

# PPP Loan Forgiveness Payroll Protection Flexibility Act Loan Forgiveness Application Latest Regulations

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# DISCLAIMER

THIS DOCUMENT IS A HIGH-LEVEL SUMMARY AND DISCUSSION OF PARTS OF THE PAYCHECK PROTECTION PROGRAM OF THE CARES ACT, THE PAYCHECK PROTECTION FLEXIBILITY ACT AND RELATED REGULATIONS AND GUIDANCE OF BOTH.

LOAN FORGIVENESS APPLICATIONS WILL BE MADE TO YOUR LENDER WHO HAS AUTHORITY TO ADMINISTER THE PPP. **IT WILL BE IMPORTANT TO COORDINATE LOAN FORGIVENESS CALCULATIONS WITH YOUR LENDER.**

SBA AND TREASURY CONTINUE TO ISSUE REGULATIONS AND GUIDANCE RELATED TO THE PAYCHECK PROTECTION PROGRAM.

THIS DOCUMENT SHOULD NOT BE USED AS A BASIS TO MAKE ANY DECISIONS OR TAKE ANY ACTIONS RELATED TO A PPP LOAN, GOOD FAITH CERTIFICATIONS OR LOAN FORGIVENESS. BORROWERS SHOULD CONSULT THEIR BANK AND THEIR OWN ADVISORS BEFORE MAKING ANY DECISIONS OR TAKING ANY ACTIONS RELATED TO THESE MATTERS.

# Recent Guidance

- Paycheck Protection Program - Loan Forgiveness Application
  - REVISED June 16, 2020
  - SBA Form 3508 & 3508EZ
- SBA/Treasury Department – Interim Final Rule - Requirements – Loan Forgiveness
  - May 22, 2020
  - Docket Number SBA – 2020-0032
- Paycheck Protection Flexibility Act – H.R. 7010 (PPFA)
  - June 5, 2020
  - Treasury and SBA Joint Statement – June 8, 2020
- SBA/Treasury Department – Interim Final Rule – Business Loan Program Temporary Changes; Paycheck Protection Program – Revisions to First Interim Final Rule
  - June 11, 2020
  - Docket Number SBA – 2020-0035

# Discussion Outline

## Review of Loan Forgiveness Provisions & Changes Considering:

- Paycheck Protection Flexibility Act (June 5)
- IFR – Revisions to First Interim Final Rule (June 11)
- Form 3508 - Loan Forgiveness Application & Instructions (June 16)
- Form 3508EZ – Loan Forgiveness Application & Instructions (June 16)

# SBA to Release Names of PPP Borrowers – June 19

- Reversal of prior stance on disclosure
  - Pressure from Congress, labor unions and media companies
- Statistics
  - Loans < \$150K – 86% of borrowers / 27% of funding
  - Loans > \$150K = 14% of borrowers / 73% of funding
- Loans greater than \$150,000
  - Business name and address
  - Demographic Data/Number of jobs supported
  - Other details?
- Specific loan amounts will not be disclosed
  - Borrower Disclosure by Five Loan Size Categories from \$150K to \$10M

# Loan Forgiveness Process

The general loan forgiveness process described below applies only to loan forgiveness applications that are not reviewed by SBA prior to the lender's decision on the forgiveness application. In a separate interim final rule (May 23) on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, SBA will describe its procedures for reviewing PPP loan applications and loan forgiveness applications.

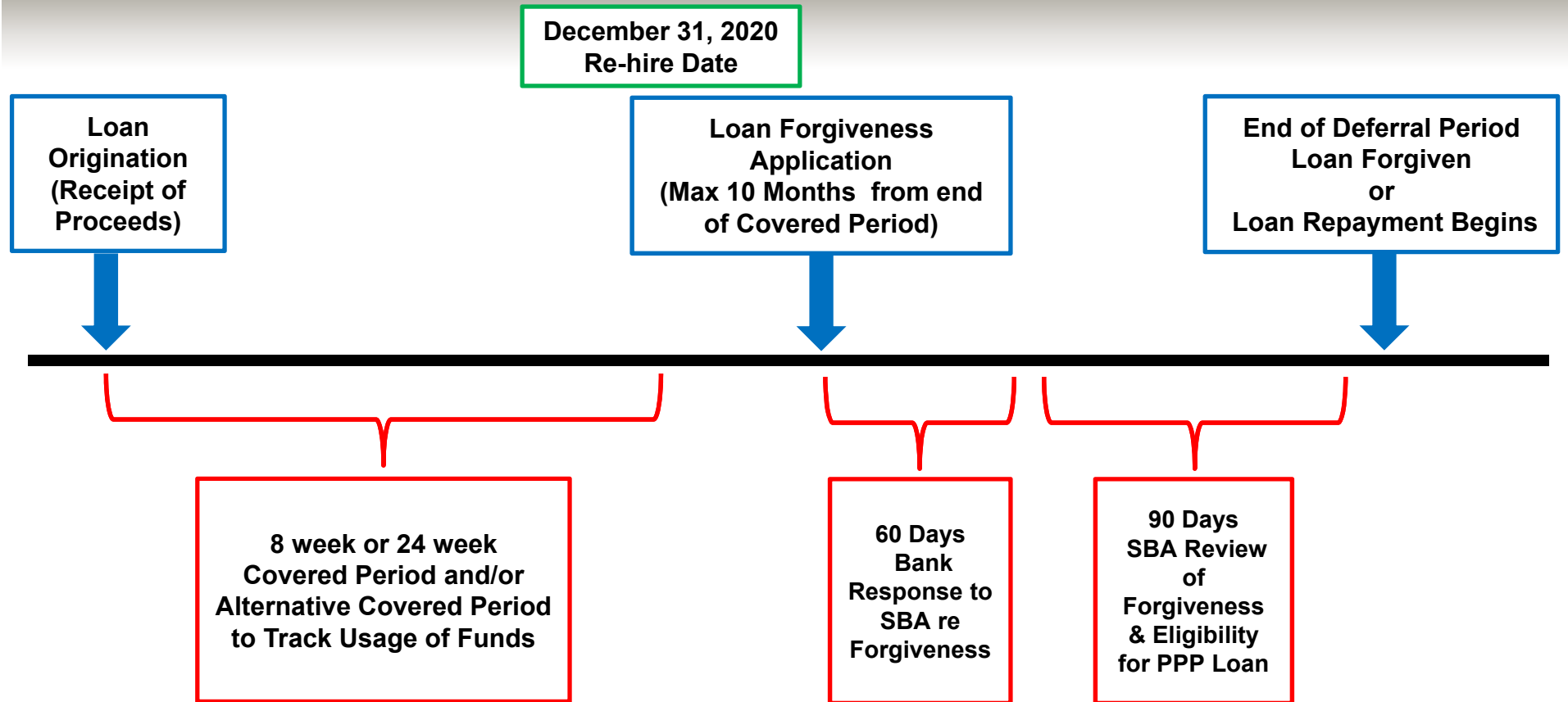
1. Borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508 or lender equivalent) to its Lender.
2. The lender has 60 days from receipt of a complete application to issue a decision to SBA.
3. SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment, not later than 90 days after the lender issues its decision to SBA.
4. If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness.
5. The lender is responsible for notifying the borrower of the forgiveness amount.
6. If only a portion of the loan is forgiven, or if the forgiveness request is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity of the loan.

# Time Limit to Apply For Forgiveness

Time Limit to Apply for Loan Forgiveness:

- If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period, then
  - NOTE – BE SURE TO CHECK YOUR LOAN DOCUMENTS!
- Eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

# PPP Loan Forgiveness Timeline





# Loan Terms – Deferral Period & Term of Loan

## Deferral Period

- Payment of principal, interest, and fees are deferred until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender (SBA Approval of Forgiveness).
- Previously the deferral period was 6 months from the date of the loan.

## Term of Loan

- Minimum Maturity of 5 years for loans after June 5, 2020.
- For loans made before June 5, 2020, the maturity is 2 years, however, borrowers and lenders may mutually agree to extend the maturity of such loan to 5 years.
- Interest rate remains 1%.

# Allowable Cost Mix

## UPDATED IN SBA & TREASURY JUNE 8, 2020 JOINT STATEMENT

IMPORTANT NOTE – **Changed from PPFA language on June 5** that caused borrowers to lose 100% of forgiveness if they did not spend at least 60% on Payroll Costs. Joint statement on June 8 allows for partial forgiveness amount based on the amount spent on Payroll Costs.

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the following costs incurred and payments made during the covered period:

- **AT LEAST 60%** of costs must be used for Payroll Costs - (Prior was 75%)
- **NOT MORE THAN 40%** of the costs can be used for Nonpayroll Costs - (Prior was 25%)

Borrowers can receive partial forgiveness of their loan based on the usage of the funds for allowable costs and the mix of costs noted above.

# Cost Mix Example

	CASE 1		CASE 2		CASE 3	
<b>Loan Amount</b>	<b>1,000</b>		<b>1,000</b>		<b>1,000</b>	
<b>Payroll Costs</b>	<b>500</b>		<b>600</b>		<b>700</b>	
<b>Nonpayroll Costs</b>	<b>400</b>		<b>400</b>		<b>400</b>	
<b>Total Costs Paid or Incurred</b>	<b>900</b>		<b>1,000</b>		<b>1,100</b>	
<b>Costs that Qualify For Forgiveness:</b>						
<b>Payroll (Minimum 60%)</b>	<b>500</b>	<b>60%</b>	<b>600</b>	<b>60%</b>	<b>700</b>	<b>70%</b>
<b>Nonpayroll (40% Cap)</b>	<b>333</b>	<b>40%</b>	<b>400</b>	<b>40%</b>	<b>300</b>	<b>30%</b>
<b>Amount Eligible for Forgiveness</b>	<b>833</b>	<b>100%</b>	<b>1,000</b>	<b>100%</b>	<b>1,000</b>	<b>100%</b>

# Covered Period

1. The term Covered Period means the period beginning on the date of the origination of a covered loan and ending the earlier of:
  - The date that is 24 weeks (168 Days) after such date of origination; or
  - December 31, 2020
2. Option for Borrowers That Already Received Loans Before June 5, 2020
  - May elect to use the 8 week (56 Day) Covered Period.

## QUESTIONS:

1. Which covered period should I elect & how do I assess that decision?
2. Can I file for forgiveness early if I spend the funds between week 8 and week 24?

# FTE Reduction Safe Harbors - #1 (NEW)

**Two separate safe harbors** exempt certain borrowers from any loan forgiveness reduction based on a reduction in FTE employee levels:

1. The Borrower is exempt from the reduction in loan forgiveness based on a reduction in FTE employees described above if the Borrower, in good faith, is able to document that it was unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, 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, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

## FTE Reduction Safe Harbors - #2 (EXISTING)

Two separate safe harbors exempt certain borrowers from any loan forgiveness reduction based on a reduction in FTE employee levels:

2. The Borrower is exempt from the reduction in loan forgiveness based on a reduction in FTE employees described above if **both** of the following conditions are met:
  - (a) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; And
  - (b) the Borrower then restored its FTE employee levels by not later than December 31, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

### NOTE

To meet this safe harbor, borrowers have to restore FTEs to the February 15 level not later than December 31.

- There are no references to maintaining FTE levels through December 31.

# FTE Reduction Exceptions

Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness:

- (1) any positions for which the Borrower made a good-faith, written offer to rehire an individual who was an employee on February 15, 2020 and the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020;
- (2) any positions for which the Borrower made a good-faith, written offer to restore any reduction in hours, at the same salary or wages, during the Covered Period or the Alternative Covered Period and the employee rejected the offer,
- (3) 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

## NOTE

Reduction exceptions do not apply if the position was filled by a new employee.

# Salary & Wage Reduction Safe Harbor (EXISTING)

1. The amount of loan forgiveness shall be reduced by the amount of ANY reduction in total salary or wages of ANY employee during the covered period or alternative covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
  - An employee, for purposes of this section, is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000 or were not employed by the Borrower at any point in 2019.
2. Safe Harbor Exemption - The amount of loan forgiveness shall be determined without regard to a reduction in salaries and wages if:
  - there is a reduction in the salary or wages of 1 or more employees during the period of February 15, 2020 and April 26, 2020 as compared to February 15, 2020, and, if not later than December 31, 2020, the eligible employer has eliminated the reduction in the salary or wages.

## NOTE

To meet this safe harbor, borrowers have to restore salaries & wages to the February 15 level not later than December 31.

- There are no references to maintaining salary & wage levels through December 31.



# No Double Penalty for FTE & Wage/Salary Reductions

To ensure that borrowers are not doubly penalized, 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.

- Applies only if reduction in salaries and wages > 25% is solely attributable to a reduction in hours (as opposed to pay rates)

Example:

- An hourly wage employee had been working 40 hours per week during the borrower selected reference period (FTE employee of 1.0) and the borrower reduced the employee's hours to 20 hours per week during the covered period (FTE employee of 0.5). There was no change to the employee's hourly wage during the covered period.
- Because the hourly wage did not change, the reduction in the employee's total wages is entirely attributable to the FTE employee reduction and the borrower is not required to conduct a salary/wage reduction calculation for that employee.

# Covered Period – Options/Tradeoffs

Borrowers who choose the 24 week covered period to measure their loan forgiveness must also report (over the SAME COVERED PERIOD):

1. FTE reduction calculations - (Unless the Safe Harbor Applies)
2. Salary and wage reduction >25% calculations - (Unless the Safe Harbor Applies)

## Tradeoffs:

✓ **More time to fully spend the money** on allowable costs (amount eligible for forgiveness)

vs.

✓ **potential forgiveness reductions** related to the longer period to maintain FTE and salary and wage levels.

# Covered Period - Options/Tradeoffs Example

	8 Week	24 Week Case A	24 Week Case B
<b>Loan Amount</b>	1,000	1,000	1,000
<b>Funds Spent</b>	800	1,000	1,000
<b>FTE Reduction Quotient</b>	90%	90%	60%
<b>Forgiveness</b>	720	900	600

## 24 Week Covered Period – Can I File Early?

- Measurement and reporting of reductions in forgiveness due to reductions in FTE and salary & wage levels is for the entire Covered Period (8 or 24 weeks) even if the funds are expended before the end of the Covered Period.
- Unless you meet **BOTH** wage/salary & FTE safe harbors:
  - Application Page 4 – re FTE Safe Harbor:
    - Step 4. Enter the borrower’s total FTE as of the earlier of December 31, 2020, and the date this application is submitted.
  - Application Instructions Page 4 - re Salary & Wage Safe Harbor:
    - Step 2.c. Enter the average annual salary or hourly wage as of the earlier of December 31, 2020 and the date this application is submitted.
- OPEN QUESTION – NEEDS CLARIFICATION

# Form 3508EZ Filing Option 1

- ❑ The Borrower is a **self-employed** individual, **independent contractor**, or **sole proprietor** who had **no employees** at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form

## NOTES

- ✓ Documentation is still required to be submitted the EZ application
- ✓ Documentation requirements are different than those for the regular Form 3508 Application.
- ✓ See page 4 of Form 3508EZ Instructions for Borrowers

## Form 3508EZ Filing Option 2

- ❑ The Borrower **did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period** (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);

AND

The Borrower **did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period.** (Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee’s hours that the Borrower offered to restore and the employee refused.

## Form 3508EZ Filing Option 3

- ❑ The Borrower **did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period** (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);

AND

The Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements **established or guidance** issued between March 1, 2020 and December 31, 2020 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, **related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.**

# Payroll & Nonpayroll Costs Paid or Incurred

## 1. Eligible Payroll Costs

Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the 24-week (168-day) or 8-week (56-day) Covered Period (or Alternative Payroll Covered Period).

- 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.
- Payroll costs **incurred** during the borrower's **last pay period** of the covered period or the alternative payroll covered period are eligible for forgiveness if **paid** on or before the next regular payroll date;

## 2. Eligible Nonpayroll Costs must be:

- **paid** during the Covered Period, or
- **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.



# Paid or Incurred Example

ASSUMPTIONS	
Covered Period	8 Weeks
Pay Period	Weekly
	Saturday to Friday
Pay Day	Friday (for past week)
Loan Date	Monday April 13
56 Day Covered Period End	Sunday June 7

Week	Pay Date	Payroll Costs		Allowable Costs
		Paid	Incurred	
Start	13-Apr			
1	17-Apr	10,000		10,000
2	24-Apr	10,000		10,000
3	1-May	10,000		10,000
4	8-May	10,000		10,000
5	15-May	10,000		10,000
6	22-May	10,000		10,000
7	29-May	10,000		10,000
8	5-Jun	10,000		10,000
End	7-Jun			
		80,000		80,000
	12-Jun	10,000	2,857	2,857
				<u>82,857</u>

# Payroll Tax Deferral

- Borrowers will be eligible for the deferral of payment of the employer's share of Social Security payroll taxes (6.2%), regardless of whether the borrower receives loan forgiveness.
- This allows borrowers to now defer the payment of the employer's share until 2021 when 50% of such taxes must be paid, with the remaining 50% due in 2022.

# Taxation of Loan Forgiveness

1. The Cares Act
  - Debt forgiveness on a PPP loan shall be excluded from gross income for federal tax purposes.
2. IRS – Notice 2020-32 – April 30, 2020
  - Expenses related to PPP loan forgiveness under the Cares Act are not tax deductible.
3. Expect to see more guidance from Treasury
4. Taxability at the state level is unclear at this time.

# Documents Borrowers Must Submit with its PPP Loan Forgiveness Application – Payroll

Payroll: Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period consisting of each of the following:

- a) Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
- b) Tax forms (or equivalent third-party **payroll service provider reports**) for the periods that overlap with the Covered Period or the Alternative Payroll Covered Period:
  - 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.
- c) 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.

# Documents Borrowers Must Submit with its PPP Loan Forgiveness Application – FTEs

FTE: Documentation showing (at the election of the Borrower):

- a) the average number of FTE employees on payroll per **week** employed by the Borrower between February 15, 2019 and June 30, 2019;
- b) the average number of FTE employees on payroll per **week** employed by the Borrower between January 1, 2020 and February 29, 2020; or
- c) in the case of a seasonal employer, the average number of FTE employees on payroll per **week** employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive 12 week period between May 1, 2019 and September 15, 2019. (at the election of the Borrower)
- d) The average number of FTEs in the Covered Period or Alternative Covered Period

Documents 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.

# Documents Borrowers Must Submit with its PPP Loan Forgiveness Application – Nonpayroll

Nonpayroll: Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

- a) Business mortgage interest payments: Copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
- b) Business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
- c) Business utility payments: Copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments.

# Documentation Borrower Must Maintain But Not Submit

PPP Schedule A Worksheet or its equivalent and the following:

- a. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary.
- b. Documentation supporting the listing of each individual employee in PPP Schedule A Worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000.
- c. Documentation regarding any employee job offers and refusals, refusals to accept restoration of reductions in hours, firings for cause, voluntary resignations, written requests by any employee for reductions in work schedule, and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
- d. Documentation supporting the certification, if applicable, that the Borrower was unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 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, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19. This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records.
- e. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor 2.”

# Documentation Borrower Must Maintain But Not Submit – Other

All records relating to the Borrower's PPP loan, including:

- documentation submitted with its PPP loan application,
- documentation supporting the Borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan,
- documentation necessary to support the Borrower's loan forgiveness application
- documentation demonstrating the Borrower's material compliance with PPP requirements.

The Borrower must retain all such documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.



# Thanks for Your Time and Attention!

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