



# PPP 3508S: For Amounts Under \$50,000

## Forgiveness Form Instructions

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For business who received less than \$50,000 in PPP funding, forgiveness just got even easier. The SBA eliminated two key tests that businesses previously had to meet to receive 100% forgiveness.

### **Businesses that received less than \$50,000 no longer have to:**

1. Make any calculation for changes in FTE (Full Time Equivalent Employees). The new 3508S form still asks businesses to show FTEs at the time of the application for the loan and at the time of the request for forgiveness, but this calculation now has no bearing on the amount of forgiveness the business will receive. This means these businesses can have experienced a decline in FTE count and the amount of forgiveness they qualify for will not be reduced.
2. Make a calculation for any reduction in hourly wage or salary for individual employees. We don't believe many businesses will experience this problem. But now, if the business received less than \$50,000 and reduced hourly wages or salaries for an employee or employees, it no longer matters.

### **What do businesses still have to do to receive forgiveness?**

Businesses still have to provide their lender with documentation of how the money was spent. The rules on acceptable documentation are largely unchanged but specific requirements may vary from lender to lender. You can still not seek forgiveness for payroll to any individual that was at a rate in excess of \$100,000 on an annualized basis.

### **What remains unknown?**

Besides smaller technical issues that will only impact a small percentage of businesses, the largest unknown remains how forgiveness will be treated from a tax perspective. The current IRS ruling is that while the PPP forgiveness does not have to be treated as taxable income, the business cannot deduct the forgiven expenses from their tax filings. This effectively increases the taxable income of the business by the amount of the forgiven expenses, thus rendering them as a taxable event. There is a significant amount of speculation that Congress will move to change this, but for now, the IRS ruling is the law of the land.

For sole proprietors, independent contractors and self-employed with no employees, there is some confusion on whether they will need to file this 3508S form or use the somewhat longer 3508EZ form. According to the rules for the 3508S form, it seems that these businesses could use this form. However, there is specific language in an SBA document from October 13, 2020 stating that these businesses should use the 3508EZ form. As of today, we do not have clarification, so check with your bank. In any event, the 3508EZ form is not significantly more difficult for these businesses since they did not have employees, so they do not have to worry about FTE or salary/wage reductions anyway.

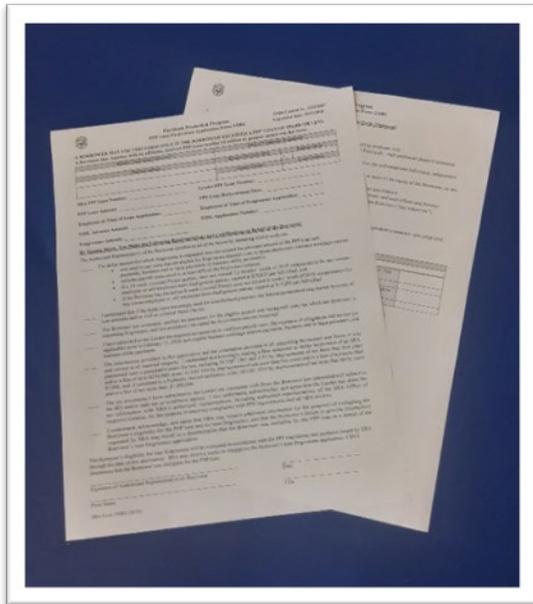
The new application 3508S application can be found at <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses> under the heading “For Borrowers.”

Remember, each bank may have a somewhat different interface when you submit your application. However, if you prepare all of the information needed to complete the SBA application, you should have all of the information needed to complete your bank’s forms.

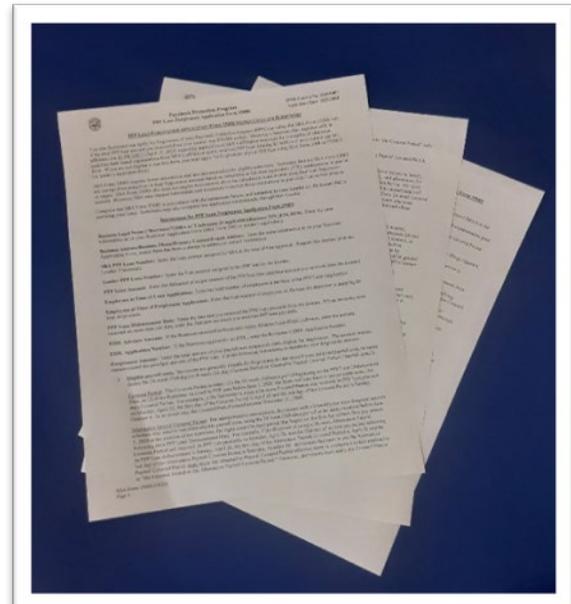
We will now review the 3508S form step-by-step. For most businesses, this will be easy. In the body of this document, we will provide instructions that should be sufficient for most of us. We will also provide some footnotes at the end of the document that will provide a more detailed discussion for those who want more information.

There are two documents needed for the 3508S Form: the two-page application and the three-page instructions.

### Two-page Application



### Three-page Instructions



We will walk through the application and refer to the instructions as necessary.

The top portion of Page 1 of the application is shown below.

 <p><b>Paycheck Protection Program</b> <b>PPP Loan Forgiveness Application Form 3508S</b></p>		<p>OMB Control No. 3245-0407 Expiration date: 10/31/2020</p>	
<p><b>A BORROWER MAY USE THIS FORM ONLY IF THE BORROWER RECEIVED A PPP LOAN OF \$50,000 OR LESS.</b> <b>A Borrower that, together with its affiliates, received PPP loans totaling \$2 million or greater cannot use this form.</b></p>			
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: \_\_\_\_\_

Forgiveness Amount: \_\_\_\_\_

Most of this is very straightforward and asks for specific information about your business and your loan.

- The **SBA PPP Loan Number** and **Lender PPP Loan Number** will be in your loan documentation.
- The **PPP Loan Disbursement Date** is the day that you received your PPP funds in your bank account.

Now, let's look at **Employees at Time of Loan Application and at Time of Forgiveness Application**.

Remember, while it is important to enter these numbers accurately and on a consistent basis, they will have no impact on the amount of your PPP that will be forgiven. So, do them correctly, but don't sweat it, even if the number has declined. When the SBA says employees, they mean Full Time Equivalent (FTEs). There are two accepted ways for calculating FTEs.<sup>1</sup> Since it won't matter for our forgiveness calculation, we suggest using the easier method, which is that everyone who works 40 hours or more a week counts as 1 FTE, and everyone who works less than 40 hours per week counts as .5 FTE. "Employees at the Time of Application" means for the **pay period** that included the date you applied on. If you think you may have used a different number when you applied for the PPP (or EIDL), don't worry. It doesn't matter anymore. Just calculate the correct number now and put it on the form.

"Employees at Time of Forgiveness" application is the same calculation just now done at the time you are submitting the application. The time-period for the calculation is the pay period that includes the date you are submitting the application. That could be a week, two weeks, half a month—whatever your normal pay period is.

If you received an **EIDL Advance**, you will need to enter that amount here and include the EIDL Application number that you received. You will not use that number in any of your calculations, but this amount will not be forgiven. We will discuss how this will work later on. For now, we will continue filling out the form.



**Forgiveness Amount**

Here is where we will enter the amount of qualified expenses that we have paid or incurred<sup>2</sup> during our Covered or Alternative Covered Period. As long as this number is equal to or greater than the amount of our PPP and at least 60% of these expenses are for payroll costs, we will receive the maximum amount of PPP forgiveness that we are entitled to. We do not have to show the SBA a breakdown of these expenses on this form, but we will have to provide our lender with documentation that supports our calculations for these expenses.

Before we can document these expenses, we will need to understand what our **Covered or Alternative Covered Periods** are. Every borrower will have a Covered Period, but only some borrowers will have an Alternative Covered Period. The vast majority of businesses will use a 24-week Covered Period, which is the 24-week period beginning on the disbursement date of our loan.<sup>3</sup>

Some borrowers may also have an Alternative Covered Period. This is only available for borrowers who have pay periods that are bi-weekly or less frequently (weekly? daily?). The only advantage to using an Alternative Covered Period is that it allows you to begin your Alternative Covered Period on the same day as the beginning of a pay period. This makes the payroll calculations easier since you will not have to calculate payroll amounts for partial payroll periods. Even if you use an Alternative Covered Period, the calculation of all non-payroll expenses must still be done for the Covered Period time frame.

The official language that discusses this is at the bottom of Page 1 and top of Page 2 of the instructions and is present below:

Covered Period: The Covered Period is either: (1) the 24-week (168-day) period beginning on the PPP Loan Disbursement Date, or (2) if the Borrower received its PPP loan before June 5, 2020, the Borrower may elect to use an eight-week (56-day) Covered Period. For example, if the Borrower is using a 24-week Covered Period and 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, October 4. In no event may the Covered Period extend beyond December 31, 2020.

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 24-week (168-day) period or for loans received before June 5, 2020 at the election of the borrower, the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date. For example, if the Borrower is using a 24-week Alternative Payroll Covered Period and 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, October 10. Borrowers that 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

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(not the Alternative Payroll Covered Period) wherever there is a reference in this application to “the Covered Period” only. In no event may the Alternative Payroll Covered Period extend beyond December 31, 2020.



Now that we have determined what our Covered Period and/or what our Alternative Covered Periods are, if we have chosen to use one, we can start compiling what paid and incurred expenses we have that are eligible for forgiveness.

Let's start with eligible payroll costs. At least 60% of the expenses that we will declare for forgiveness must be for payroll. If we have not spent at least this amount on payroll, then our forgiveness will be reduced. This should not be a problem for the vast majority of businesses. Your PPP amount was based on 2.5 months of your historic payroll (roughly 10.833 weeks). You now have six months (24-weeks) to spend the 60% of this amount on payroll. For most businesses, this will be easy. In fact, most businesses should be able to demonstrate that they have spent the entire amount of their PPP or more on just payroll. If your business can do this, then you should be done and do not have to worry about putting together information on other qualified expenses. There is no bonus for showing that you spent more than the entire amount of your PPP on qualified expenses. Once you can demonstrate that you have spent at least 100% of it on qualified expenses and at least 60% on payroll, you will receive the maximum level of forgiveness to which you are entitled.

The rules for what you can include in payroll costs are set forth on Page 2 of the instructions. Basically, they are:

- Salaries, wages, tips, commissions, paid leave (except FFCRA leave<sup>4</sup>) and allowances for dismissal and separations
- Paid and incurred
- Capped at \$100,000 per year times the portion of the year in the covered period (Weeks in Covered Period/52 weeks)
- Owners capped at the lesser of 2.5 months of 2019 Income or 2.5 months at \$100,000 per year (\$20,833)<sup>5</sup>
- Include benefits, state and local taxes (some limitation on owners<sup>6</sup>)

If your eligible payroll costs are not more than your PPP loan, then you will need to document other eligible expenses. If your eligible payroll costs are not at least 60% of your PPP loan, then you will not receive maximum forgiveness.

Other eligible expenses are set forth on the bottom of Page 2 of the instructions and are presented below.

2. **Eligible nonpayroll costs.** Nonpayroll costs eligible for forgiveness consist of:
- (a) covered mortgage obligations: payments of mortgage 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, telephone, transportation, 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 40% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once.

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Most of these are pretty straightforward. There are a few items that have been further clarified by the SBA. Interest payments are only for secured debt. Credit card interest is not eligible.

Transportation is only for transportation utility fees charged by state and local governments. If your business has vehicles and you thought you could use expenses related to those vehicles, that is not the case.

Now that we have assembled all of our eligible expenses, we can add them together and enter this number on Page 1 of the application. We will need to provide our lender with documentation for these expenses. Acceptable documentation is spelled out on Page 3 of the instruction form.



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

**Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application Form 3508S**

**PPP Loan Forgiveness Application Form 3508S**

**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.

**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



### **Representations and Certifications**

The business now must sign the representations and certifications on Page 1 of the application. These are must be true or the business may be charged with fraud.

Finally, on Page 2 of the application, the business is asked to provide demographic data for the principal of the business.

This finishes the application and if the business has documented eligible expenses in excess of the amount of the PPP with at least 60% of these expenses in the form of payroll expenses, they should be approved for the maximum level of forgiveness. For some businesses, that will mean that 100% of the PPP loan will be forgiven. However, if your business received an EIDL Advance, the SBA will deduct the amount of this advance from the forgiveness calculation. The amount of the EIDL Advance will be treated as an open balance and the business will need to repay this amount under the terms of its PPP loan. Interest on this amount, or any unforgiven amount, will be accrued from the date of disbursement.



## Footnotes

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### 1. The Two Methods for Calculating Full Time Equivalent Employees (FTEs)

Back when we all first started filling out these applications, the definition of what an employee meant was not clear. In fact, there were several contradictory definitions floating around. Many businesses just counted every individual who worked for them and counted them as 1, no matter how many or how few hours the individual worked. Many people have been concerned that they made a mistake at that point. Well, don't worry about it. There are clear definitions now and all is forgiven for mistakes on the application (at least in this one regard). What are the definitions of FTEs? Well, remember, it really doesn't matter too much to you if you are able to use the EZ form because there is no FTE calculation required. That said, here they are:

- 1) Everyone who works 40 hours or more a week counts as 1. Everyone who works less than 40 hours per week counts as .5. Yes, someone working 38 hours a week is .5 and someone working 2 hours a week is .5.
- 2) Everyone who works 40 hours per week counts as 1. Everyone who works less counts as a percentage of an FTE rounded to the nearest tenth and the calculation is Hours Worked Per Week/40 hours. Using the numbers above, our 38 hour per week employee is now .95, which rounds up to 1, and the employee working 2 hours per week is .05, which rounds up to a 0.1.

The business gets to choose which calculation to use, but once they choose, they must be consistent.

### 2. Paid or Incurred

This was pretty important when we all thought we had to use an 8-week covered period and is less important now that we can spread the use of the PPP out over to 24-weeks. However, it may still be important for some businesses. When you calculate payroll costs, you can include items that were paid and incurred during the covered period. Let's say your covered period started on a Thursday and you paid your employees the next day, Friday, for work they had performed during the preceding two weeks. You get to count this payment toward forgiveness. Even though it was incurred before your covered period, it was paid during your covered period. Similarly, when we get to the end of the covered period, we will have hours that employees worked (we owe them, i.e. incurred) but we have not paid them. The payment will happen after the covered period ends. We get to include those amounts towards forgiveness as well. This also works with benefits as well as with the other allowed expenses of rent and utilities. It does not work with mortgage interest payments.

### 3. Covered Period

#### *Start of the Covered Period*

The covered period can either start on the day the business receives the loan proceeds, or if the business pays more frequently than bi-weekly, the business can choose to have it start on the beginning of the pay period following receipt of the loan proceeds. This is known as the Alternative Covered Period. The major advantage to using an alternative covered period is that because it lines up with your payroll periods, it will make some of your calculations for incurred payroll easier.

#### *End of the Covered Period*

The covered period is defined in these instructions as the 8-week or 24-week period after receipt of the loan proceeds (or the alternative start date mentioned above). Only businesses that received their PPP Loan prior to June 5, 2020 can choose to use an 8-week covered period. There is very little advantage for doing so and we think the few business who do choose an 8-week period will have a sophisticated CPA on board.

One further point. Previously, we believed that the covered period could be any length of weeks between 8-weeks and 24-weeks. We had reasons to believe this, but we now know that it is not true. The covered period must be either an 8-week or 24-week period.



**4. Families First Coronavirus Response Act Leaves (FFCRA)**

The FFCRA requires most employers to allow their employees to take a paid leave. We won't go into the detail here (that would be for another session). As it relates to PPP, the FFCRA allows businesses to take the cost of the leave as a tax credit at the end of the year, so you cannot use it here for forgiveness. That would be double dipping.

**5. Why are owners capped at 2.5 months of their historic pay?**

The theory is that in the calculations for determining the PPP amount, owners could only include this amount. The fear is that some owners could now fire all of their employees, pay themselves all of the PPP proceeds over 24-weeks and be unfairly enriched. We know we would never do that, but someplace there is someone who would if they could. Now they can't.

**6. Why is there all this special language about not adding benefits for self-employed, general partners, or owner-employees of S-corps and limitations on retirement contributions for self-employed or general partners?**

Basically, it is a similar answer as above. For these classes of people, these payments should have already been included in the total compensation calculations they used for 2019. Since they can include their total compensation amount for forgiveness, they have already been paid for these amounts and adding them now would be double dipping.