Obtaining Loan Forgiveness

Current Guidance as of 5/5/20

The information within this document is based upon guidance the SBA has issued to date. Please note that the SBA is continuously refining its guidance and this information is subject to change. First Financial Bank will update and change this document as promptly as possible as the SBA continues to provide guidance. This information is intended for the use by First Financial clients and is not intended to be relied upon for legal or tax advice.

Designed to advance Congress’s goal of keeping workers paid and employed across the United States by providing cash-flow assistance to employers who maintain their payroll during this emergency, the core purpose of the SBA Paycheck Protection Program (SBA PPP or PPP) is to devote finite program resources primarily to payroll protection. The PPP provides low cost funds to borrowers to meet eligible payroll costs and other eligible expenses during this temporary time of economic dislocation caused by the Coronavirus. As certified in the application, the funds from the SBA PPP Loan will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments.

All borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere,1 borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

Borrowers must have made this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification in good faith.

Furthermore, the SBA will review all loans in excess of $2 million, in addition to other loans as appropriate, following the FFB’s submission of your loan forgiveness application.

Important to consider when attempting to utilize proceeds that may be forgiven:

- If by 6/30/20, you re-hire your workforce and additionally restore your full-time employment and salary levels for any changes to your workforce made between 2/15/20 and 4/26/20, the re-hire and restoration would be exempted from forgiveness reductions. No governmental guidance requires that employees be physically working, but rather that they be employed. Example, if you had 10 employees prior to 2/15/2020 and reduced your staff to 5 employees during the crisis, you could avoid a reduction in forgiveness by rehiring 5 employees back to 10 total. If salary levels were $100,000 per month before 2/15/2020, then were reduced to $50,000 per month during the crisis, forgiveness reductions could be avoided by returning to the $100,000 salary and 10 employee levels as before.
- Utilize proceeds for payroll costs first.
- Utilize qualifying proceeds within the first 8 weeks from disbursement of the proceeds.

1 As defined in Section 3(h) of the Small Business Act.
How much of my SBA PPP loan MAY be forgiven?

- The amount of loan proceeds used for qualifying purposes during the 8 weeks following the date of the disbursement of the proceeds.
- The maximum forgiveness is the full principal amount plus any accrued interest; however, stipulations apply, and the forgiveness can be less than this.
- At a minimum, 75% of the loan proceeds must be attributable to Payroll Costs. Payroll Costs defined on next page.
- At a maximum, 25% of the forgiveness amount may be attributable to non-Payroll Costs\(^2\), which are limited to:
  - payments of mortgage interest on mortgage obligations incurred before February 15, 2020
  - rent payments on leases dated before February 15, 2020
  - utility payments under service agreements dated before February 15, 2020

**Important:** It is the borrower’s responsibility to track and calculate Payroll and non-Payroll Costs.

- The amount forgiven may be reduced if:
  - your full-time employee headcount decreases.
    - The amount of loan forgiveness will be reduced (but not increased) by comparing the number of full-time employees (FTE) used for the loan amount calculation to the number of employees during the period when proceeds were used. Reduction would not be applied if the total number of FTE is restored before 6/30/20.
    - If you attempt to rehire a laid off employee for the same salary/wages and same number of hours, but the employee declines the offer, the forgiveness amount will not be reduced by that employee. You must have given a good faith, written offer, and the employee’s rejection of that offer must be documented.
  - Employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.
  - salaries and wages decrease by more than 25% for any employee making less than $100,000 annually. Reduction would not apply if the salary or wage is restored before 6/30/20.
  - you refinanced an Economic Injury Disaster Loan (EIDL) into your PPP, any proceeds from any EIDL advance up to $10,000 will be deducted from the loan forgiveness amount.

**Applying for Forgiveness:**\(^3\)

Current guidelines request the following information in the application for forgiveness:

- Documentation verifying the number of FTE on payroll and pay rates for the periods specified.
- Documentation demonstrating that proceeds were used for payroll, which may include:
  - payroll tax filings, such as
    - Form 941
    - State quarterly wage unemployment insurance tax reporting forms
  - payroll processor records that best correspond to the covered period (with evidence of any retirement and health insurance contributions)
  - 2019 Form 1040 Schedule C
- Cancelled checks, payment receipts, or other documents on covered mortgage obligations, rent obligations and utility payments.
- Any other documentation deemed necessary by the SBA.
- Certification by the authorized representative of the borrower that:
  - Documentation is true and correct, and
  - Amount for which forgiveness is requested was used for purposes eligible for forgiveness.
- A dedicated bank account for SBA PPP proceeds is not required by First Financial Bank.

\(^2\) For individuals with self-employment income who file a Form 1040 Schedule C, these are eligible for forgiveness to the extent they are deductible on Form 1040 Schedule C.

\(^3\) Reminder: This information is currently not fully complete and requires additional SBA guidance.
How do I calculate Payroll Costs for forgiveness purposes?

Payroll Costs Include:

- Salary, wages, commissions, or tips (capped at $100,000 on an annualized basis for each employee with a principal place of residence in the United States);
- Employee benefits (for employees not owners) including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation paid by the employer (such as unemployment insurance premiums);
- Housing stipends or allowance provided to an employee as part of compensation; and
- Owner compensation replacement, calculated based on 2019 net profit, with forgiveness of such amounts limited to eight weeks’ worth (8/52) of 2019 net profit, but excluding any qualified sick or family leave equivalent amount for which credit is claimed under FFCRA.

Payroll Costs Excludes:

- Compensation from employees whose principal place of residence is outside of the US;
- Compensation of an individual employee in excess of an annual salary of $100,000, prorated as necessary;
- Since payroll costs are calculated on a gross basis, they are calculated without regard to federal employment taxes imposed or withheld between 2/15/20 and 6/30/20, including the employee’s and employer’s share of FICA and RRA taxes. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, and payroll costs do not include the employer’s share of payroll tax;
- Other income taxes required to be withheld from employees; and
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.

*If funds are used for unauthorized purposes, you will have to repay those amounts. If you knowingly misuse them, you will be charged with fraud.

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4 Net profit is calculated using 2019 IRS Form 1040 Schedule C line 31 net profit amount (if you have not yet filed a 2019 return, fill it out and compute the value). If this amount is over $100,000, reduce it to $100,000.

5 Section 7002 of the Families First Coronavirus Response Act (FFCRA) (Public Law 116-127) and Section 7004 of FFCRA, respectively.