

CARES ACT – SEC. 1106 LOAN FORGIVENESS – QUICK REFERENCE

In General

Recipients of a Paycheck Protection Program loan are eligible to have a portion of their loan forgiven, generally equal to the amount of payroll costs, interest, rent, and utility payments made during a twenty-four week period beginning on the day the loan proceeds are received (“covered period”). The amounts forgiven are not treated as taxable income and the remaining balance is subject to a five-year term at a 1% interest rate.

Details

Loan Forgiveness

- A recipient of a PPP loan is eligible for loan forgiveness equal to the sum of the following costs paid or incurred during the twenty-four-week period (eight-weeks at the election of the borrower) starting on the loan disbursement date:
 - Payroll Costs¹;
 - Mortgage interest;
 - Rent;
 - Utilities.^{2,3}
- Forgivable employee wage and salary is limited to \$46,154 per employee and forgivable owner replacement compensation is capped at \$20,833.⁴
- Total forgiveness may not exceed the original amount of the loan.
- At least 60% of the forgiveness amount must be for payroll costs and no more than 40% of the forgiveness amount can be for non-payroll costs.
- Amounts forgiven are not included in gross income for tax purposes.
- Remaining balance is subject to a five-year term at a 1% interest rate (two-years for loans entered into prior to June 5, 2020).
 - Payments of principal, interest, and any fees are deferred until the date a decision on forgiveness is remitted to the lender.

Use of Alternate Payroll Covered Period

- Borrowers with a biweekly or more frequent payroll schedule may calculate eligible payroll costs using the eight or twenty-four-week period that starts on the first day of their first pay period following the disbursement of the PPP funds.
 - Non-Payroll costs must still be determined based on the eight-week covered period starting on the loan disbursement date.

¹ As defined by the Paycheck Protection Program (see related Quick Reference).

² Does not apply to mortgage, leasing, or utility service agreements entered into after February 15th, 2020.

³ Interest, rent, and lease payments can be for real or personal property. Utilities include electricity, gas, water, transportation, telephone, and internet access.

⁴ For an eight-week covered period, compensation for employees and owners are capped at \$15,385

Limitation Based on Reduced Full Time Equivalent Employees

- The amount of loan forgiveness is decreased by a percentage equal to the percent reduction in the borrower's workforce.
 - The percentage is determined by comparing the average monthly number of full-time equivalent employees (FTEs) during the 8-week covered period to the average monthly number during, at the employer's election:
 - Feb 15, 2019 to June 30, 2019; or
 - Jan 1, 2020 to Feb 29, 2020.⁵

FTE Calculation

- Borrowers determine their average FTEs by dividing the hours paid per week for each employee by 40 and round to the nearest tenth (capped at 1.0 FTE per employee)
 - Ex. 5 hours per week = 0.10 FTE
- Employees working 40 or more hours per week may be counted as 1.0 FTE, and any employees working less than 40 hours per week may be counted as 0.5 FTE

Limitation Based on Reduced Wages

- If a borrower reduces individual employee wages, the loan forgiveness is also reduced dollar for dollar by the amount any wage reduction during the covered period exceeds 25% of the employee's average annual salary or hourly wage between 1/1/20 and 3/31/20.⁶

FTE and Salary/Wage Reduction Safe-Harbor

- A borrower is exempt from the reduction in loan forgiveness based on FTEs or salary/wages if:
 - The borrower reduced its FTEs or individual employee wages between 2/15/20 and 4/26/20; and
 - The borrower restored its FTE levels or individual employee wages by December 31st to the equivalent levels as of February 15, 2020.^{7,8}

Exemption Based on Employee Availability

- A borrower is exempt from the reduction in loan forgiveness based on FTEs if, in good faith, the borrower can document:
 - An inability to rehire individuals who were employees on Feb 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before Dec 31, 2020; or

⁵ Seasonal employers may instead use a consecutive twelve-week period between May 1, 2019 and September 15, 2019.

⁶ Doesn't include amount of wages reduced for employees with salaries over \$100,000 per year.

⁷ Doesn't require employer to re-hire laid-off employees but does require employer to restore reductions in an individual's pay.

⁸ Workforce reductions between 4/27 and 6/30 may still affect loan forgiveness.

- An inability to return to the same level of business activity as of Feb 15, 2020 by Dec 31, 2020 due to compliance with COVID-19 health and safety requirements.

Exemption for Employees Refusing Reemployment

- Employers are not required to include the following employees in their calculation of FTEs:
 - Employees for whom the employer made a good-faith, written offer to rehire that was rejected;
 - Employees fired for cause;
 - Employees who voluntarily resigned;
 - Employees who voluntarily requested and received a reduction in hours.

Application for Loan Forgiveness

- Employers seeking loan forgiveness must submit an application to the servicing lender within ten months after the last day of the covered period for determining forgivable expenses. The application must include:
 - Documentation verifying number of full-time employees and pay rates during the periods included in calculating forgiveness reduction;⁹
 - Documentation of mortgage interest, rent, and utility payments during the 8-week covered period; and
 - Certification that documentation is accurate and loan amounts were used for intended purposes.¹⁰
- Employers are not eligible for loan forgiveness if they don't provide such application and documentation.
- Lenders must issue decision on forgiveness within 60 days of receipt of such application.
- The SBA has 90 days to review the lender's decision after it is issued.

⁹ Such documentation includes Federal payroll tax filings, and State income, payroll, and unemployment insurance filings.

¹⁰ The SBA has issued the application for loan forgiveness. Please see the QR related to the application for more details.