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The Paycheck Protection Program ("PPP") under the CARES Act (the "Act") Loan Forgiveness Certification/Issues

**Presentation to the NYC Association of Legal
Administrators ("ALA")**

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Disclaimer: The content related to legislative COVID-19 relief measures contained in this document is based on information that was available at the time of the webinar on May 18, 2020. Although our firm has made every reasonable effort to ensure that any information provided related to COVID-19 legislation is accurate, we make no warranties, expressed or implied, on such information. Further, since legislative efforts are still ongoing, there may be additional legislation, as well as guidance and clarity from regulators, which may modify any legislative measures discussed. Some of those modifications may be significant and could affect any eligibility for benefits. The determination whether to apply for benefits, which benefits to apply for, and the amount applied for is your responsibility. Transmission of this information alone is not intended to create, and receipt does not constitute, any client-firm relationship. For specific tax or professional advice, including an analysis of how legislative COVID-19 relief measures may impact you or your business, please contact a member of our firm.

May 18, 2020

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Overview



- PPP Loan (Section 1102)/Forgiveness Program (Section 1106) - History, Treasury /SBA Guidance Including FAQ's 31/37/46 & IRC 265
- The Forgiveness Certification Application/Issues
- Additional Partner SE Income Loans
- Expenditure Issues: Loan - Covered Period 2/15 – 6/30/20 vs. Forgiveness - Covered Period (8 weeks)
- Payroll Costs, Partner SE Income & Covered Costs

History of the Paycheck Protection Program (PPP)

- On March 27, 2020, the Act initially provided for \$349 billion to **help small businesses keep workers employed & cover certain expenses** while dealing with the impact of COVID-19.
- Friday, April 03rd, the first bank began accepting applications. Many banks started later and application/review/guidance issues delayed processing.
- Friday April 10th, Self-Employed individuals and I.C.'s became eligible but, issues delayed this until April 13/14.
- April 16th, initial funds exhausted and businesses perceived to be ineligible receiving funds, e.g. – Ruth's Chris, Shake Shack, L.A. Lakers creating a significant public/political backlash (**FAQ's 31/37/46/47**) with a May 18th (currently) safe harbor to return funds (originally May 7th).

History Continued



- On April 24th, 2020, Congress approved an additional \$310 billion for PPP Loans. Total funding is now \$659 billion
- April 27th, the SBA began accepting additional loan applications which overwhelmed and reportedly crashed the system
- On April 28th, Secretary Mnuchin: SBA review of loans > 2M and criminal prosecutions of those making false certifications exacerbating FAQ 37 concerns.
- May 6th PPP Loan return period extended until May 14th
- A/O May 8th, 4.1M loans approved averaging 131.5K (221K/79K)
- May 13th PPP loan return period extended until today May 18th
- May 13th Treasury releases Interim Final guidance allowing partnerships to re-apply for additional PPP loan proceeds for partners excluded from original applications filed before April 24th
- May 14th 120B (38%) of the second tranche remained unapplied for
- May 15th SBA finally releases the Loan Forgiveness Application

PPP Sections 1102/1106 vs. the Treasury/SBA Guidance

- The Treasury/SBA were authorized to implement and issue guidance on the PPP and have issued separate guidance/FAQ's
- Not all guidance has comported to the Act:
 - The loan & forgiveness 75% payroll thresholds were not part of the statute (although it does reflect the intent of the statute, i.e. – payroll protection vs. bottom line). 75% of payroll for forgiveness $365/12 = 30.417 * 2.5 = 76.042/7 = 10.86$. $8/10.86 = 73.64\%$ rounded to 75% with the balance of 25% for other eligible costs (IFRN SBA-2020-0015). Misuse results in repayment(?) & penalties
 - *The issue regarding adequate sources of liquidity was not part of the statute and expressly excepted – see FAQ's 31/37 following discussion*
 - Notice 2020-32 eliminating the deductibility of the expenses paid for with forgiven loan proceeds under IRC section 265 preventing a double tax benefit does not reflect the intent of the statute – See Notice 2020-32 following discussion

FAQ 31 – Large Companies

- **31. Question: “Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan”?**
- **Answer:** “In addition to reviewing applicable affiliation rules to determine eligibility, 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 (as defined in section 3(h) of the Small Business Act), 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 “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” **Borrowers must make 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”. Since the issuance of FAQ 31 some 59 public companies have returns some 488M (8.3M avg).

FAQ 31 Continued

- Lenders may rely on a borrower's certification regarding the necessity of the loan request. Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith (April 23).
- *Due to the lack of clear guidance, severity of penalties threatened and the short deadline, IRS Extended to May 14 (May 5) FAQ 43.*
- Due to guidance coming out on May 13, FAQ 47 extended to May 18th.
- Marc Rubio tweet: "that whether the loan is necessary should be determined on an eight-week timeline: **If the money wasn't necessary because of *the danger of becoming insolvent during those eight weeks*, the taxpayer shouldn't be taking the loan and can face civil or criminal consequences**". HOWEVER, *business people do not look at their business based upon an 8 week horizon!*

FAQ 37 – Private Companies

- **37. Question: “Do businesses owned by private companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan”?**
- **Answer: “See response to FAQ #31”**
- **HOWEVER – CARES ACT section 1102(a)(2)(I) Credit Elsewhere – During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in section (3h), shall not apply to a covered loan. See *Zumasys, Inc. et al v. US SBA, et al* filed 5/4/20 challenging the authority of the FAQ’s in contradiction with the statute**
- Will the SBA revisit the loan application regarding the above upon receipt of the forgiveness application?
- Considerations for the forgiveness application, certification or review process?

FAQ 46 – Safe Harbor/SBA Review

- **46. Question: How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?**
- **Answer: *When submitting a PPP application, all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”*** SBA, in consultation with the Department of the Treasury, has determined that the following safe harbor will apply to SBA's review of PPP loans with respect to this issue: ***Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.***
- SBA has determined that this safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans. This safe harbor will also promote economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees. In addition, given the large volume of PPP loans, this approach will enable SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns.

FAQ-46 Continued

- ***Importantly, borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance. SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form. If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request. SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee. 5-13-20.***

Notice 2020-32 (IRC 265) – Non-deductibility of Forgiven Expenditures

- Section 1106(c)(1) (the loan forgiveness statute) under the CARES Act indicates that the forgiveness is to be treated by the banks as *cancelled indebtedness* by a lender authorized under section 7(a) of the Small Business Act. Cancellation of Debt Income (“CODI”) is normally taxable unless the law provides an exclusion from gross income. Section 1106(i) of the CARES Act *specifically excludes the PPP loan forgiveness from gross income*. Since without this last section, you would get the same result if the forgiveness created taxable gross income and taxable deductions as non-taxable income and non-deductible expense, it appeared Congress intended to allow for the exemption of the forgiveness income while still allowing the tax deduction for the related expenses, *i.e. – the double dipping*.
- The day after the Notice dropped, both the Senate and House chairs of the Ways & Means committees along with the tax-writers committees stated that the IRS overstepped its authority indicating the Notice went against the Congressional intent of the forgiveness statute. They have advised that they plan to reverse this ruling in the next phase of legislation.
- Subsequently, Secretary Mnuchin came out supporting the validity of the Notice.

PPP Loan Definitions/Usage



- Covered Loan – loan made during the covered period
- Covered Period – beginning Feb 15 and ending June 30, 2020
- Allowable use of Covered Loans:
 - (I) Payroll costs (must be 75% of loan usage IFRN SBA-2020-0015)
 - (II) Continuing health care benefits costs including insurance premiums
 - (III) Employee salaries, commissions, similar compensation
 - (IV) Payments of interest on any mortgage obligation (not principal payments)
 - (V) Rent including rent under a lease agreement
 - (VI) Utilities, and
 - (VII) ***Interest on any other debt obligations that were incurred < the covered period – this is not part of the forgiveness section***

PPP (Loan) Forgiveness Definitions/Usage

- Covered Loan – loan made under section 1102 of the Act
- Covered Period – 8 weeks starting on the origination date of the 1102 loan
- Expected Forgiveness Amount = the sum of:
 - (A) payroll costs (must be 75% of loan usage, defined under 1102)
 - (B) payments of interest on any covered mortgage obligation (not principal payments) on real or personal property
 - (C) covered rent obligations including rent under a lease agreement
 - (D) covered utilities including electric, gas, water, transportation, telephone or internet

“Payroll Costs” Defined



- Under the Act, “**Payroll Costs**” are comprised of the following payments:
 - Wages, commissions, salary, or similar compensation to an employee and self-employment income of an active partner in a partnership (not to exceed \$100,000 on an annualized basis for each employee and each active partner);
 - Cash tip or equivalent;
 - Vacation, parental, family, medical or sick leave;
 - Allowance for dismissal or separation;
 - Group health care benefits, including insurance premiums;
 - Any retirement benefits; and
 - State or local tax assessed on the compensation of employees.

¹ <https://www.sba.gov/document/support--faq-lenders-borrowers>

Payroll Costs - Additional Guidance

- SBA FAQ #7 clarifies that the exclusion of compensation in excess of \$100,000 annually applies only to *cash compensation*, not to *non-cash benefits*, including:
 - *Employer contributions to defined-benefit or defined-contribution retirement plans*
 - Payment for the provisions of employee benefits consisting of group health care coverage, including insurance premiums, and
 - Payment of state and local taxes assessed on compensation of employees.
- The non-cash benefits are above the \$100,000 cash compensation

Payroll Costs – What’s Excluded



- Under the Act “**Payroll Costs**” do **not** include the following:
 - Federal payroll taxes, railroad retirement taxes, and income taxes;
 - Compensation of any employee whose principal place of residence is **outside the U.S.**;
 - Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (“FFCRA”); or
 - Qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA. The FFCRA was passed on March 18, 2020.

Payroll Costs - Additional Guidance

- SBA Interim Final Rules on eligibility issued April 14 clarifies the eligibility of an individual with self-employment income as reported on Form 1040, Schedule C along with partners in partnerships – Note - 1/19 pages applied to partners & partnerships
- Treasury released guidance on April 24th indicating how to calculate payroll costs for partnerships/S Corps from the 2019 forms K-1 & clearly indicating that healthcare premiums/pension expense is not includable – so limitation for partners is 100,000 SE income. *What about new 2020 Partners?*
- Partnerships include partners average monthly SE income based on 2019 Form 1065 not to exceed \$100,000 per annum (calculation is 92.35% of the amount on line 14a of schedule K-1 reduced by any IRC 179 expense or unreimbursed business expenses reported separately)
- S Corporations report as additional payroll costs pension benefits and health insurance premiums amounts reported on lines 17 & 18 respectively
- <https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf>

Payroll Costs – Additional Loan for Partners SE Income



- Late on May 13th Treasury issued additional Interim Final Rule indicating that partnerships that submitted their loan application prior to April 24th (and for which the lender had not yet submitted SBA form 1502) could file for additional funds for partner SE income
- The April 1502 form is due by May 22nd
- This can add another \$20,833/partner (forgiveness is still limited to \$15,385)
- Guidance still needed as to additional loan impact on the forgiveness calculations: does this start a new 8 week period, extend the initial 8 week period or, part of original 8 week period?

PPP Loan Forgiveness Application



- The SBA had until April 26, 2020 (which was 30 days from the enactment of the Act) to issue guidance and regulations to implement this section (1106) of the Act
- Late on May 15, 2020, the SBA issued its loan forgiveness instructions/application - 11 pages (5.5 pages each):
<https://content.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>
- The instructions/application provide long awaited clarifications but, further guidance is still required

Loan Forgiveness Application



- The application consists of 4 components:
 - Calculation form – 30 items, 7 certifications
 - PPP Schedule A – 13 items
 - PPP Schedule A worksheet – 17 items
 - PPP Borrower Demographic Information Form (optional) – 6 items

PPP Loan Forgiveness Application - Continued

- Key Items to note:
- Covered Period (forgiveness) stays at 8 weeks (56 days) starting with the PPP disbursement date (aka the receipt date)
- *(NEW) **Alternative** Payroll Covered Period* – addresses the question of *incurred and paid* for payroll: “for payroll purposes, the 8 week period starts on the date of the first payroll vs. the disbursement date”. E.g. – funds received Wednesday 4/15 with payroll Friday, 4/17 can elect to shift the 8 week *payroll (only)* to the next pay period which would start 4/18 shifting the end of the 8 weeks to 6/12 from 6/9. Eliminates the 2 day special payroll run but, creates 2 different 8 week periods: payroll v. other qualified expenses.
- *There is a checkbox for PPP Loans in Excess of \$2,000,000*
- You only need to include non-payroll costs to the extent you want them forgiven, i.e. – mortgage interest on real or personal property, rent for real or personal property and utilities re 25%

PPP Loan Forgiveness Certification



- Forgiveness Certification PDF – 1 page
- Loan Application Certification PDF – attached

PPP Borrower Application Form – Certifications

_____ The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.

_____ Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

_____ The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.

_____ The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.

_____ I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.

_____ During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

_____ I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

_____ I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Signature of Authorized Representative of Applicant

Date

PPP Loan Forgiveness Calculation – Schedule A



- Payroll costs/75% determines if the 75% limitation was met
- **Eligible Payroll Costs** – incurred vs paid:
 - Payroll costs are considered incurred on the day earned. Payroll costs incurred but, not paid during the last pay period of the Covered (or, **Alternative**) Period, are eligible for forgiveness if paid on or before the next regular payroll date otherwise they must be paid within the Covered (or, **Alternative**) Period
 - Payroll costs - still based on *cash compensation* not exceeding \$100,000 – *capped at \$15,385 for the covered period*
 - *Self-employed/partners are reported separately - line 9*
 - Non-Payroll Costs – must be paid during the Covered (not Alternative) 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 8 week covered period.

PPP Loan Forgiveness Application – Schedule A Worksheet

- Forgiveness Reduction for Average Full-Time Equivalents (“FTE”):
 - 3 different reference periods to use:
 - (i) 2/15/19 – 6/30/19, or
 - (ii) 1/1/20 – 2/29/20, or for
 - (iii) Seasonal Employers – either of the above or, a consecutive 12 week period between 5/1/19 – 9/15/19.

PPP Loan Forgiveness Application – Schedule A Worksheet (Cont)

- Average FTE Calculation: Average # of hours paid per **week/40 hours** and round the total to the nearest 10th capped at 1.
- Alternatively, “Simplified Method” (Borrower election) assigns 1 for every 40+ hours and .5 for employees < 40 hours (benefit for employers with employees < 20 hours/week).
- Reduction quotient is:
 - Average FTE Calculation above/Average FTE’s during the reference period

PPP Loan Forgiveness Application – Schedule A Worksheet (Cont)

- **FTE Reduction Exceptions:**
 - (1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and
 - (2) 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.
- In all of these cases, include these FTEs on this line only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness.

PPP Loan Forgiveness Application – Schedule A Worksheet (Cont)

- **FTE Reduction Safe Harbor:**
 - A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the Borrower is exempt from the reduction in loan forgiveness based on FTE employees described above if both of the following conditions are met:
 - (1) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and
 - (2) the Borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

PPP Loan Forgiveness Application – Schedule A Worksheet (Cont)

- Salary/Hourly Wage Reduction: ...the actual amount of loan forgiveness the Borrower will receive may be less, depending on whether the salary or hourly wages of certain employees during the Covered Period or the Alternative Payroll Covered Period was less than during the period from January 1, 2020 to March 31, 2020. If the Borrower restored salary/hourly wage levels, the Borrower may be eligible for elimination of the Salary/Hourly Wage Reduction amount. Borrowers must complete this worksheet to determine whether to reduce the amount of loan forgiveness for which they are eligible. Complete the Salary/Hour Wage Reduction column only for employees whose salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of January 1, 2020 through March 31, 2020. For each employee listed in Table 1, complete the following (using salary for salaried employees and hourly wage for hourly employees):

PPP Loan Forgiveness Application Documents – Schedule A

- 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:
 - i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
 - ii. State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.

PPP Loan Forgiveness Application Documents – Schedule A Continued



- Payroll Documentation Continued
 - 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 (PPP Schedule A, lines (6) and (7)). Documents supporting other expenditures: cancelled checks, receipts, account transcripts or, other documents verifying covered mortgage obligations, covered lease obligations and covered utility payments.

PPP Loan Forgiveness Application – Schedule A Documentation (Continued)

- FTE: Documentation showing (at the election of the Borrower):
 - a. the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
 - b. the average number of FTE employees on payroll per month 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 month employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019.
- The selected time period must be the same time period selected for purposes of completing PPP Schedule A, line 11. 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 submitted may cover periods longer than the specific time period.

PPP Loan Forgiveness Application Documents – Schedule A Continued

- Non-payroll: 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.

PPP Loan Forgiveness Application Documents – Schedule A Continued

- Documents that Each Borrower Must Maintain but is Not Required to Submit:
 - 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, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.
 - d. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

PPP Forgiveness Application - 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, and 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. SBA Form 3508 (05/20) Page 10**

PPP Loan Forgiveness Issues



- Acceleration of expenses – be careful/conservative:
 - Can I accelerate rent expense during the 8-week period?
 - Can I pay bonuses during the 8-week period in order to meet the 75% rule? Annualization? Pay raises? 100K limitation and when are bonuses paid?
- How will states treat the forgiveness, e.g. – New York decouples from IRC changes after March 01, 2020 pursuant to the Act.

PPP Loan Forgiveness Issues

- *Any other documentation the Administrator determines is necessary:*
- Information available to the public from the SBA:
 - Name of borrower and loan amount – how will that play amount with New York Law Journal disclosure of 2020 PEP information?
 - Do you have your full documentation for your original certification of need for loan?

PPP Loan – General Terms



- The PPP provides “small businesses” with loans up to a maximum of \$10 million
- Maturity - 2 years
- Interest rate - 1%
- Payments will be deferred for 6 months, however interest will continue to accrue
- There is no prepayment penalty
- PPP loans are available through June 30, 2020
- Loan fees are waived
- Loans backed by 100% guaranty of SBA
- Loans must be used for eligible expenditures

Loan Forgiveness – Covered Costs Defined



Interest on a Covered Mortgage Obligation

- A covered mortgage obligation is defined as any indebtedness or debt instrument incurred in the ordinary course of business that:
 - Is a liability of the borrower;
 - Is a mortgage on real or personal property; and
 - was incurred before February 15, 2020.
- Excludes any prepayments or payment of principal

Covered Rent Obligation

- Rent obligated under a leasing agreement in force before February 15, 2020

Loan Forgiveness – Covered Costs Defined

Covered utility payments

- Payment for a service for the distribution of a service that began before February 15, 2020:
- Electricity
- Gas
- Water
- Transportation
- Telephone
- Internet access
- “Oil” (is not listed as a utility in the Act)



**Paycheck Protection Program
Loan Forgiveness Application**

OMB Control Number 3245-0407
Expiration Date: 10/31/2020

LOAN FORGIVENESS APPLICATION INSTRUCTIONS FOR BORROWERS

To apply for forgiveness of your Paycheck Protection Program (PPP) loan, you (the Borrower) must complete this application as directed in these instructions, and **submit it to your Lender** (or the Lender that is servicing your loan). Borrowers may also complete this application electronically through their Lender.

This application has the following components: (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) the PPP Schedule A Worksheet; and (4) the (optional) PPP Borrower Demographic Information Form. All Borrowers must submit (1) and (2) to their Lender.

Instructions for PPP Loan Forgiveness Calculation Form

Business Legal Name (“Borrower”)/DBA or Tradename (if applicable)/Business TIN (EIN, SSN): Enter the same information as on your Borrower Application Form.

Business Address/Business Phone/Primary Contact/E-mail Address: Enter the same information as on your Borrower Application Form, unless there has been a change in address or contact information.

SBA PPP Loan Number: Enter the loan number assigned by SBA at the time of loan approval. Request this number from the Lender if necessary.

Lender PPP Loan Number: Enter the loan number assigned to the PPP loan by the Lender.

PPP Loan Amount: Enter the disbursed principal amount of the PPP loan (the total loan amount you received from the Lender).

Employees at Time of Loan Application: Enter the total number of employees at the time of the Borrower’s PPP Loan Application.

Employees at Time of Forgiveness Application: Enter the total number of employees at the time the Borrower is applying for loan forgiveness.

PPP Loan Disbursement Date: Enter the date that you received the PPP loan proceeds from the Lender. If loan proceeds were received on more than one date, enter the first date on which you received PPP loan proceeds.

EIDL Advance Amount: If the Borrower received an Economic Injury Disaster Loan (EIDL) advance, enter the amount.

EIDL Application Number: If the Borrower applied for an EIDL, enter the Borrower’s EIDL Application Number.

Payroll Schedule: Select the box that corresponds to your payroll schedule.

Covered Period: Enter the eight-week (56-day) Covered Period of your PPP loan. The first day of the Covered Period must be the same as the PPP Loan Disbursement Date. For example, if the Borrower received its PPP loan proceeds on Monday, April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is Sunday, June 14.

Alternative Payroll Covered Period: For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the “Alternative Payroll Covered Period”). For example, if the Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20. Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in this application to “the Covered Period or the Alternative Payroll Covered Period.” However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to “the Covered Period” only.

If Borrower Received PPP Loans in Excess of \$2 Million: Check the box if the Borrower, together with its affiliates (to the extent required under SBA’s interim final rule on affiliates ([85 FR 20817](#) (April 15, 2020)) and not waived under 15 U.S.C. 636(a)(36)(D)(iv)), received PPP loans with an original principal amount in excess of \$2 million.

Forgiveness Amount Calculation (see Summary of Costs Eligible for Forgiveness below):

Line 1: Enter total eligible payroll costs incurred or paid during the Covered Period or the Alternative Payroll Covered Period.



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To calculate these costs, complete PPP Schedule A. Enter the amount from PPP Schedule A, line 10.

Line 2: Enter the amount of business mortgage interest payments during the Covered Period for any business mortgage obligation on real or personal property incurred before February 15, 2020. Do not include prepayments.

Line 3: Enter the amount of business rent or lease payments for real or personal property during the Covered Period, pursuant to lease agreements in force before February 15, 2020.

Line 4: Enter the amount of business utility payments during the Covered Period, for business utilities for which service began before February 15, 2020.

NOTE: For lines 2-4, you are not required to report payments that you do not want to include in the forgiveness amount.

Line 5: Enter the number from PPP Schedule A, line 3. This amount reflects the loan forgiveness reduction required for salary/hourly wage reductions in excess of 25% for certain employees as described in PPP Schedule A.

Line 6: Add lines 1 through 4, subtract line 5, enter the total. If this amount is less than zero, enter a zero.

Line 7: Enter the number from PPP Schedule A, line 13.

Line 8: Enter the amount on line 6 multiplied by the amount on line 7. This calculation incorporates the loan forgiveness reduction required for any full-time equivalency (FTE) employee reductions as described in PPP Schedule A.

Line 9: Enter the PPP Loan Amount.

Line 10: Divide the amount on line 1 by 0.75, and enter the amount. This determines whether at least 75% of the potential forgiveness amount was used for payroll costs. For more information, see Interim Final Rule on Paycheck Protection Program posted on April 2, 2020 ([85 FR 20811](#)).

Line 11: Enter the smallest of lines 8, 9, or 10. Note: If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender.

Summary of Costs Eligible for Forgiveness:

Borrowers are eligible for loan forgiveness for the following costs:

1. **Eligible payroll costs.** Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the eight-week (56-day) Covered Period (or Alternative Payroll Covered Period) (“payroll costs”). 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 but not paid during the Borrower’s last pay period of the Covered Period (or 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). For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the covered period. Count payroll costs that were both paid and incurred only once. For information on what qualifies as payroll costs, see Interim Final Rule on Paycheck Protection Program posted on April 2, 2020 ([85 FR 20811](#)).
2. **Eligible nonpayroll costs.** Nonpayroll costs eligible for forgiveness consist of:
 - (a) covered mortgage obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payments”);
 - (b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 (“business rent or lease payments”); and
 - (c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020 (“business utility payments”).

An eligible nonpayroll cost 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. Eligible nonpayroll costs cannot exceed 25% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once.

The amount of loan forgiveness the Borrower applies for may be subject to reductions as explained in PPP Schedule A.



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PPP Loan Forgiveness Calculation Form

Business Legal Name ("Borrower")	DBA or Tradename, if applicable	
Business Address	Business TIN (EIN, SSN)	Business Phone
		() -
	Primary Contact	E-mail Address

SBA PPP Loan Number: _____ **Lender PPP Loan Number:** _____

PPP Loan Amount: _____ **PPP Loan Disbursement Date:** _____

Employees at Time of Loan Application: _____

Employees at Time of Forgiveness Application: _____

EIDL Advance Amount: _____ **EIDL Application Number:** _____

Payroll Schedule: The frequency with which payroll is paid to employees is:

- Weekly** **Biweekly** (every other week) **Twice a month** **Monthly** **Other** _____

Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____

If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here:

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10): _____

Line 2. Business Mortgage Interest Payments: _____

Line 3. Business Rent or Lease Payments: _____

Line 4. Business Utility Payments: _____

Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3): _____

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5: _____

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13): _____

Potential Forgiveness Amounts

Line 8. Modified Total (multiply line 6 by line 7): _____

Line 9. PPP Loan Amount: _____

Line 10. Payroll Cost 75% Requirement (divide line 1 by 0.75): _____

Forgiveness Amount

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10): _____



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By Signing Below, You Make the Following Representations and Certifications on Behalf of the Borrower:

The authorized representative of the Borrower certifies to all of the below by **initialing** next to each one.

_____ The dollar amount for which forgiveness is requested:

- was used to pay costs that are eligible for forgiveness (payroll costs to retain employees; business mortgage interest payments; business rent or lease payments; or business utility payments);
- includes all applicable reductions due to decreases in the number of full-time equivalent employees and salary/hourly wage reductions;
- does not include nonpayroll costs in excess of 25% of the amount requested; and
- does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual.

_____ I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges.

_____ The Borrower has accurately verified the payments for the eligible payroll and nonpayroll costs for which the Borrower is requesting forgiveness.

_____ I have submitted to the Lender the required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.

_____ The information provided in this application and the information provided in all supporting documents and forms is true and correct in all material respects. I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

_____ The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency. I also understand, acknowledge, and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of ensuring compliance with PPP requirements and all SBA reviews.

_____ I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower's eligibility for the PPP loan and for loan forgiveness, and that the Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

The Borrower's eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower's loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

Signature of Authorized Representative of Borrower

Date

Print Name

Title



Instructions for PPP Schedule A

Lines 1 through 5: Enter the amounts from PPP Schedule A Worksheet Tables as directed.

Enter the amount from line 3 of PPP Schedule A on line 5 of the Loan Forgiveness Application Form.

For lines 6 through 9, during the Covered Period or the Alternative Payroll Covered Period:

Line 6: Enter the total amount paid by the Borrower for employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan, but excluding any pre-tax or after tax contributions by employees.

Line 7: Enter the total amount paid by the Borrower for employer contributions to employee retirement plans, excluding any pre-tax or after-tax contributions by employees.

Line 8: Enter the total amount paid by the Borrower for employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax); do not list any taxes withheld from employee earnings.

Line 9: Enter any amounts paid to owners (owner-employees, a self-employed individual, or general partners). This amount is capped at \$15,385 (the eight-week equivalent of \$100,000 per year) for each individual or the eight-week equivalent of their applicable compensation in 2019, whichever is lower. See Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans posted on April 14, 2020 for more information ([85 FR 21747](#), 21749).

Line 10: Add lines 1, 4, 6, 7, 8, and 9. Enter this amount on line 1 on the PPP Loan Forgiveness Calculation Form.

Line 11: Enter the Borrower's total average weekly full-time equivalency (FTE) during the chosen reference period. For purposes of this calculation, the reference period is, at the Borrower's election, either (i) February 15, 2019 to June 30, 2019; (ii) January 1, 2020 to February 29, 2020; or (iii) in the case of seasonal employers, either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019. For each employee, follow the same method that was used to calculate Average FTE on the PPP Schedule A Worksheet. Sum across all employees during the reference period and enter that total on this line.

The calculations on lines 11, 12, and 13 will be used to determine whether the Borrower's loan forgiveness amount must be reduced based on reductions in full-time equivalent employees, as required by the statute. Specifically, the actual loan forgiveness amount that the Borrower will receive may be reduced if the Borrower's average weekly FTE employees during the Covered Period (or the Alternative Payroll Covered Period) was less than during the Borrower's chosen reference period. The Borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies. See PPP Schedule A Worksheet—FTE Reduction Safe Harbor.

Line 12: Add lines 2 and 5.

Line 13: Divide line 12 by line 11 (or enter 1.0 if the FTE Reduction Safe Harbor has been met, according to PPP Schedule A Worksheet—FTE Reduction Safe Harbor). If more than 1.0, enter 1.0. Enter this amount on line 7 of the Loan Forgiveness Calculation Form.



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PPP Schedule A

PPP Schedule A Worksheet, Table 1 Totals

Line 1. Enter Cash Compensation (Box 1) from PPP Schedule A Worksheet, Table 1: _____

Line 2. Enter Average FTE (Box 2) from PPP Schedule A Worksheet, Table 1: _____

Line 3. Enter Salary/Hourly Wage Reduction (Box 3) from PPP Schedule A Worksheet, Table 1:
If the average annual salary or hourly wage for each employee listed on the PPP
Schedule A Worksheet, Table 1 during the Covered Period or the Alternative Payroll
Covered Period was at least 75% of such employee's average annual salary or hourly
wage between January 1, 2020 and March 31, 2020, check here and enter **0** on line
3.

PPP Schedule A Worksheet, Table 2 Totals

Line 4. Enter Cash Compensation (Box 4) from PPP Schedule A Worksheet, Table 2: _____

Line 5. Enter Average FTE (Box 5) from PPP Schedule A Worksheet, Table 2: _____

Non-Cash Compensation Payroll Costs During the Covered Period or the Alternative Payroll Covered Period

Line 6. Total amount paid by Borrower for employer contributions for employee health insurance: _____

Line 7. Total amount paid by Borrower for employer contributions to employee retirement plans: _____

Line 8. Total amount paid by Borrower for employer state and local taxes assessed on employee
compensation: _____

Compensation to Owners

Line 9. Total amount paid to owner-employees/self-employed individual/general partners:
This amount may not be included in PPP Schedule A Worksheet, Table 1 or 2. If there is
more than one individual included, attach a separate table that lists the names of and
payments to each.

Total Payroll Costs

Line 10. Payroll Costs (add lines 1, 4, 6, 7, 8, and 9): _____

Full-Time Equivalency (FTE) Reduction Calculation

If you have not reduced the number of employees or the average paid hours of your employees between
January 1, 2020 and the end of the Covered Period, check here , skip lines 11 and 12 and enter **1.0** on line 13.

Line 11. Average FTE during the Borrower's chosen reference period: _____

Line 12. Total Average FTE (add lines 2 and 5): _____

Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if FTE Safe Harbor is met: _____



Instructions for PPP Schedule A Worksheet

Complete the PPP Schedule A Worksheet or obtain an equivalent report from the Borrower’s payroll system or payroll processor.

Table Instructions

Employee’s Name: Separately list each employee. Do not include any independent contractors, owner-employees, self-employed individuals, or partners.

Employee Identifier: Enter the last four digits of each employee’s Social Security Number.

Cash Compensation: Enter the sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period. For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period; therefore, do not enter more than \$15,385 in Table 1 or Table 2 for any individual employee.

Average FTE: This calculates the average full-time equivalency (FTE) during the Covered Period or the Alternative Payroll Covered Period. For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower.

This calculation will be used to determine whether the Borrower’s loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in full-time equivalent employees. Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. However, the actual loan forgiveness amount that the Borrower will receive may be less, depending on whether the Borrower’s average weekly number of FTE employees during the Covered Period or the Alternative Payroll Covered Period was less than during the Borrower’s chosen reference period (*see* Instructions to PPP Schedule A, Line 11). The Borrower is exempt from such a reduction if the FTE Reduction Safe Harbor applies. See the FTE Reduction Safe Harbor instructions below.

Salary/Hourly Wage Reduction: This calculation will be used to determine whether the Borrower’s loan forgiveness amount must be reduced due to a statutory requirement concerning reductions in employee salary and wages. Borrowers are eligible for loan forgiveness for certain expenditures during the Covered Period or the Alternative Payroll Covered Period. However, the actual amount of loan forgiveness the Borrower will receive may be less, depending on whether the salary or hourly wages of certain employees during the Covered Period or the Alternative Payroll Covered Period was less than during the period from January 1, 2020 to March 31, 2020. If the Borrower restored salary/hourly wage levels, the Borrower may be eligible for elimination of the Salary/Hourly Wage Reduction amount. Borrowers must complete this worksheet to determine whether to reduce the amount of loan forgiveness for which they are eligible. Complete the Salary/Hour Wage Reduction column only for employees whose salaries or hourly wages were reduced by more than 25% during the Covered Period or the Alternative Payroll Covered Period as compared to the period of January 1, 2020 through March 31, 2020. For each employee listed in Table 1, complete the following (using salary for salaried employees and hourly wage for hourly employees):

Step 1. Determine if pay was reduced more than 25%.

- a. Enter average annual salary or hourly wage during Covered Period or Alternative Payroll Covered Period: _____.
- b. Enter average annual salary or hourly wage between January 1, 2020 and March 31, 2020: _____.
- c. Divide the value entered in 1.a. by 1.b.: _____.
If 1.c. is 0.75 or more, enter zero in the column above box 3 for that employee; otherwise proceed to Step 2.

Step 2. Determine if the Salary/Hourly Wage Reduction Safe Harbor is met.

- a. Enter the annual salary or hourly wage as of February 15, 2020: _____.
- b. Enter the average annual salary or hourly wage between February 15, 2020 and April 26, 2020: _____.
If 2.b. is equal to or greater than 2.a., skip to Step 3. Otherwise, proceed to 2.c.
- c. Enter the average annual salary or hourly wage as of June 30, 2020: _____.
If 2.c. is equal to or greater than 2.a., the Salary/Hourly Wage Reduction Safe Harbor has been met – enter zero in the column above box 3 for that employee. Otherwise proceed to Step 3.

Step 3. Determine the Salary/Hourly Wage Reduction.

- a. Multiply the amount entered in 1.b. by 0.75: _____.
- b. Subtract the amount entered in 1.a. from 3.a.: _____.



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If the employee is an hourly worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

- c. Enter the average number of hours worked per week between January 1, 2020 and March 31, 2020:

_____.

- d. Multiply the amount entered in 3.b. by the amount entered in 3.c. _____. Multiply this amount by 8: _____. Enter this value in the column above box 3 for that employee.

If the employee is a salaried worker, compute the total dollar amount of the reduction that exceeds 25% as follows:

- e. Multiply the amount entered in 3.b. by 8: _____. Divide this amount by 52: _____.

Enter this value in the column above box 3 for that employee.

FTE Reduction Exceptions: Indicate the FTE of (1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (2) 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. In all of these cases, include these FTEs on this line only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower’s loan forgiveness.

Boxes 1 through 5: Enter the sums of the amounts in each of the columns.

FTE Reduction Safe Harbor

A safe harbor under applicable law and regulation exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. Specifically, the Borrower is exempt from the reduction in loan forgiveness based on FTE employees described above if both of the following conditions are met: (1) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (2) the Borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower’s pay period that included February 15, 2020.



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PPP Schedule A Worksheet

Table 1: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of less than or equal to \$100,000 for all pay periods in 2019 or were not employed by the Borrower at any point in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE	Salary / Hourly Wage Reduction
FTE Reduction Exceptions:				
Totals:		Box 1	Box 2	Box 3

Table 2: List employees who:

- Were employed by the Borrower at any point during the Covered Period or the Alternative Payroll Covered Period whose principal place of residence is in the United States; and
- Received compensation from the Borrower at an annualized rate of more than \$100,000 for any pay period in 2019.

Employee's Name	Employee Identifier	Cash Compensation	Average FTE
Totals:		Box 4	Box 5

Attach additional tables if additional rows are needed.

FTE Reduction Safe Harbor:

- Step 1. Enter the borrower's total average FTE between February 15, 2020 and April 26, 2020. Follow the same method that was used to calculate Average FTE in the PPP Schedule A Worksheet Tables. Sum across all employees and enter: _____.
- Step 2. Enter the borrower's total FTE in the Borrower's pay period inclusive of February 15, 2020. Follow the same method that was used in step 1: _____.
- Step 3. If the entry for step 2 is greater than step 1, proceed to step 4. Otherwise, the FTE Reduction Safe Harbor is not applicable and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.
- Step 4. Enter the borrower's total FTE as of June 30, 2020: _____.
- Step 5. If the entry for step 4 is greater than or equal to step 2, enter 1.0 on line 13 of PPP Schedule A; the FTE Reduction Safe Harbor has been satisfied. Otherwise, the FTE Reduction Safe Harbor does not apply and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.



Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application

PPP Loan Forgiveness Calculation Form

PPP Schedule A

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:
 - i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
 - ii. 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 (PPP Schedule A, lines (6) and (7)).

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

- a. the average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
- b. the average number of FTE employees on payroll per month 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 month employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive twelve-week period between May 1, 2019 and September 15, 2019.

The selected time period must be the same time period selected for purposes of completing PPP Schedule A, line 11. 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 submitted may cover periods longer than the specific time period.

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.

Documents that Each Borrower Must Maintain but is Not Required to 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, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.
- d. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

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, and 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.



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PPP Borrower Demographic Information Form (Optional)

Instructions

1. **Purpose.** Veteran/gender/race/ethnicity data is collected for program reporting purposes only.
2. **Description.** This form requests information about each of the Borrower’s Principals. Add additional sheets if necessary.
3. **Definition of Principal.** The term “Principal” means:
 - For a self-employed individual, independent contractor, or a sole proprietor, the self-employed individual, independent contractor, or sole proprietor.
 - For a partnership, all general partners and all limited partners owning 20% or more of the equity of the Borrower, or any partner that is involved in the management of the Borrower’s business.
 - For a corporation, all owners of 20% or more of the Borrower, and each officer and director.
 - For a limited liability company, all members owning 20% or more of the Borrower, and each officer and director.
 - Any individual hired by the Borrower to manage the day-to-day operations of the Borrower (“key employee”).
 - Any trustor (if the Borrower is owned by a trust).
 - For a nonprofit organization, the officers and directors of the Borrower.
4. **Principal Name.** Insert the full name of the Principal.
5. **Position.** Identify the Principal’s position; for example, self-employed individual; independent contractor; sole proprietor; general partner; owner; officer; director; member; or key employee.

Principal Name		Position
Veteran	1=Non-Veteran; 2=Veteran; 3=Service-Disabled Veteran; 4=Spouse of Veteran; X=Not Disclosed	
Gender	M=Male; F=Female; X=Not Disclosed	
Race (more than 1 may be selected)	1=American Indian or Alaska Native; 2=Asian; 3=Black or African-American; 4=Native Hawaiian or Pacific Islander; 5=White; X=Not Disclosed	
Ethnicity	H=Hispanic or Latino; N=Not Hispanic or Latino; X=Not Disclosed	

Disclosure is voluntary and will have no bearing on the loan forgiveness decision

Paperwork Reduction Act – You are not required to respond to this collection of information unless it displays a currently valid OMB Control Number. The estimated time for completing this application, including gathering data needed, is 180 minutes. Comments about this time or the information requested should be sent to Small Business Administration, Director, Records Management Division, 409 3rd St., SW, Washington DC 20416, and/or SBA Desk Officer, Office of Management and Budget, New Executive Office Building, Washington DC 20503.

PPP Loans Rules, Guidelines & FAQs

- **United States Law**

H.R. 748 - CARES Act <https://www.congress.gov/bill/116th-congress/house-bill/748>

H.R. 266 - Paycheck Protection Program and Health Care Enhancement Act

<https://www.congress.gov/bill/116th-congress/house-bill/266>

- **Other Treasury and SBA Guidelines**

Treasury FAQs for Lenders and Borrowers updated through #37 (as of 4/28/20):

<https://www.sba.gov/document/support-faq-lenders-borrowers>

SBA Paycheck Protection Program Borrower Application Form:

<https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>

Treasury - How To Calculate Maximum Loan Amounts-By Business Type:

<https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>

PPP Loans Rules, Guidelines & FAQs

- **SBA Interim Final Rules**

PPP Interim Final Rule:

<https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule>

PPP Affiliation Interim Final Rule:

<https://www.sba.gov/document/policy-guidance--ppp-affiliation-interim-final-rule>

PPP Interim Final Rule - Additional Eligibility Criteria and Requirements for Certain Pledges of Loans:

<https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule-additional-eligibility-criteria-requirements-certain-pledges-loans>

PPP Interim Final Rule - Promissory Notes, Authorizations, Affiliation, and Eligibility:

<https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule-promissory-notes-authorizations-affiliation-eligibility>

PPP Interim Rule – Seasonal Employers:

<https://www.sba.gov/document/policy-guidance--ppp-interim-final-rule-seasonal-employers>

STEVEN D. LANDO

CPA

Tax Partner, Tax Leader of Anchin's Services Group

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OVERVIEW

Steven Lando, CPA, is a tax partner at Anchin. He is the Tax Leader of the Firm's Services Group, including its Law Firms Group.

Steven's expertise is in the area of tax planning and compliance, specializing in income and estate tax planning, wealth preservation, and compliance for federal, international, state and local taxes. His practice consists of law firms and attorneys, high net worth families, and a diverse group of business enterprises including hedge funds, acquisition companies, technology businesses, real estate owners and developers throughout the United States and in other various countries.

Steven has consulted with numerous groups and law firms on minimizing tax consequences of converting from a PC to an LLP, on establishing sophisticated pension plans to maximize owner contributions without undue burden on the business, on mergers & acquisitions, and on tax planning for investment decisions.

Steven has lectured to members of banks, law firms, real estate companies and most recently presented on "The State of State and Local Taxation and How it Impacts Your Law Firm" to the ALA. He has written for publications such as the New York Law Journal and Law Office Administrator. He has served on the State and Local, and Interstate Taxation Committees of the New York State Society of Certified Public Accountants (NYSSCPA) for a number of years.



EDUCATION

Herbert H. Lehman College, B.S., Accounting

CERTIFICATIONS

Certified Public Accountant

INDUSTRIES

Law Firms

Life Sciences

Manufacturing and Distribution

Services Industries

Technology

SERVICES

Tax Planning & Compliance

Thank you for joining us.



- COVID-19 Resource Team
 - Consists of more than 20 specialists
 - Focused on helping clients related to the relief options available to them
- COVID-19 Update Center via our homepage on Anchin.com
- Contact your Anchin Relationship Partner or our Resource Team at COVID19@anchin.com