OLD NATIONAL BANK

Revised January 21, 2021 – Subject to Change

Client Guide: Applying for Paycheck Protection Program (PPP) Loan Forgiveness

PPP Loan Forgiveness Applications and Instructions

The borrower may request forgiveness by completing the PPP Loan Forgiveness Application and submitting it to its PPP lender.

https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-and-Instructions--Form-3508-1192021.pdf
https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form3508EZ-1192021.pdf
https://home.treasury.gov/system/files/136/PPP--Loan-Forgiveness-Application-Instructions--Form-3508S-1192021.pdf

Old National has provided an online forgiveness portal with the ability to upload required documentation; however, a thorough review of the applicable application form and instructions are critical before applying for forgiveness and will be useful when utilizing the forgiveness portal.

The following information was updated for Changes to the Loan Forgiveness Rules on January 19, 2021.

PPP – IFR Loan Forgiveness Requirements and Loan Review Procedures – 1.19.2021-508

A borrower of a PPP loan of $150,000 or less may use the SBA Form 3508S to apply for loan forgiveness.

Covered operations expenditures[1]

A covered operations expenditure is a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.

Covered property damage costs[1]

A covered property damage cost is a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation.

Covered supplier costs[1]

A covered supplier cost means an expenditure made by a borrower to a supplier of goods for the supply of goods that: (A) are essential to the operations of the borrower at the time at which the expenditure is made; and (B) is made pursuant to a contract, order, or purchase order—(i) in effect at any time before the covered period with respect to the applicable covered loan; or (ii) with respect to perishable goods, in effect before or at any time during the covered period with respect to the applicable covered loan.

[1]This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

Covered worker protection expenditures[1]

A covered worker protection expenditure:

(A) means an operating or a capital expenditure to facilitate the adaptation of the business activities of an entity to comply with requirements established or guidance issued by the Department of Health and Human Services, the Centers for Disease Control, or the Occupational Safety and Health Administration, or any equivalent requirements established or guidance issued by a State or local government related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19, during the period beginning on March 1, 2020 and ending the date on which the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19) expires; (B) may include—(i) the purchase, maintenance, or renovation of assets that create or expand— (I) a drive-through window facility; (II) an indoor, outdoor, or combined air or air pressure ventilation or filtration system; (III) a physical barrier such as a sneeze guard; (IV) an expansion of additional indoor, outdoor, or combined business space; an onsite or offsite health screening capability; or (VI) other assets relating to the compliance with the requirements or guidance described in subsection (A), as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (ii) the purchase of—(I) covered materials described in section 328.103(a) of title 44, Code of Federal Regulations, or any successor regulation; (II) particulate filtering facepiece respirators approved by the National Institute for Occupational Safety and Health, including those approved only for emergency use authorization; or other kinds of personal protective equipment, as determined by the Administrator in consultation with the Secretary of Health and Human Services and the Secretary of Labor; and (C) does not include residential real property or intangible property.

When must payroll costs be incurred and/or paid to be eligible for forgiveness?[2]

For purposes of loan forgiveness, the covered period is the period beginning on the date the lender disburses the PPP loan and ending on a date selected by the borrower that occurs during the period: (i) beginning on the date that is 8 weeks after the date of disbursement, and (ii) ending on the date that is 24 weeks after the date of disbursement.[3]

[1]This eligible nonpayroll cost was added by section 304 of the Economic Aid Act.

[2]This subsection was originally published at 85 FR 33004, subsection III.3.a. (June 1, 2020) and amended by 85 FR 38304, subsection III.1.d. (June 26, 2020) and has been modified to conform to section 306 of the Economic Aid Act and for readability.

[3]Amended to conform to the section 306 of Economic Aid Act change to definition of covered period. The option to elect an alternative covered period has been removed because the Economic Aid Act provided borrowers flexibility to choose the end of their covered period.

The following information was updated for Changes to the Loan Forgiveness Rules on October 13, 2020.

A borrower of a PPP loan of $50,000 or less, other than any borrower that together with its affiliates received loans totaling $2 million or greater, may use SBA Form 3508S to apply for loan forgiveness. A borrower that uses SBA Form 3508S is exempt from any reductions in the borrower's loan forgiveness amount based on reductions in full-time equivalent (FTE) employees or reductions in employee salary or wages that would otherwise apply.

The following information was updated by an Interim Final Rule issued by the SBA on August 24, 2020.

Owners

Are any individuals with an ownership stake in a PPP borrower exempt from application of the PPP owner-employee compensation rule when determining the amount of their compensation that is eligible for loan forgiveness?
Yes, owner-employees with less than a 5 percent ownership stake in a C- or S- Corporation are not subject to the owner-employee compensation rule. The First Loan Forgiveness Rule, as revised by the Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules, 85 FR 38304, 38307 (June 26, 2020), caps the amount of loan forgiveness for payroll compensation attributable to an owner-employee. There is no exception in the rule based on the owner-employee's percentage of ownership. The Administrator, in consultation with the Secretary, has now determined that an owner- employee in a C- or S-Corporation who has less than a 5 percent ownership stake will not be subject to the owner-employee compensation rule. This exemption is intended to cover owner-employees who have no meaningful ability to influence decisions over how loan proceeds are allocated.

Eligibility of Certain Nonpayroll Costs for Loan Forgiveness

a. Are amounts attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, in the context of home-based businesses, household expenses, eligible for forgiveness?
No, the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or sub-tenant of the PPP borrower or, for home-based businesses, household expenses. The examples below illustrate this rule.

Example 1: A borrower rents an office building for $10,000 per month and sub- leases out a portion of the space to other businesses for $2,500 per month. Only $7,500 per month is eligible for loan forgiveness.

Example 2: A borrower has a mortgage on an office building it operates out of, and it leases out a portion of the space to other businesses. The portion of mortgage interest that is eligible for loan forgiveness is limited to the percent share of the fair market value of the space that is not leased out to other businesses. As an illustration, if the leased space represents 25% of the fair market value of the office building, then the borrower may only claim forgiveness on 75% of the mortgage interest.

Example 3: A borrower shares a rented space with another business. When determining the amount that is eligible for loan forgiveness, the borrower must prorate rent and utility payments in the same manner as on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.
Example 4: A borrower works out of his or her home. When determining the amount of nonpayroll costs that are eligible for loan forgiveness, the borrower may include only the share of covered expenses that were deductible on the borrower's 2019 tax filings, or if a new business, the borrower's expected 2020 tax filings.

b. Are rent payments to a related party eligible for loan forgiveness?
Yes, as long as (1) the amount of loan forgiveness requested for rent or lease payments to a related party is no more than the amount of mortgage interest owed on the property during the Covered Period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to February 15, 2020. Any ownership in common between the business and the property owner is a related party for these purposes. The borrower must provide its lender with mortgage interest documentation to substantiate these payments. While rent or lease payments to a related party may be eligible for forgiveness, mortgage interest payments to a related party are not eligible for forgiveness. PPP loans are intended to help businesses

cover certain non- payroll obligations that are owed to third parties, not payments to a business's owner that occur because of how the business is structured. This will maintain equitable treatment between a business owner that holds property in a separate entity and one that holds the property in the same entity as its business operations.

Changes to forgiveness resulting from the PPP Flexibility Act

a. General

The Flexibility Act amended the requirements regarding forgiveness of PPP loans to reduce, from 75 percent to 60 percent, the portion of PPP loan proceeds that must be used for payroll costs for the full amount of the PPP loan to be eligible for forgiveness.

b. Maturity

The Flexibility Act provides a minimum maturity of five years for all PPP loans made on or after the date of enactment of the Flexibility Act (June 5, 2020), and permits lenders and borrowers to extend the maturity date of earlier PPP loans by mutual agreement.

c. Deferral

The Flexibility Act extended the deferral period for PPP loans from 6 months to the date that SBA remits the forgiveness amount to the lender.

Loan Forgiveness Process

What is the general process to obtain loan forgiveness?

To receive loan forgiveness, a borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508 or 3508EZ) which will be done via Old National's online forgiveness portal. Once the application is submitted, Old National reviews the application for completeness and makes a preliminary decision regarding loan forgiveness. Old National has 60 days from receipt of a complete application to issue its review to the SBA. If Old National determines that the borrower has complied with the statute and applicable regulations, Old National will request payment from the SBA. The 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 the SBA. If applicable, the SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to Old National as required by section 1110(e)(6) of the CARES Act. If the 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. Old National is responsible for notifying the borrower of the forgiveness amount. 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 date of the loan. Old National is responsible for notifying the borrower of remittance by the SBA of the loan forgiveness amount (or that the SBA determined that no amount of the loan is eligible for forgiveness) and the date on which the borrower's first payment is due, if applicable. If the SBA determines that the full amount of the loan is eligible for forgiveness and remits the full amount of the loan to the lender, Old National will report the status of the loan as "paid in full" to the SBA.

When must a borrower apply for loan forgiveness or start making payments on a loan?

A borrower may submit a loan forgiveness application any time on or before the maturity date of the loan – including before the end of the forgiveness "covered" period – if the borrower has used all of the loan proceeds for which the borrower is requesting forgiveness. If the borrower applies for forgiveness before the end of the covered period and has reduced any employee's salaries or wages in excess of 25 percent, the borrower must account for the excess salary reduction for the full 8-week or 24-week covered period, and reduce the forgiveness calculation accordingly. If the borrower does not apply for loan forgiveness within 10 months after the last day of the covered period, or if the SBA determines that the loan is not eligible for forgiveness (in whole or in part), the PPP loan is no longer deferred and the borrower must begin paying principal and interest. If this occurs, Old National will notify the borrower of the date the first payment is due. Old National will report that the loan is no longer deferred to SBA.

What is the term of the Covered Period?

Under section 1106 of the CARES Act, certain provisions regarding the forgiveness of PPP loans are limited to the "covered period." "Covered period," as that term is used in section 1106 of the CARES Act, was originally defined as the eight-week period beginning on the date of the origination of a covered loan. However, the Flexibility Act extended the length of the covered period as defined in section 1106 of the CARES Act from eight to 24 weeks, while allowing borrowers that received PPP loans before June 5, 2020 to elect to use the original eight-week covered period.

When must payroll costs be incurred and/or paid to be eligible for forgiveness?

In general, payroll costs paid or incurred during the covered period are eligible for forgiveness. For purposes of loan forgiveness, the covered period is the 24-week period beginning on the date Old National disburses the PPP loan. Under section 3(b)(1) of the Paycheck Protection Program Flexibility Act of 2020, the loan forgiveness covered period of any borrower will end no later than December 31, 2020.

Borrowers may seek forgiveness for payroll costs for the applicable covered period beginning on either: a) the date of disbursement of the borrower's PPP loan proceeds from the Lender (i.e., the start of the covered period); or b) the first day of the first payroll cycle in the covered period (the "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 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; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness. Payroll costs are generally incurred on the day the employee's pay is earned (i.e., on the day the employee worked). For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

A borrower with a bi-weekly (or more frequent) payroll cycle may elect to use an "alternative payroll covered" period that begins on the first day of the first payroll cycle in the covered period and continues for either (a) eight weeks, in the case of a borrower that received its PPP loan before June 5, 2020 and elects to use an eight-week covered period, or (b) 24 weeks, in the case of all other borrowers. If payroll costs are incurred during this alternative payroll covered period, but paid after the end of the alternative payroll covered period, such payroll costs will be eligible for forgiveness if they are paid no later than the first regular payroll date thereafter.

Example: A borrower that received a PPP loan before June 5, 2020, elects to use an eight-week covered period and has a bi-weekly payroll schedule (with payments made every other week). The borrower's eight-week covered period begins on June 1 and ends on July 26. The first day of the borrower's first payroll cycle that starts in the covered period is June 7. The borrower may elect an alternative payroll covered period for payroll cost purposes that starts on June 7 and ends 55 days later (for a total of 56 days), on August 1. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness if they are paid on or before the first regular payroll date occurring after August 1. Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.

Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?

Yes. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 compensation $15,385 per individual, whichever is less, in total across all businesses. For all other borrowers, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 compensation or $20,833 per individual, whichever is less, in total across all businesses. In particular, C-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health insurance contributions made on their behalf. S-corporation owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement contributions made on their behalf, but employer health insurance contributions made on their behalf cannot be separately added because those payments are already included in their employee cash compensation. Schedule C or F filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235.

When must nonpayroll costs be incurred and/or paid to be eligible for forgiveness?

A nonpayroll cost is eligible for forgiveness if it was: a) paid during the covered period; or b) 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.

Example: A borrower that received a loan before June 5, 2020 uses a 24-week covered period that begins on June 1 and ends on November 15. The borrower pays its electricity bills for June through October during the covered period and pays its November electricity bill on December 10, which is the next regular billing date. The borrower may seek loan forgiveness for its June through October electricity bills, because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of its November electricity bill through November 15 (the end of the covered period), because the service was incurred during the covered period and paid on the next regular billing date.

Eliminating Reductions to Loan Forgiveness Amount

Certain reductions are required in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees or in employee salary and wages, subject to an important statutory exemption for borrowers that have eliminated the reduction on or before December 31, 2020. However, there are exemptions from reductions in loan forgiveness amounts based on employee availability and business activity. In addition, SBA and Treasury have adopted a regulatory exemption to the reduction rules for borrowers that have offered to restore employee hours at the same salary or wages, even if the employees have not accepted. The instructions to the loan forgiveness applications and the guidance below explains how the statutory forgiveness reduction formulas work.

Section 1106(d)(2) of the CARES Act reduces the amount of the PPP loan that may be forgiven if the borrower reduces full-time equivalent employees during the covered period as compared to a base period selected by the borrower by no later than December 31, 2020.

Example: A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $1,200 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling $1,200).

Example: A borrower that received a PPP loan before June 5, 2020 has elected to use an eight-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25 percent of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $400 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by eight weeks).

Section 3(b)(2)(B) of the Flexibility Act established two new exemptions based on employee availability and business activity, respectively, that would eliminate a reduction in the loan forgiveness amount that would otherwise be required due to a reduction in full-time equivalent (FTE) employees.

1. Borrowers are exempted from the loan forgiveness reduction arising from a proportional reduction in FTE employees during the covered period if the borrower is able to document in good faith the following: (1) an inability to rehire individuals who were employees of the borrower on February 15, 2020; and (2) an inability to hire similarly qualified individuals for unfilled positions on or before December 31, 2020. Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer.7 The documents that borrowers should maintain to show compliance with this exemption include, but are not limited to, the written offer to rehire an individual, a written record of the offer's rejection, and a written record of efforts to hire a similarly qualified individual.

2. Borrowers are also exempted from the loan forgiveness reduction arising from a reduction in the number of FTE employees during the covered period if the borrower is able to document in good faith an inability to return to the same level of business activity as the borrower was operating at 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 (CDC), 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 (COVID Requirements or Guidance). Specifically, borrowers that can certify that they have documented in good faith that their reduction in business activity during the covered period stems directly or indirectly from compliance with such COVID Requirements or Guidance are exempt from any reduction in their forgiveness amount stemming from a reduction in FTE employees during the covered period. Such documentation must include copies of applicable COVID Requirements or Guidance for each business location and relevant borrower financial records.

   The Administrator, in consultation with the Secretary, is interpreting the above statutory exemption to include both direct and indirect compliance with COVID Requirements or Guidance, because a significant amount of the reduction in business activity stemming from COVID Requirements or Guidance is the result of state and local government shutdown orders that are based in part on guidance from the three federal agencies.

Example: A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all non-essential businesses, including the borrower's business, to shut down their stores, based in part on COVID-19 guidance issued by the CDC in March 2020. Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID Requirements or Guidance, the borrower satisfies the Flexibility Act's exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID Requirement or Guidance as described above.

Will a borrower's loan forgiveness amount be reduced if the borrower reduced the hours of an employee, then offered to restore the reduction in hours, but the employee declined the offer?

No. In calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if: a) The borrower made a good faith, written offer to restore the reduced hours of such employee; b) the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours; c) the offer was rejected by such employee; and e) the borrower has maintained records documenting the offer and its rejection.