

PPP LOAN FORGIVENESS RULEBOOK OUTLINE-FIRST EDITION

1. Legislative Source.
 - a. CARES Act (P.L.116-136) Section 1106. Footnotes refer to Section 1106 unless otherwise indicated.
 - b. Swiftness of enactment left many ambiguities.
 - c. Many calculations must be inferred until final Federal guidance published.¹
 - d. It is up to Employer-borrower to affirmatively seek forgiveness from its lender.²
2. Income tax consequences.
 - a. Loan forgiveness is income tax free.³
3. Choose Base Period for measuring “payroll”:⁴
 - a. January 1, 2020 - February 29, 2020; or
 - b. February 15, 2019 - June 30, 2019.
4. “Payroll”⁵ means:
 - a. For W-2 employees: gross W-2 wages (not counting employer FICA or Medicare taxes) not in excess of \$100,000, employee benefits (including health premiums), retirement plan contributions and state unemployment compensation taxes.
 - b. For partners and self-employed’s: self-employment income not in excess of \$100,000, but no benefits, retirement plans, or unemployment compensation taxes.

¹ (k); SBA was supposed to issue final guidance on loan forgiveness by April 26, 2020. In absence of guidance, this work product presents the author’s best inference as to what Congress intended. There is no guarantee that the final guidance will confirm the author’s inferences.

² (e), (f), and (g)

³ (i); IRS Notice 2020-32 (April 30, 2020) makes it clear that the expenditures for payroll, interest, lease, and utilities which are the source of forgiveness may not be deducted for income tax purposes.

⁴ (d)(3)

⁵ SBA interim final rule dated April 14, 2020

For partners, self-employment income, as reported in box 14a on 2019 Schedule K-1 is multiplied by 0.9235, to eliminate the “employer share of FICA”.⁶

- c. Independent contractors are not counted in an employer’s payroll. They apply separately for their own PPP loans.⁷
5. Determine Payroll during Base Period.
- a. Exception: for partners and self-employed’s, measure $8/52 \times 2019$ self-employment income.⁸
 - b. Convert to average monthly payroll.
6. Determine number of “full time equivalent” employees (“FTE’s”) in Base Period.
- a. According to SBA definitions used for Affordable Care Act to identify employers with more than 50 FTE’s, full time means working 130 hours per month or 30 hours per week.⁹
 - b. For part time employees, determine fraction of FTE and aggregate all part time employees to determine equivalent whole FTE’s.
 - c. Convert to average monthly FTE’s during Base Period.
7. Determine the following expenditures accrued and paid¹⁰ during 8 weeks after funding of PPP Loan.
- a. Average Payroll for W-2 employees per month.
 - b. Average Number of FTE’s per month.
 - c. Self- employment income for partners and self- employed (but not in excess of $8/52 \times 2019$ self-employment income subject to \$100,000 cap), averaged per month during the 8 weeks.
 - d. Deductible Interest on secured debt of business on real or personal property owned prior to February 15, 2020 during the 8 weeks.

⁶ Treas. FAQ April 24, 2020: <https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>

⁷ SBA/Treas FAQ April 30, 2020, Answers #10 and #15.

⁸ SBA interim final rule dated April 14, 2020

⁹ SBA Website: describing Affordable Care Act Responsibility Credit for employers > 50 employees: [https://www.sba.gov/sites/default/files/files/Calculating%20FTEs%20for%20businessUSA%20072213%20\(Updated%20March%202014\).pdf](https://www.sba.gov/sites/default/files/files/Calculating%20FTEs%20for%20businessUSA%20072213%20(Updated%20March%202014).pdf)

¹⁰ (b)

- e. Deductible Lease payments incurred and paid on leases executed prior to February 15, 2020 during the 8 weeks.
 - f. Deductible Utility payments incurred and paid on service agreements executed prior to February 15, 2020 during the 8 weeks.
8. Potential loan forgiveness of 100% of principal PPP loan proceeds (not interest),¹¹ if:
- a. All factors considered above in #7 during 8 weeks are satisfied.
 - b. But total W-2 payroll (and self- employed payroll if applicable) during 8 weeks must equal or exceed 75% of expenditures of loan proceeds. Therefore, any interest, lease and utility payments in excess of 24.99% of loan proceeds will reduce forgiveness.¹²
 - c. Exceptions to 100% forgiveness if either one or both of two forgiveness conditions are flunked.
9. Flunk forgiveness: FTE's Test - average monthly FTE's for terminated or reduced-hours employees.¹³
- a. Multiply the amount of permissible expenditures during the 8 weeks by a fraction:
 - i. Numerator is average monthly FTE's during the 8 week period.
 - ii. Denominator is average monthly FTE's during the Base Period.
 - b. The product of multiplication is the amount of potential loan forgiveness that is allowable. The remaining 8 weeks' expenditures are not allowed to be forgiven.
10. Flunk forgiveness: Wage Reduction Test - average monthly wages for continuing employees.¹⁴
- a. If the average monthly wages of any employee retained in employment during the 8 week period is reduced by more than 25% when compared to the average monthly wages of such employee paid in the last full quarter prior to the start of the 8 week period, then

¹¹ (d)(1)

¹² SBA interim final rule dated April 14, 2020

¹³ (d)(2)

¹⁴ (d)(3)

- b. Such reduction in excess of the 25% monthly rate for the said last quarter for each such employee, applicable during the entire 8 weeks, shall be subtracted from the potential loan forgiveness.
- 11.** Special relief for employers who made personnel adjustments between February 15, 2020 and April 26, 2020, for either or both of FTE test and wage reduction test.¹⁵
- a. Salvage forgiveness for FTE test.¹⁶
 - i. Applies only to number of employees who were terminated during the period February 15, 2020 - April 26, 2020.
 - ii. Employer must rehire enough FTE's in the month of June, 2020, so that the monthly FTE's in June are equal to or greater than the FTE's employed on February 15, 2020.
 - iii. Then, Employer will not lose any forgiveness attributable to the average monthly FTE's during the 8 week period being less than the average monthly FTE's during the Base Period.
 - b. Salvage forgiveness for wage reduction test.¹⁷
 - i. Applies to any employee remaining in employment during the 8 weeks, whose wages were reduced during the period February 15, 2020 to April 26, 2020.
 - ii. Employer increases such employee's wages during the month of June to the rate it was on February 15, 2020.
 - iii. Then, Employer will not lose forgiveness attributable to any such employee's average monthly wages during the 8 weeks being less than average monthly wages during the Base period.

Example

Facts

- i. Employee A full time earned annual wage rate in Base Period of \$160,000 (\$13,333 per month). Wages reduced on April 1, 2020 to \$115,000 per year (\$9,583 per month) which applies during 8 weeks after funding and thereafter.

¹⁵ (d)(5)

¹⁶ (d)(5)(B)(i)

¹⁷ (d)(b)(B)(ii)

- ii. Employee B full time earned annual wage rate in Base Period of \$50,000 per year (\$4,167 per month). Wages reduced on April 1, 2020 to \$35,000 per year (\$2,917 per month). Employer restored B's wages to \$50,000 per year (\$4,167) on June 1, 2020.
- iii. Employee C worked part time 100 hours per month earning \$36,000 per year (\$3000 per month). C was terminated on April 1.

Forgiveness results

- i. Loan forgiveness for A's wages cannot exceed \$100,000 per year (\$8,333 per month). Even though A's wages were reduced by more than 25%, the most that can be forgiven for 8 weeks' expenditures for A's wages is \$16,666 of loan proceeds, if wages were accrued and paid in 8 week period. So there is no impact on loan forgiveness allowed of \$16,666 of 2 months of wages.
- ii. Loan forgiveness, attributable to B's wages, would have been reduced by 8 weeks of reduced wages, or \$2,500 (i.e. \$4,167-\$2,917x 2); except Employer restored wage rate in June 2020 to the level it was on February 15, 2020. So there is no impact on loan forgiveness allowed of 2 months of wages (\$4,167 x 2 = \$8,334).
- iii. Employee C worked part time which is equivalent to 100/130 or 77% of a FTE. The Base Period FTE's were 2.77. The average monthly FTE's during the 8 weeks was 2. So 2.00/2.77 is 72%.
- iv. The loan proceeds borrowed were (\$8,333 + \$4,167 + \$3,000) x 2.5, for a total for wages of \$38,750, plus \$12,750 borrowed for lease, interest, and utilities, for a total of \$51,500 in loan proceeds (less than 25% borrowed for lease, interest and utilities). However, the forgiveness is limited to two months of A's wages (\$16,666) plus B's wages (\$8,334), and the balance spent for lease, interest, and utilities cannot exceed 24.99% (\$8,333). So the maximum loan forgiveness is \$33,333. The maximum loan forgiveness must be reduced to 72% of \$33,333 because of the FTE test, so the Employer obtains forgiveness of \$24,000 (\$33,333 x 72%) of the original loan proceeds of \$51,500.