 weeks of the PPP period, they spend \$108,000 on their employees, more than their PPP loan amount.
- They claim the full \$67,500 of their loan for forgiveness. Assuming they do not qualify for any rehiring exemptions, because their workforce is smaller, their forgivable amount will be multiplied by 0.67.

Therefore only \$45,225 would be forgiven.



### **PPP Loan Forgiveness - Payroll Rates**

#### You must maintain at least 75% of total salary:

- This requirement will be individually assessed for every employee that did not receive more than \$100,000 in annualized pay in 2019.
- If the employee's pay over the 8 weeks is less than 75% of the pay they received during the most recent quarter in which they were employed, the eligible amount for forgiveness will be reduced by the difference between their current pay and 75% of the original pay.
- You can rehire any staff that were laid off or put on furlough and reinstate any pay that was
  decreased by more than 25% to meet the requirements for forgiveness, if those changes were made due
  to COVID-19 between February 15 and April 26. You have until December 31, 2020 to do so.



## PPP Loan Forgiveness – Reduction Example (Reduced Pay)

**Tasty Kakes Bakery, LLC** had nine full-time employees in 2019.

They each made \$3,000 per month before the outbreak.

Their PPP loan amount was \$67,500 (\$3,000 x 9 people x 2.5).

They had to lay all employees off in February due to COVID-19.



- They hire back all nine of their employees, but only pay them \$2,000 a month.
- Over the 24 weeks of the PPP period, they spend \$108,000 on they employees, more than their PPP loan amount. They claim the full \$67,500 of your loan for forgiveness.
- When it comes to calculating their forgivable amount, they need to look at each employee's individual compensation. The 75% minimum salary is \$2,250, so they are paying each person \$250 less than that each month. The difference is scaled up to a 24-week period, (\$250 x 6 months), so \$1,500 would be deducted from the forgivable amount per employee.

Repeating that for each employee would result in a total of \$54,000 forgiven.



## **PPP Loan Forgiveness - Exemptions**

The Paycheck Protection Flexibility Act added an exemption to the FTE Reduction calculation.

A borrower can request an exemption from the normal forgiveness reductions due to reduced payroll for the period beginning February 15, 2020 and ending December 31, 2020, provided the borrower can document:

- An inability to rehire employees who were employed as of February 15, 2020, and
- An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020, or
- An inability to return to the same level of business activity as such business was operating at before
  February 15, 2020, due to compliance with requirements and guidelines issued by Health and Human
  Services, CDC or OSHA during March 1, 2020 to December 31, 2020 related to certain protocols for
  responding to COVID-19 (this includes State Mandates).



## **PPP Loan Forgiveness – Claiming Exemptions**

Employees who were employed as of February 15, 2020 and were laid off or put on furlough may not wish to be rehired onto payroll. If the employee rejects your re-employment offer, you <u>may</u> be allowed to exclude this employee when calculating forgiveness.

#### To qualify for this exemption:

- You must have made a written offer to rehire in good faith.
- You must have offered to rehire for the same salary/wage and number of hours as before they were laid off.
- You must have documentation of the employee's rejection of the offer.

#### If any of these conditions apply to an employee, you can also qualify for an exemption:

- They were fired for cause.
- They voluntarily resigned.
- They voluntarily requested and received a reduction of their hours.

You may also be required to demonstrate you were unable to hire similarly qualified employees for unfilled positions, or document that due to safety requirements, you were unable to return to normal operating levels.

Note that employees who reject offers for re-employment may no longer be eligible for continued unemployment benefits.



## PPP Loan Forgiveness – Self Employed Individuals

You are entitled to use the PPP loan to replace lost compensation due to the impacts of COVID-19.

- You are eligible to claim 2.5 months worth of your 2019 net profit to replace pay.
- If you didn't have any other payroll expenses factoring into your PPP loan amount, this means that your entire PPP loan could be forgiven for the 24-week period.
- Include any amounts paid to owners (owner-employees, a self-employed individual, or general partners). For a 24-week Covered Period, this amount is capped at \$20,833 (the 2.5-month equivalent of \$100,000 per year) for each individual or the 2.5-month equivalent of their applicable compensation in 2019, whichever is lower. For an 8-week Covered Period, this amount is capped at 8/52 of 2019 compensation (up to \$15,385).
- The remaining PPP funds will need to be spent on utilities, rent, and mortgage interest expenses in order to be forgiven.
- If you have mortgage interest, rent, or utilities expenses, you must have claimed or be entitled to claim a
  deduction for those expenses on your 2019 Form 1040 Schedule C in order to claim them for
  forgiveness.

Example: If you worked in an office space in 2019 and did not have a home office, you could not have claimed a deduction on your home mortgage interest. Even if you are currently working at home now, you are not eligible to claim home mortgage interest payments for forgiveness.



## PPP Loan Forgiveness - Record Keeping and Documentation

These are the documents you will need to collect to provide with your PPP forgiveness application. Your lender may have additional requirements.

- Documents verifying the number of full-time equivalent employees on payroll and their pay rates, for the periods used to verify you met the staffing and pay requirements.
- Payroll reports from your payroll provider.
- Payroll tax filings (Form 941).
- Income, payroll, and unemployment insurance filings from your state.
- Documents verifying any retirement and health insurance contributions.
- Documents verifying that your eligible interest, rent, and utility payments were active in February 2020.
- Documents verifying your eligible interest, rent, and utility payments (canceled checks, payment receipts, account statements).

#### Good record keeping and bookkeeping will be critical for getting your loan forgiven.

Keep track of eligible expenses and their accompanying documentation over the 24 weeks. Your business will need to have complete financial statements at the end of your fiscal year.

Your lender and the SBA have the right to request and audit your business's financial documents and

records.



## **PPP Loan Foregiveness – Choosing the Correct Form**

Borrowers should check with their lender to determine whether the lender has their own form.

If they do not there are three possible SBA claim forms:

#### PPP Loan Forgiveness Application Form 3508S

• This form is specifically for borrowers of \$50,000 or less. This special streamlined form may only be used in this circumstance.

#### PPP Loan Forgiveness Application Form 3508EZ

#### You may use this simplified form provided:

- You are a self-employed individual, independent contractor, or sole proprietor with no employees at the time of the PPP loan application and did not include any employee payroll expense in the average monthly payroll expense calculation on that application; OR
- You certify that you did not reduce annual salary or wages by more than 25% during the chosen 8 or 24-week period compared to Q1 2020 AND the number of employees or average paid hours of employees was restored to their averages by the end of the chosen period. You can ignore reductions that were due to an inability to rehire individuals, hire a similarly qualified employee, or restore hours in the case of an employee's refusal. This is essentially you certifying that you did not breach the terms of headcount reduction; OR
- You certify that you did not reduce annual salary or wages by more than 25% during the chosen 8 or 24-week period compared to Q1 2020 AND you were unable to operate at the same level of business activity due to compliance with requirements related to any work or customer safety requirement related to COVID-19.

**WARNING:** If you certify any of the above falsely to receive forgiveness and your application is audited, you could be punished with imprisonment and a fine.

And PPP Loan Forgiveness Application Form 3508 for all other borrowers.



### **PPP Loan Forgiveness – Example Form 3508S**

DODDC"	PPP Loan Forgiveness Application Form 3508S Expiration date: 10/31/2020 BORROWER MAY USE THIS FORM ONLY IF THE BORROWER RECEIVED A PPP LOAN OF \$50,000 OR LESS.				
	ER MAY USE THIS FORM ONLY that, together with its affiliates, receive				
Business Legal Name ("Borrower")			DBA or Tradename, if applicable		
	Business Address		Business TIN (EIN,	SSN) Business Phone	
			Primary Contac	t E-mail Address	
			Primary Contac	t E-mail Address	
SBA PPP Loan Number:		Lender l	Lender PPP Loan Number:		
PP Loan A	mount:	PPP Loa	n Disbursement Date:		
mployees a	t Time of Loan Application:	Employe	es at Time of Forgivene	ss Application:	
IDL Advance Amount:		EIDL A	oplication Number:		
orgiveness	Amount:				
-	selow, You Make the Following Repre	esentations and Co	rtifications on Behalf of	the Borrower:	
	ed Representative of the Borrower certi-				
The	dollar amount for which forgiveness is a				
				employees; business mortgage interest	
	payments; business rent or lease				
	<ul> <li>includes payroll costs equal to at</li> </ul>				
				f 2019 compensation for any owner-	
	employee or self-employed indiv				
				eks' worth of 2019 compensation for	
	any owner-employee or self-emp	loyed individual/go	eneral partner, capped at \$	315,385 per individual.	
	derstand that if the funds were knowingl amounts and/or civil or criminal fraud of		rized purposes, the federa	I government may pursue recovery of	
The requ	Borrower has accurately verified the p esting forgiveness, and has accurately co	ayments for the el alculated the forgiv	igible payroll and nonpay reness amount requested.	yroll costs for which the Borrower is	
appl	ve submitted to the Lender the required of icable) prior to February 15, 2020, and oness utility payments.				
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	or a fine of not more than \$1,000,000.	morrow, uno	200 tot toy impri		
the tax	The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IBS and/or state trax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.				
I un Born requ	derstand, acknowledge, and agree tha rower's eligibility for the PPP loan an ested by SBA may result in a determ rower's loan forgiveness application.	t SBA may reque d for loan forgive	st additional information ness, and that the Borro	for the purposes of evaluating the wer's failure to provide information	
hrough the d	r's eligibility for loan forgiveness will b ate of this application. SBA may direct at the Borrower was ineligible for the P	a lender to disappr			
ignature of	Authorized Representative of Borrowe	er	Date		
rint Name			Title		

## PPP Loan Forgiveness Application Form 3508S

- ONLY for borrowers of \$50,000 or less.
- Streamlined form with minimal calculation required.
- Full SBA completion instructions and documentation requirements available <u>here</u>.



## PPP Loan Forgiveness – Example Form 3508EZ



## PPP Loan Forgiveness Application Form 3508EZ

- For borrowers of loans greater than \$50,000.
- For businesses that have no employees (only the owner), or for businesses with employees that certify they have maintained payroll counts AND did not reduce employee compensation by more than 25%.
- 3 pages, EXCLUDES Schedule "A" to calculate reduction
- Full SBA completion instructions and eligibility checklist available here.



## PPP Loan Forgiveness – Example Form 3508



## PPP Loan Forgiveness Application Form 3508

- Required if you have reduced payroll or staff counts without exemptions if your loan is greater than \$50,000.
- 5 pages, includes Schedule "A" to calculate reduction
- Full SBA completion instructions available <u>here</u>.
- Also available in Spanish with instructions.



## Free Assistance for Preparing Documentation

Free assistance with reconstructing financial records, preparing financial statements and submitting the loan forgiveness documents is available from :

SBA Small Business Development Centers (SBDC): <a href="http://nysbdc.org/appointment.html">http://nysbdc.org/appointment.html</a>

Entrepreneurship Assistance Centers (EAC): <a href="https://esd.ny.gov/entrepreneurship-assistance-centers">https://esd.ny.gov/entrepreneurship-assistance-centers</a>

Community Development Financial Institutions (CDFI): <a href="https://esd.ny.gov/sites/default/files/CDFI%20List.pdf">https://esd.ny.gov/sites/default/files/CDFI%20List.pdf</a>

Business Mentor NY COVID-19 Volunteer Task Force: <a href="https://www.businessmentor.ny.gov">www.businessmentor.ny.gov</a>

ESD Small Business Division: <a href="https://esd.ny.gov/doing-business-ny/small-business-hub">https://esd.ny.gov/doing-business-ny/small-business-hub</a>

For the SBA nearest office, visit: <a href="https://www.sba.gov/local-assistance">https://www.sba.gov/local-assistance</a>



## Together we will defeat the virus! Thank you for supporting Small Business in New York State

