

May 28 PPP Forgiveness and Flexibility Webinar

FAQ (as of 6/5/2020)

General

Q Is PPP available for independent piano technicians also and also independent piano teachers who run their own business?

A Self-employed individuals and independent contractors are eligible to apply for PPP loans.

Unemployment Insurance

Q Can an employer receive unemployment insurance payments based on loss of part time work and still receive a PPP for other expenses or employee wages? If not, can I accept PPP money and use for other things? What qualifies as proof of payroll?

A Per Treasury guidance, “you are eligible for a PPP loan if: (i) You were in operation on February 15, 2020; (ii) you are an individual with self-employment income (such as an independent contractor or a sole proprietor); (iii) your principal place of residence is in the United States; and (iv) you filed or will file a Form 1040 Schedule C for 2019. In addition, you should be aware that participation in the PPP may affect your eligibility for state-administered unemployment compensation or unemployment assistance programs, including the programs authorized by Title II, Subtitle A of the CARES Act, or CARES Act Employee Retention Credits.” There is no additional federal guidance on whether PPP makes you ineligible for unemployment. That might also depend on the circumstances in your state.

Documentation verifying the eligible cash compensation and non-cash benefit payments consist 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.

Q If an employee will not come back to work when offered a position, do they still get unemployment payments plus \$600?

A The Department of Labor has told unemployment claimants who have been placed on temporary layoff or furlough related to COVID-19 that they must return to work if called back by their employers. Refusal to return to work, when being offered the normal rate of pay and number of hours per week, may result in the termination of unemployment benefits and the need to repay certain benefits.

PPP Forgiveness

Q If an Employee to whom a “Recall from Furlough Offer Letter” was issued, wishes to change from a Full-Time, Salaried, Position to a Part-Time, Hourly, classification how might this affect our FTE Count for purposes of the Loan Forgiveness? If our Offer Letter offers the Employee same terms as before they were furloughed and the Employee rejects’ the Offer, would this be considered a “good faith effort”?

A The SBA’s PPP Loan Forgiveness Application implies that a borrower need only make “a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period.”

Q Are staff resignations held against you with PPP forgiveness?

A The SBA’s PPP Loan Forgiveness Application makes clear that FTE reductions attributable to voluntary resignations do not reduce loan forgiveness.

Q Is the June 30th date still the date for 100% reinstatement of employees? I heard there is a "Safe Harbor". What does that mean? If we are at 100% employment now, but not on June 30th are we "Safe Harbored"?

A Recent congressional action, if signed by the President, will move that date until December 31, 2020 from June 30, 2020. The “safe harbor” is the FTE Reduction Safe Harbor, which exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels. If the President signs the recent congressional legislation, guidance will be needed to modify current guidance that states that a 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.

Q If the flexibility law ultimately passes, would the flexibility apply to PPP Loans already received or only the new PPP Loans yet to be funded? What about interest for debt obligations incurred prior to Feb. Is that forgivable?

A The *Paycheck Protection Program Flexibility Act* will apply to any PPP loans. The only non-payroll costs eligible for forgiveness are business mortgage interest payments, rent or lease payments, and utility payments.

Q Does the 16-week extension mean you can use the entire PPP loan for payroll for up to 16 weeks instead of 8?

A The *Paycheck Protection Program Flexibility Act* extends the covered period such that it ends 24 weeks after such date of origination or on December 31, 2020, whichever comes earlier.

Q For the FTE headcount forgiveness calculation, if an individual does not report back to work how do we document to exclude from the calculation?

A You need to have made written notice to the employee. 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.

Q More detail on exactly what payroll expenses can be used to qualify for forgiveness. Also, what utilities can be used?

A Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred during the covered period. (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 are eligible for forgiveness if paid on or before the next regular payroll date.) 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.

Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

Utility payments eligible for forgiveness are 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.

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