

NFIB UPDATE

Bi-Weekly Briefing for Small Business

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September 2, 2020 – Ready for PPP Loan Forgiveness?

Let's make sure all your ducks are in a row!



DISCLAIMER

The materials and information provided in this webinar and on NFIB's website are for informational purposes only and not for the purpose of providing legal or tax advice. You should contact your attorney and/or tax professional to obtain advice with respect to a particular issue.

This is based on information available by 9/1/20.



Upcoming NFIB Webinars

September 16

Updates on Federal Aid Programs,
Navigating PPP Forgiveness, Q&A

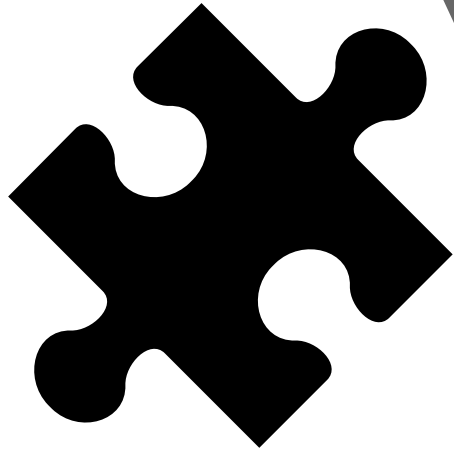
September 30

Tax Provisions in Cares Act - Beyond
the PPP, Congress Next Steps, Q&A

Agenda

-
- Current Events
 - Paycheck Protection Program
Loan Forgiveness **Top 10 FAQs**
 - Q&A

Current Events





Economic Injury Disaster Loan

****SBA STILL ACCEPTING EIDL APPLICATIONS****

The SBA's EIDLs provide working capital to help small businesses survive until normal operations resume after a disaster.

- Payroll costs, including benefits,
- Fixed debts (mortgage, rent, lease),
- Accounts payable,
- Other bills.

****Apply for an EIDL [here](#).****



Paycheck Protection Program

****FINAL RULE ON TREATMENT OF OWNERS****

On August 24, SBA released a new [Interim Final Rule \(IFR\)](#), which provides that **owner-employees** with **less than a 5 percent ownership stake** in a C- or S-Corporation are not subject to the owner-employee compensation rule.

The rule makes no reference to partners, meaning a general partner with any interest in a partnership appears to be an owner under these rules.



Paycheck Protection Program

****FINAL RULE ON FORGIVENESS OF RENT & MORTGAGE INTEREST****

The August 24 IFR also provides guidance on certain rent and mortgage interest payments.

1. The rule announced that the amount of loan forgiveness requested for nonpayroll costs may not include any amount attributable to the business operation of a tenant or subtenant of the PPP borrower.
2. SBA also announced that rent or lease payments to a related party *are* eligible for loan forgiveness provided that (1) the amount of loan forgiveness requested for those payments is no more than the amount of mortgage interest owed on the property during the covered period that is attributable to the space being rented by the business, and (2) the lease and the mortgage were entered into prior to Feb. 15, 2020.

However, mortgage interest payments to a related party are not eligible for forgiveness. Per the rule, PPP loans are intended to help businesses cover nonpayroll costs owed to third parties, not payments to a business's owner that occur because of how the business is structured.





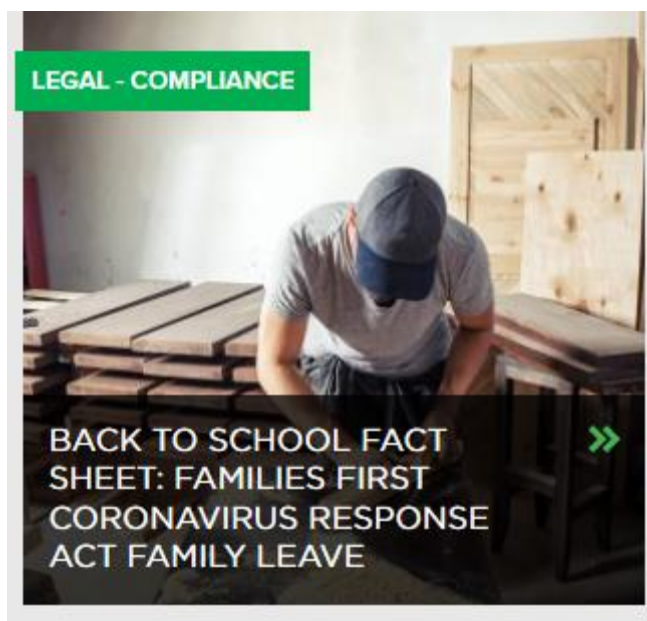
Payroll Tax Deferral

On Friday, the U.S. Treasury Department issued Notice 2020-65, which provides guidance for implementing the President's Executive Order requesting that Treasury delay the withholding and payment of payroll taxes (OASDI taxes) for the period from September 1 – December 31, 2020.

- The deferral is essentially a loan. The notice puts employers on the hook for the payroll tax deferral by requiring that deferred taxes be paid by April 30, 2021.
- Neither the Order, nor Notice 2020-65, require an employer to defer the payment of employee OASDI taxes. Thus, an employer may choose to continue to withhold and deposit employee OASDI taxes as usual.
- Tax experts predict that few employers will implement the deferral given the risks of not being able to withhold the deferred taxes from future income (e.g., due to employee terminations); most employers will likely choose to continue to withhold and deposit employee OASDI taxes as usual.

UPDATE

Families First Coronavirus Response Act

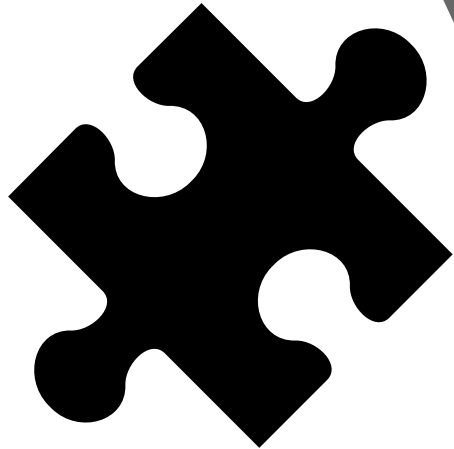


Is a school considered closed when there is virtual learning and the teachers are teaching?

The Department of Labor recently explicitly answers this question with a very clear...**YES!** Employees may be eligible for FFCRA leave in order to care for a child when the school is operating in whole or in part virtually.

NFIB has summarized DOL's updates in a tip sheet [here](#).

Top 10 FAQs on PPP Loan Forgiveness



FAQ #10

**If my company is undergoing a changed in ownership,
how will that affect my loan forgiveness?**

FAQ #10

The SBA must consent to the change of ownership and/or any assignment of the PPP obligation to a new borrower.

FAQ #9

What costs qualify as utility expenses within nonpayroll costs?

FAQ #9

The SBA states the below categories are eligible if service began before February 15, 2020:

- phone
- internet
- gas
- water
- electricity
- transportation

FAQ #8

For payroll costs, is it based on gross or net pay and can I include payroll taxes?

FAQ #8

PPP payroll costs include:

- Gross salary, wages, commissions and tips—up to \$100,000 annualized for each employee.
- Employee benefits, including paid leave, severance pay, employer insurance (health/dental/vision) premiums and employer contributions to retirement benefits.
- State and local employer taxes assessed on pay.

Federal payroll taxes do not count. Therefore, you do not count any of the employer portion of FICA and Medicare taxes. You also do not reduce gross wages by the employee share of FICA and Medicare costs plus any federal income tax withheld.

If you pay someone \$1,000, you count \$1,000 towards PPP payroll costs.



FAQ #7

How do I decide whether to use the
EASY Forgiveness Application - Form 3508**EZ**?

FAQ #7

You may be able to use Form 3508EZ if you:

- Are self-employed and have no employees; or
- Did not reduce the salaries or wages of your employees by more than 25%, and did not reduce the number or hours of your employees; or
- Experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of your employees by more than 25%.

Otherwise, you may have to use Form 3508.





**Paycheck Protection Program
PPP Loan Forgiveness Application Form 3508EZ**

**OMB Control No. 3245-0407
Expiration Date: 10/31/2020**

PPP LOAN FORGIVENESS APPLICATION FORM 3508EZ INSTRUCTIONS FOR BORROWERS

Checklist for Using SBA Form 3508EZ

You (the Borrower) can apply for forgiveness of your Paycheck Protection Program (PPP) loan using this SBA Form 3508EZ if you can check at least one of the three boxes below. Do not submit this Checklist with your SBA Form 3508EZ.

- ☐ The Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form (SBA Form 2483).

- ☐ The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);
AND
The Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period. (Ignore reductions that arose from an inability to rehire individuals who were employees on February 15, 2020 if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Also ignore reductions in an employee’s hours that the Borrower offered to restore and the employee refused. See [85 FR 33004](#), 33007 (June 1, 2020) for more details.

- ☐ The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the Covered Period or the Alternative Payroll Covered Period (as defined below) compared to the period between January 1, 2020 and March 31, 2020 (for purposes of this statement, “employees” means only those employees that did not receive, during any single period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000);
AND
The Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

If you can check at least one of the three boxes above, complete this SBA Form 3508EZ in accordance with the instructions below, and **submit it to your Lender** (or the Lender that is servicing your loan). Borrowers may also complete this application electronically through their Lender. If you are unable to check one of the boxes above, you cannot use SBA Form 3508EZ and instead you must apply for forgiveness of your PPP loan using SBA Form 3508.

Form 3508EZ Instructions



Form 3508EZ Certification - Must ☒ one below

1. Borrower did not reduce the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period (other than any reductions that arose from the inability to rehire individuals who were employees on February 15, 2020, if the Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020 and the reductions in an employee's hours that a borrower offered to restore and were refused).
- OR**
2. Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements between March 1, 2020 and December 31, 2020 by Health and Human Services, CDC or OSHA.

FAQ #6

If I received an EIDL advance from the SBA does that impact PPP forgiveness?

FAQ #6

An EIDL grant or advance (same thing!) - in amounts up to \$10,000 - will cause the SBA to reduce the amount of the PPP Loan eligible for forgiveness.

As an example, ABC received an EIDL emergency grant for \$3,000. Subsequently, ABC received a PPP loan for \$25,000. ABC complies with PPP forgiveness terms; \$22,000 of the PPP will be forgiven and the \$3,000 EIDL emergency grant will need to be paid back within two/five years at 1% interest rate.

**\$25,000 eligible forgiveness - \$3,000 advance = \$22,000 forgiven;
\$3,000 remains as a PPP loan**



FAQ #5

**The PPP Forgiveness Application Form requests
“Employees at Time of Loan Application” and
“Employees at Time of Forgiveness Application;” is this
the same as the FTE number?**

FAQ #5



**Paycheck Protection Program
Loan Forgiveness Application Revised June 16, 2020**

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

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:



FAQ #5

No. The numbers are not (necessarily) the same.

This is the number of employees (full- and part-time) and not (necessarily) the same number as the FTE number used for forgiveness calculations.

FAQ #4a and FAQ #4b

My bank isn't accepting PPP Loan Forgiveness Applications yet. Is this unusual?

And what is the status of PPP auto-forgiveness?

FAQ #4a and FAQ #4b

No. Many banks are waiting to see if Congress passes an **auto-forgiveness provision** for loans under \$150,000.

A bipartisan bill called The Paycheck Protection Small Business Forgiveness Act has been introduced in Congress that would allow small businesses who received a PPP loan of \$150,000 or less to obtain automatic forgiveness after submitting a one-page attestation form. NFIB is supporting the bill and remains optimistic that Congress will pass the bill.



FAQ #3

Should I apply now for forgiveness or should I wait until the end of my 24-week covered period?

FAQ #3

Many banks and tax/business professionals are advising clients to wait since there is a chance Congress will pass an auto-forgiveness provision for loans under \$150,000.

Moreover, many banks aren't yet accepting forgiveness applications.

But if Congress allows borrowers to submit a 2nd PPP loan application, it might be required to apply for forgiveness on the 1st loan before taking out a 2nd loan. In addition, some businesses would like to adjust staffing and want to submit their forgiveness application before laying off employees.

FAQ #2

What happens if I layoff employees after I've spent my PPP but before I apply for forgiveness (my bank isn't accepting forgiveness applications yet) and/or before the end of my covered period?

FAQ #2

While SBA has indicated borrowers can apply forgiveness after spending the entire loan, it's not clear whether the FTE and wage requirements for forgiveness apply after you have exhausted your loan funds but before the end of the covered period.

We don't believe it is the intent of the program to penalize borrowers who utilize the funds in good faith, but for now we can't say for certain that you won't be penalized.



FAQ #1

How do FTE reductions impact loan forgiveness?

FAQ #1

It may be reduced if your average weekly FTE employees during the Covered Period or Alternative Payroll Covered Period was less than during your chosen reference period and doesn't meet FTE Reduction Exceptions or FTE Reduction Safe Harbor rules.



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 or incurred by Borrower for employer contributions for employee health insurance:

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

Line 8. Total amount paid or incurred 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 satisfy **any** of the following three criteria, check the appropriate box, skip lines 11 and 12, and enter 1.0 on line 13; otherwise, complete lines 11, 12, and 13:

No reduction in employees or average paid hours: 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 ☐.

FTE Reduction Safe Harbor 1: If you were unable to operate between February 15, 2020, and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19, check here ☐.

FTE Reduction Safe Harbor 2: If you satisfy FTE Reduction Safe Harbor 2 (see PPP Schedule A Worksheet), check here ☐.

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

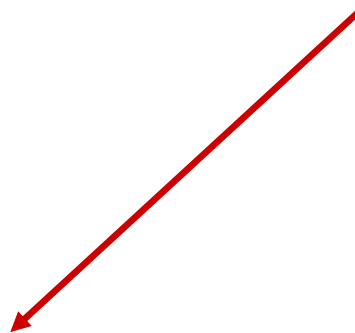
Line 12. Total Average FTE (add lines 2 and 5):

Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if any of the above criteria are met:

FTE SAFE HARBOR #1

(Restricted Business Activity)

Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements between March 1, 2020 and December 31, 2020 by Health and Human Services, CDC or OSHA.





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 2:

- 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, FTE Reduction Safe Harbor 2 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 the earlier of December 31, 2020, and the date this application is submitted: _____.
- 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 2 has been satisfied. Otherwise, FTE Reduction Safe Harbor 2 does not apply and the Borrower must complete line 13 of PPP Schedule A by dividing line 12 by line 11 of that schedule.

FTE SAFE HARBOR #2

(December 31, 2020 Restoration)

The borrower is exempt from the reduction in loan forgiveness based on a reduction in FTE employees described above if both of the following conditions are met: (a) the Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and (b) the Borrower then restored its FTE employee levels by not later than December 31, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

FTE Reduction Exceptions

When completing Schedule A Worksheet Tables - Determine if FTE Reduction Exception applies:

- (a) any positions for which the borrower has made a good-faith, written offer to rehire an individual who was an employee on February 15, 2020, and the borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020;
- (b) any positions for which the borrower made a good-faith, written offer to restore the reduced hours of such employee, at the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the reduction in hours, the employee rejected the offer; and the borrower has maintained records documenting the offer and its rejection; and
- (c) any employees who, during the Covered Period or the Alternative Payroll Covered Period, (1) were fired for cause, (2) voluntarily resigned, or (3) voluntarily requested and received a reduction of their hours.

Borrowers are required to inform the applicable state unemployment insurance office of any employee's rejected rehire offer within 30 days of the employee's rejection of the offer. Borrowers must maintain documents to show compliance with these exemptions, which may include the written offer, written record of the rejection, and a written record to hire a similarly qualified individual.



FTE Calculations

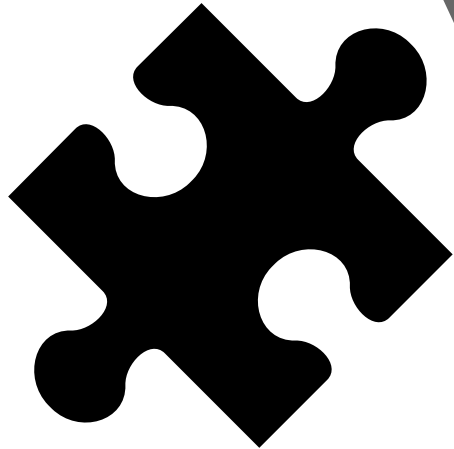
1. **Determine if an FTE Reduction Safe Harbor is met.** The Safe Harbors apply for workforce reductions from 2/15/2020 – 4/26/2020 that are restored by 12/31/2020 and for businesses subject to restricted activity due to COVID-19.
2. Determine the average FTEs during the **Covered Period** (or Alternative Payroll Covered Period) **being sure to add back any FTE Reduction Exceptions** (due to voluntarily departure, being fired, etc.) – this will be the numerator below
3. Select the baseline **reference period** at the business owner's election by determining the fewest average number of FTEs during the following periods – this will be the denominator below
 - a. 2/15/2019 through 6/30/2019; or
 - b. 1/1/2020 through 2/29/2020;
 - c. For seasonal employers only: either of (1) or (2) directly above or any consecutive 12-week period from 5/1/2019 through 9/15/2019
4. Calculate the FTE Reduction Quotient, not to exceed 100%:

Average FTEs during the covered period

Average FTEs during reference period



Q&A



COVID-19 Resources

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- [PPP Loan Forgiveness EZ Application Instructions](#)
 - [PPP Loan Forgiveness EZ Application](#)
 - [AICPA PPP Loan Forgiveness Calculator](#) (**updated 9/2/20**)
 - [NFIB Coronavirus Resources](#)
 - [NFIB Chart of Federal COVID-19 Financial Programs](#)
 - [NFIB PPP Loan Forgiveness Tip Sheet](#)
 - [NFIB FFCRA Tax Credit Tip Sheet](#)
 - [NFIB FFCRA Back-To-School Tip Sheet](#) (**new!**)
 - [NFIB EIDL Tip Sheet](#)