

# **CARES Act Paycheck Protection Program: Forgiveness Clarity**

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# PPP Loan Forgiveness

Forgiveness Application was released on March 15, 2020

- Application and instructions gave guidance on several key issues.

# PPP Loan Forgiveness

Forgiveness Calculation has three steps:

1. Calculate Payroll and Nonpayroll expenses paid during 8-week eligibility period
2. Reduction of payroll if: i) Salaries reduced; or ii) Number of FTEs reduced
3. Apply 75% payroll threshold

# PPP Loan Forgiveness: Eligible Expenses

- Loan proceeds spent on eligible expenses in the 8 weeks following funding are forgiven
- The calculation of which expenses were included in the 8-week period was previously unclear

# PPP Loan Forgiveness: Eligible Expenses

- The CARES Act provides that expenses eligible for forgiveness are expenses “paid and incurred”
- It was unclear how this standard would apply: Guidance seemed to imply cash basis
- Most business payroll schedules did not align with the 8-week period

# PPP Loan Forgiveness: Eligible Expenses

- Most business payroll schedules did not align with the 8-week period
- This caused accounting difficulties since most employers pay employees in arrears

# PPP Loan Forgiveness: Eligible Expenses

- The application gives the business a choice to use either: the Covered Period or Alternative Covered Period

# PPP Loan Forgiveness: Eligible Expenses

- Covered Period: 56 day period beginning on the Loan Disbursement date
- 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.

# PPP Loan Forgiveness: Eligible Expenses

- Alternative Covered Period: 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

# PPP Loan Forgiveness: Eligible Expenses

- Example: Borrower receives 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

# PPP Loan Forgiveness: Eligible Expenses

## Other Payroll Related Clarifications:

- Payroll costs are considered paid on the day paychecks are distributed or Borrower originates an ACH credit transaction
- Payroll costs are considered incurred on the day that the employee's pay is earned

# PPP Loan Forgiveness: Eligible Expenses

## Other Payroll Related Clarifications:

- 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.
- All other payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period).

# PPP Loan Forgiveness: Eligible Expenses

What does this mean for my Business?

- If you pay monthly, consider changing to paying biweekly so you can use the alternative covered period, and get more payroll expenses forgiven.

# PPP Loan Forgiveness: Eligible Expenses

What about my other expenses if I elect to use the Alternative Covered Period?

- Employee health insurance, retirement plan contributions, and state and local taxes on employee compensation are tracked during the Alternative Covered Period
- Rent, mortgage interest, and utilities are tracked in the first 56 days after Loan Disbursement (the “Covered Period”).

# PPP Loan Forgiveness

Will there be any extension for businesses shut down in the 8-week period after receiving the loan?

- None are described in the application
- Treasury Secretary Mnuchin has indicated nothing has been planned to address this issue
- Trump has met with business owners to discuss an extended period for restaurants

# PPP Loan Forgiveness

How will Rent, Interest, and Utility payments be impacted?

- They must be paid in 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
- This does not apply to Payroll Costs

# PPP Loan Forgiveness

## How will the 75% Test be Calculated?

- Forgiveness is limited if 75% of the loan amount is not spent on Payroll Expenses
- It was previously unclear what happened if a borrower spent 74% on Payroll Expenses
- The rule clarifies that Borrower can first determine the Payroll Expense and then the sum of the other forgivable expenses cannot exceed 33.33% of the Payroll Expense

# PPP Loan Forgiveness

## Example:

- If your loan total was \$10,000, and only \$7,000 was spent on payroll, then 33.33% of \$7,000 is \$2,333.
- Thus, the maximum amount forgiven based on interest, rent, and utilities will be \$2,333, so the maximum forgiveness amount is \$9,333

# Forgiveness Reduction Calculation

How do you calculate a FTE?

- The instructions clarify that you use a 40 hour per week standard.
- 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.

# Forgiveness Reduction Calculation

When can I be relieved from forgiveness due to a reduction in FTEs?

- If you made a good-faith, written offer to rehire an employee which was rejected by the employee;
- If the employee was fired for cause
- If the employee voluntarily resigned
- If the employee voluntarily requested and received a reduction of their hours

# PPP Loan Forgiveness: Partner Compensation

In calculating the total amount of the Loan, a 2.5X multiplier of payroll is used:

- SBA guidance released shortly before the first round of funding ran out, provided that partners could include up to \$100,000 of compensation paid to partners in the payroll compensation
- The SBA clarified that partnerships who did not include partnership compensation can now apply for additional amounts.

# PPP Loan Forgiveness: Seasonal Businesses

- The initial guidance provided that a seasonal employer must determine its maximum loan amount for purposes of the PPP by referencing to the employer's average total monthly payments for payroll "the 12-week period beginning February 15, 2019, or at the election of the eligible borrower, March 1, 2019, and ending June 30, 2019."
- The SBA revised the guidelines to state *"Under this interim final rule issued pursuant to 1109 of the Act, a seasonal employer may alternatively elect to determine its maximum loan amount as the average total monthly payments for payroll during any consecutive 12-week period between May 1, 2019 and September 15, 2019"* to allow the business to choose the 12-week timeframe that best represents his or her payroll.
- The SBA clarified that entities who did not take advantage of the revised guidelines can revise their application in order to receive additional amounts.

# PPP Loan Forgiveness

- The Application also clarifies that Independent contractors, sole proprietors, partners cannot receive forgiveness for the costs of their own health insurance and retirement plan contributions
- This is different than owners employed by C or S corporations, who receive forgiveness of such expenses

# PPP Loan Forgiveness: Required Documents

## Payroll Documents:

- Bank account statements or third-party payroll service provider reports documenting cash compensation paid
- Tax forms for periods overlapping with covered/alternative period
- Quarterly UI filings for each state
- Payment receipts, cancelled checks, or account statements documenting the amount of employer contributions to health insurance and retirement plans included in the forgiveness amount

# PPP Loan Forgiveness: Required Documents

## FTE Documents: Documentation showing

- Average # of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
- Average # of FTE employees on payroll per month employed by the Borrower between January 1, 2020 and February 29, 2020 covered/alternative period
- For seasonal employers, 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.

# PPP Loan Forgiveness: Required Documents

## Nonpayroll Documents:

- *Mortgage Interest:* Lender amortization schedule and canceled checks, or lender account statements from February 2020 and covered period through one month after verifying interest amounts and eligible payments
- *Business Lease:* Lease agreement and receipts or cancelled checks or lender account statements from February 2020 and covered period through one month after verifying interest amounts and eligible payments
- *Utility Payments:* Invoices from February 2020 and those paid during the covered period and receipts, cancelled checks, or account statements verifying payments.

# PPP Loan Forgiveness: Retained, Unsubmitted Documents

- PPP Schedule A
- Documentation supporting the listing of each employee in Schedule A Table 1-2 (salary reductions and salary annualization).
- Documentation of job offerings and refusals, firings for cause, voluntary resignations, and written reductions in work schedule.
- Documentation supporting PPP Schedule A FTE Reduction Safe Harbor

# PPP Loan Forgiveness

## Reminders

- The SBA may revise the application
- Your lender may use its own form
- An Interim Final Rule on Loan Forgiveness is still pending

# PPP Loan Forgiveness: Liquidity

- SBA FAQ Number 36 clarified that businesses owned by private companies with adequate sources of liquidity to support the business's operations are subject to the same tests as businesses owned by large companies
- Borrowers must certify that “current economic uncertainty makes this loan necessary to support the ongoing operating of the Applicant”
- Certification must be made in good faith, taking into account current business activity and ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business

# PPP Loan Forgiveness

## Key Resources:

- <https://www.sba.gov/document/sba-form--paycheck-protection-program-loan-forgiveness-application>
- [https://www.sba.gov/sites/default/files/2020-05/Paycheck-Protection-Program-Frequently-Asked-Questions\\_05%2013%2020\\_2.pdf](https://www.sba.gov/sites/default/files/2020-05/Paycheck-Protection-Program-Frequently-Asked-Questions_05%2013%2020_2.pdf)

# Questions?

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