# How to Maximize PPP Loan Forgiveness: 6 Practical Steps

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The Paycheck Protection Program (PPP) Flexibility Act of 2020, signed into law on June 5, 2020, expands the possibility of loan forgiveness to small business borrowers. The PPP Flexibility Act addresses many concerns expressed by small businesses about the CARES Act, which was enacted to provide relief as many struggle to operate amidst the global pandemic.

> The original program required borrowers to use 75% of loan proceeds on payroll costs to achieve the maximum foregiveness. The PPP Flexibility Act reduces the percentage to 60%.

Addressing the top concerns of small businesses, the PPP Flexibility Act extends the period in which borrowers must use funds from eight to 24 weeks, and extends the deadline to rehire workers and restore wages to pre-pandemic levels to 24 weeks. Borrowers can still receive maximum forgiveness if COVID-19-related government requirements prevent finding qualified workers or returning to the same level of business activity (e.g., reduced number of restaurant tables).

The original program required borrowers to use 75% of loan proceeds on payroll costs to achieve maximum forgiveness. The PPP Flexibility Act reduces the percentage to 60%, although at least 60% of the funds must be used on payroll to obtain any forgiveness or none of the loan will be forgiven. Seasonal businesses are a good example. If a borrower could not use at least 75% of the funds on payroll within the eight-week covered period, the borrower must now hire enough workers to use 60% of payroll costs within 24 weeks.

Because the application is complex, borrowers must strategize how to maximize forgiveness. Borrowers who cannot rehire all workers must document and demonstrate COVID-19-related restrictions that prevented them from doing so.

Here, we provide six practical steps borrowers can take to maximize loan forgiveness:

## 1 Prepare for a Government Audit if Loan Proceeds Exceed $2 Million

The Small Business Administration (SBA) promises to audit all loans over $2 million seeking loan forgiveness.

Besides SBA audits, borrowers must prepare for Special Inspector General for Pandemic Recovery investigations and Pandemic Response Accountability Committee and the Congressional Oversight Commission reviews. In addition, the U.S. Department of Justice (DOJ) and State Attorneys General have announced enforcement initiatives.

To prepare for these audits, borrowers must prepare to defend loan application certifications to the necessity of loan funds to support ongoing operations. Historical financial information, budgets/projections, and pandemic operating experience should be enough to support what is, ultimately, a question of judgment. Borrowers must begin the process early, since auditors regard contemporaneous documentation as more persuasive than information created once an audit begins. And it is faster to organize documents now than to re-create them later.

Consider a mock audit that replicates government procedures. Mock audits identify holes in forgiveness applications and help aggressive borrowers to gauge the likelihood of passing the Government "smell test" and subsequent referral to DOJ for criminal investigation.

Begin early—it is faster to organize documents now than re-create later

Document analysis to support certifications

Prepare to defend loan application certifications

Consider a "mock" audit

## 2 Align Covered Period to Payroll Period

The loan forgiveness application allows borrowers to align the start of the covered period with its payroll cycle rather than on the date loan proceeds were disbursed. Borrowers should consider this option since it will delay the start of the covered period by which the funds have to be used. Aligning the covered period to the payroll period also reduces the administrative burden when calculating eligible payroll costs since existing payroll reports will support the amounts on the application.

## 3 Document Costs and Headcount

Loan forgiveness requires borrowers to cover payroll costs, mortgage interest, rent and utility costs over the 24-week period after a lender issues the loan. Some companies will establish a separate bank account to track these expenses. Assemble, organize and save general ledger account details showing use of PPP funds, invoices for mortgage interest, lease payments and utility services, and lease agreements stating monthly amounts due. And, to establish the borrower returned employee and compensation levels to pre-loan levels, collect payroll records, including payroll tax reports, employee benefit records, and compensation records; calculate full-time equivalents and pay rates; and document headcount changes between February 15, 2020 and the end of the 24-week period after the loan is made.

## 4 Pay Bonuses or Hazard Pay

Bonuses and hazard pay are eligible for forgiveness if total annual compensation to any individual employee does not exceed $100,000. If the borrower does not meet the requirement for using 60% of funds on payroll costs, consider paying bonuses or hazard pay to employees making under $100,000. Employers, however, must balance the benefits of paying bonuses against the costs of losing out on forgiveness.

## 5 Document Offers to Rehire Employees & Inability to Return to Pre-Pandemic Operations

Forgiveness rules require borrowers to maintain the same average headcount, on a full-time equivalency (FTE) basis, as it had during the period of January 1, 2020 to February 29, 2020. Borrowers that furloughed employees and have difficulty rehiring them are at risk of foregoing forgiveness. However, the forgiveness application allows businesses to exclude employees who declined offers to return from the FTE calculation, if the borrower documented the offer to rehire the employee during the covered period and the employee declined in writing.

If a borrower can document an inability to return to pre-pandemic business activity due to compliance with government restrictions, it does not have to rehire all workers to achieve maximum forgiveness. Borrowers electing to use this exemption should consult with their professional advisers on how to best document a case, as it will likely be an area of focus if an SBA audit occurs.

## 6 Determine Best Way to Calculate Average FTEs

Borrowers may use one of two approaches when calculating average FTEs during the covered period. The first approach is more precise and involves calculating the average number of hours paid per week to each employee divided by 40 and then rounded to the nearest tenth (capped at 1.0). As a simplified alternative, businesses can assign a 1.0 for employees who work 40 hours per week or more and 0.5 for employees who work fewer than 40 hours per week. Borrowers should calculate average FTEs under both methods and choose the most advantageous approach. This is particularly important for borrowers with many part-time employees.

## Conclusion

Many borrowers counted on forgiveness when they applied for PPP loans. The revised program enables many more borrowers to achieve maximum forgiveness. However, the forgiveness application adds complexities and provides a roadblock for many small businesses. Borrowers must act now to be best-positioned for maximum PPP loan forgiveness.

### About the Authors

*StoneTurn Partner Jonny Frank serves as U.S. Department of Justice (DOJ) Monitor to Deutsche Bank, DOJ Independent Auditor to a Top 5 automotive manufacturer, remediation consultant to a Northern European bank, and ethics and compliance adviser to the SEC-appointed Independent Consultant of a large public accounting firm. He was previously a Big Four partner and an AUSA for the Eastern District of New York.*

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