

Cares Act Paycheck Protection Program: SBA Regulations and New Legislation Q&A

By Susan J. Markey | June 4, 2020

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Question Asked	Answer Provided
Do transportation costs that can be included in expenses - include the auto insurance that is required for company vehicles?	Unclear. The only guidance that has been given is that transportation would include gas in a business vehicle.
If our company elects to stay with the original 8-week covered period, do we also have to stay with the 75% payroll expenditure requirement-or can we stay with the 8-week period/60% payroll requirement?	There is no indication that the 60% applies in either situation.
Are we still subject to the rules for employees with salaries over \$100,000 annually?	Yes.
If we spend all the funds before the end of the 24 period, can we end the period at any point of our choosing?	It is currently unclear, but it does not appear so.
Is forgiveness either 8-weeks or 24 weeks or can it be somewhere in between like 11 weeks if we need 11 weeks for full forgiveness.	It appears to be either 8-weeks or 24 weeks at this time.
how does intercompany transactions impact the loan amount on utility and/or payroll costs?	Unclear. There is no guidance on this issue.

<p>We submitted our loan application on 4/7, and calculated our loan amount including the employer portion of federal payroll taxes (SS/Med) because that area of the loan guidance was vague at the time that we applied (and AICPA was recommending the employer taxes be included). On the same date that we applied, Treasury posted an FAQ that specifically stated that employer FICA should be excluded from the loan amount calculation. I'm not sure about exact timing, but we did not see the guidance until after we submitted our application.</p> <p>My understanding is that we could rely on the guidance that was available when we prepared the application, but how does it work if the guidance came out concurrently with our loan submission?</p>	<p>You should write a memo in your files explaining this timing and discuss the error with your lender. It seems unlikely you would be punished if it were concurrent.</p>
<p>You mentioned the forgiveness timeline can be 8-weeks or 24 weeks. Could it be something in between? What if the loan amount to cover payroll ran out at week 12?</p>	<p>It currently appears that it either 8 or 24 weeks are the only options.</p>
<p>Can you clarify the definition of owner employees? I attended a different seminar that said Schedule C and partners are owner employees and you cannot pay health insurance or pension for Schedule C or partners. What about C corp or S Corp Shareholders? Can you use the PPP proceeds for C Corp shareholder's health insurance and pension contributions?</p>	<p>This is still not entirely clear.</p>
<p>Do you anticipate a new forgiveness SBA application form?</p>	<p>Yes, I expect the current version will be revised to reflect these PPPFA changes.</p>
<p>What about the IRS interpretation of non-deductible forgiveness expenses ...? any new language for that correction?</p>	<p>No additional clarification has been issued on that yet.</p>
<p>Given the extended amount of time in which to spend the funds, is there any option to receive additional loan funds?</p>	<p>Not at this time.</p>

In terms of the change from the 8-week period to 24 weeks, do you have to spread the funds throughout the whole 24 weeks or can you exhaust the funds before the 24 weeks and apply for the forgiveness before the 24 weeks are up? say in like week 12 or 13 if the funds received are exhausted?	It is unclear but it seems that if you have exhausted the funds early but after weeks, you would need to wait to apply until the end of the period, due to the calculation of the FTE and salary reduction tests.
Is there a specific list of eligible expenses?	Generally speaking, payroll costs, mortgage interest, lease payments, utilities, and interest on other secured debt.
Is there a specific list of required reports to show proper use of the PPP Loan?	The sample forgiveness application describes the required documentation on Page 10 of the forgiveness application.
Are equipment payments considered eligible?	If it is a payment for the lease of equipment, yes.
How does the latest PPP legislation affect the forgiveness calculation?	It extends to covered period, reduces the amount that needs to be spent on payroll, extends the safe harbor date, and adds some new savings provisions for limiting reductions in forgiveness due to reductions in FTEs.
Is the 75% reduction in pay rule based on gross wages or the hourly wage rate?	It appears to be gross.
If I use PPP funds for 12 weeks, can I then include 3 months of rents, utilities, etc?	Yes, if you meet the 60% test.
By extending the Covered Period by paying employees fewer hours per week, aren't I going to screw up my FTE calculation for forgiveness?	Yes, if you pay employees fewer hours per week. However, if you can bring your numbers back up by December 31, 2020 you will be relieved from the reduction in forgiveness.
An employee that works less than 40 hours, say 39 hours, is considered a .5 FTE? That doesn't seem right	It depends on the method that is used. If you use the simplified method, any employee working less than 40 hours is counted as .5. Alternatively, you can use the average number of hours that the employee worked per week and divide by 40 and round it to the nearest tenth.
Given the date of 12/31/2020 to rehire employees and not be penalized for a reduction in FTE's, how can I apply for forgiveness before that date? Don't I need to wait until that date?	It depends on whether you reduced your FTEs during the period. If you need to use the 12/31 safe harbor date to be relieved from a reduction in forgiveness, you should wait to complete your application.
Will the SBA ever put out a list of the recipients and amounts to the public?	It is expected that this information will ultimately become public, whether it is publicized by the SBA or due to a citizen's Freedom of Information Act requests.

With the 8-weeks being extended to 24 weeks or 12/31 at the latest, when would a business have to pay the taxes on the loan amount--at end of year?	Payroll costs incurred but not paid during the borrower's last payroll cycle are eligible for forgiveness if paid on or before the next regular payroll date (regardless of which 8-week period is used to calculate forgiveness).
For the covered period, if you use up the entire loan amount in 12 weeks, can you apply for forgiveness then? Or do you have to wait 24 weeks to apply?	This is still not entirely clear. It seems likely that you would have to wait for the period to expire in order to apply, but guidance is still forthcoming.
You can use the "Alternate Covered Period" for Payroll Costs, but you must use the "Covered Period" for non-payroll costs...correct?	Correct.
How long are we expected to keep the FTE count? I am in the construction industry and fear a fall/ winter slow down since our industry lags other types of business	You either need to maintain the count during either your covered period or alternative covered period, or you must increase back to your base FTE amount by December 31, 2021.
if you use 60% on payroll, do you still have to meet the FTE requirement to determine forgiveness quotient? Is it an either-or situation or a both factors have to be met situation?	Both factors must be satisfied.
Safe Harbor period for rehires. Are there only 2 measurement dates (6/30/20 or 12/31/20) or could the FTE measurement be taken anytime within those dates? Example, a company needs 12 weeks to use up all their funds meaning they exhausted their PPP funds on 7/31/20 and at that time the company restored FTE levels to 2/15/20 levels. Could the company apply for forgiveness and use the 7/31/20 FTE measurement? Or, would you have to wait until 12/31/20 to measure FTE counts since you passed the original 6/30/20 deadline?	The safe harbor is measured on 12/31/2020. The calculation is first performed during the covered period and the alternative covered period. If FTEs or salary are reduced, you can then rehire to the same number by December 31, 2020.
Is the interest for a business truck payment (not leased) able to be included in non-payroll expenses?	If it is in the nature of a mortgage on personal property, the interest payment is deductible.
Is State unemployment compensation paid by the employer deductible?	Yes. See page 5 of the forgiveness application.
Is workers compensation that is paid to a private company deductible?	Unclear, but it this time but seems unlikely to be covered.

<p>Can our 8-weeks of payroll begin when we actually called our employees back to work and do non-payroll expenses run concurrently?</p>	<p>Payroll expenses begin on either the covered period (the date the funds are disbursed) or the alternative covered period (which is counted beginning on the first day of the first pay period following the date on which the loan funds are disbursed).</p>
<p>Doesn't the law require FEDERAL compliance, not state (i.e. lock downs)?</p>	<p>Correct, the law references compliance with federal laws. However, most state lock down programs incorporate these same federal compliance terms.</p>
<p>So, when we submit our application for forgiveness and we have a current reduction in employees, how does the December 31, 2020 date come into play? I assume we would not wait to submit for forgiveness until we have hired back to the same number of employees when we applied for the loan?</p>	<p>It appears that you would need to wait until 12/31/2020 to apply, so that you can substantiate that you have rehired to the same number of FTEs.</p>
<p>Do you have a contact # or e-mail for questions on filling out the forgiveness application?</p>	<p>No such information exists at this point in time. I suggest that you connect with your lender.</p>
<p>I have a question. I do not know if this is where I ask it or on the webinar site.</p> <p>We have H2B employees. Are the wages for these H2B employee's forgivable payroll costs? They are paying taxes like all our other employees.</p>	<p>Payments to an employee whose principal place of residence is outside the United States are not eligible payroll costs.</p>
<p>are you still ABLE to use 75% for payroll expenses</p>	<p>Yes, the rule is that you cannot use more than 40% on eligible nonpayroll expenses during the covered period. So, you can meet this test</p>
<p>Does the 60% apply to the 8-week period or the 24-week period?</p>	<p>It applies to whichever of the two periods being used.</p>
<p>I know that we will not be able to use all of our PPP funds in 8-weeks. If you switch to the 24-week covered period will you penalized if you use all the funds up before the 24 weeks is done?</p>	<p>No, you will not be penalized if you use the funds before the period is complete.</p>
<p>Once the forgiveness application is submitted, funds are used and FTEs are calculated and no loan reduction is necessary because you matched FTEs from previous period, what happens if you need to reduce your FTEs because of a continued lack of business. Is that okay once the application is submitted?</p>	<p>Yes, if the application has been submitted, there does not appear to be any limitation on how you can operate your business after that date.</p>

<p>For a company that received the loan and the main supplier is the parent company in Europe. Are we allow to continue payment to the invoices for the purchases to them? Could that jeopardize the forgiveness given we are related parties?</p>	<p>There are not any statements about how related party payments will be treated at this time.</p>
<p>Is there a deadline by which our lender is required to offer us a forgiveness application for PPP?</p>	<p>Not at this time.</p>
<p>regarding your comments about the 8-week original coverage period vs the new 24-week period, you said "you couldn't imagine why someone would keep the 8-week coverage period and retain that debt longer"... but I don't understand what you mean by "retaining the debt longer". can you clarify?</p>	<p>I do not recall this comment exactly but I believe I was getting at the idea that the 24 week period makes it easier to get your loan amount fully forgiven, since you can incur more eligible expenses over the extended period.</p>
<p>By changing the safe-harbor date from 6/30/20 to 12/31/20, does that mean that all borrowers will NOW need to calculate staff levels at 12/31/20? what about companies that were able to re-hire employees, but could only afford to keep them for 8-weeks, and had to re-terminate them before 12/31/20???</p>	<p>If you did not experience a reduction during the covered or alternative covered period, you need not use the 12/31/2020 safe harbor.</p>
<p>Do you anticipate that there will be an option for businesses that have already received funds from the PPP to get additional funds with the extension from 8 to 24 weeks, since so many businesses are still facing economic hardships due to Covid-19?</p>	<p>There is no current guidance on this. It seems more likely that new funds/programs will be created, but no one really ever knows what congress will do.</p>
<p>3. Our \$90K Safe Harbor John Hancock Profit Sharing retirement plan is due for 2019 and will be funded today and has no cash value because there is no loan or hardship allowances for withdrawal and is vested whereby all retirement rules apply. So this is not a cash contribution correct? And how do we calculate the forgiveness on this funding for the 2019 year being funded today 6/4 during the 8-week period?</p>	<p>There is not any guidance about how to calculation retirement contributions, other than a statement that contributions to defined benefit and defined contribution plans are noncash compensation.</p>
<p>4. Is it better to fund first and second quarter 2020 for Profit Sharing Safe Harbor and just ask only for forgiveness for 2020 first and second quarter than for the prior year funding?</p>	<p>Funding the quarters during the covered period is a more conservative approach, as there is no current guidance on what would be permitted.</p>

<p>We have a loan of \$600K for the business that was funded to the company on March 16th, 2020 can we ask for forgiveness for the interest on the loan.</p>	<p>If the debt is secured and in the name of the Borrower, you can include this in your calculation of eligible nonpayroll expenses.</p>
<p>2. We were funded on April 15th and the next period beginning date was April 25th for a bi-weekly payroll being paid on May 15th which means the bi-weekly time is from 4/25 to 6/19 with the actual pay-out dates for 8-weeks being 5/15 to 6/26. So, what dates would be our actual 8-week dates to apply to Profit Sharing payments and non-payroll?</p>	<p>You use the covered period for nonpayroll (so the 8-week or 24-week period) commencing on the day the funds are disbursed to the account. For payroll expenses like profit sharing, you can either use the covered period and begin counting the periods on the date the funds were disbursed, or use the alternative covered period and begin counting on the first day of the first payroll period following loan funds (April 25).</p>
<p>1. Do we know yet if Work Comp Covered?</p>	<p>Still unclear.</p>
<p>Any knowledge yet on if Employee Mileage is covered or is it just the company truck and not mileage for personal use?</p>	<p>The transportation utility is still very unclear. The only guidance at this point is that gas in a business automobile would be included.</p>
<p>Can you speak to how companies with semi-monthly payroll should calculate allowable amounts?</p>	<p>No more than \$15,385 of payments to a single employee during the covered period will be eligible for forgiveness.</p>
<p>does "utility" expense under the ACT include gasoline for company vehicles? Also, does it include garbage removal and security alarm service costs?</p>	<p>The transportation utility is still very unclear. The only guidance at this point is that gas in a business automobile would be included.</p>
<p>Is there more clarification on what defines utilities? Will propane and oil for heat be included? What about garbage collection and security monitoring?</p>	<p>The only guidance is that "proceeds used to pay for electricity, gas, water, transportation, telephone, or internet access" are covered. The only guidance on the other utilities is that "proceeds used to pay for electricity, gas, water, transportation, telephone, or internet access" are covered.</p>
<p>With the newly released extension from 8-weeks to 24 weeks. Does it have to be one or the other? Can we use -say a 14-week time period?</p>	<p>It appears to be either 8-weeks or 24 weeks at this time.</p>
<p>Do you know if the amount forgivable from the original application will change?</p>	<p>In many cases, it may change. You should recalculate using the updated information.</p>
<p>For the lookback period in establishing FTE average - what if an employee took a voluntary leave of absence in the middle of the period? How would they be counted in the FTE average?</p>	<p>If they were on vacation, parental, family, medical, or sick leave, no reduction results.</p>

<p>We have part-time employees with variable hours. for the past month, we have been decreasing their work hours due to low volume. by doing this, is there an impact to our PPP loan forgiveness? also, some of these part-timers are applying for unemployment.</p>	<p>Yes. This sounds like a reduction in salary or wages for an employee earning less than \$100,000, which results in a reduction to forgiveness. Review the calculation referenced in the application.</p>
<p>can we count part-timers as .5 instead of based on their paid hours?</p>	<p>Yes, if you decide to use the simplified method, each person working 40 or more hours is counted as a one FTE, and each person working fewer than 40 hours is counted as .5 FTE.</p>
<p>I we are at the end of our 8-weeks and spent the 75 percent as required are we ok for full forgiveness.</p>	<p>Yes, presuming that you met all of the other tests related to salary reduction and reduction in FTEs.</p>
<p>The loan application asked for total number employee with no differentiation of full time to part time but forgiveness want to reduce employees based on full time or part time. How do you get forgiveness for the part time employees?</p>	<p>It depends on which calculation method you elect. You may either divide the employees average weekly hours by 40 and round to the nearest tenth, or count each employee working 40 or more hours as 1 FTE and each employee working less as .5 FTE.</p>
<p>How do we pick the 24-week period for payroll costs? Is that for non-payroll costs as well?</p>	<p>You can elect to either use the covered period and begin counting on the day the funds are disbursed, or the alternative covered period and begin counting on the first day of the first period following the date the loan funds were disbursed.</p>
<p>Also, some of our utilities are a shared cost, as part of our rent. Do I need to break out the applicable costs on a spreadsheet in order to claim those?</p>	<p>Yes.</p>
<p>Does the max amount per employee changes, or does that stay at \$15,385</p>	<p>It was not changed in the PPPFA, so thus appears to be staying at \$15,385, but future guidance may change this.</p>
<p>can the covered period be anywhere between 8 and 24 weeks...i.e.12 weeks for example</p>	<p>No, it appears to be either 8 or 24 weeks.</p>
<p>What is included in utilities? can trash and security be included?</p>	<p>The only guidance on the other utilities is that "proceeds used to pay for electricity, gas, water, transportation, telephone, or internet access" are covered.</p>

<p>We are deferring FICA taxes as part of the COVID19 relief. We are also getting a PPP Loan. Are we allowed to do both, or do we now need to pay in the FICA that we were deferring? We did not know we would get the loan until a month after we deferred FICA from payroll.</p>	<p>You are now allowed to do both.</p>
<p>I understand that we don't have the answers, but hopefully we will before these questions are answered. I remember hearing that we needed to apply for forgiveness by June 30, but does the extended Covered Period push that out even further? We received our loan on May 1 and were going to cut it close with the June 30 deadline.</p>	<p>They have not given a deadline for applying for forgiveness. You should discuss this with your lender.</p>
<p>If we use and have full forgiveness of the funds borrowed, can we apply for another loan or different relief programs? and must the loan be forgiven before we could apply?</p>	<p>That would depend on the terms of the other loan program you wanted to participate in.</p>
<p>Citibank put their requirements up, and they are saying that none of the federal taxes or employee/employer FICA taxes are forgivable. Why did they have us put gross income for employees, if only the net was going to be forgiven?</p>	<p>Each lender is permitted to require whatever items of information they deem appropriate.</p>
<p>PPP - for non-cash compensation - can contributions to owners' pension plans be a payroll cost that is forgiven?</p>	<p>An owner-employee cannot seek forgiveness for payroll compensation in an amount greater than \$15,385. This limit applies to both employee cash compensation and employee retirement and healthcare contributions made on behalf of the employee.</p>
<p>If we were planning on the 8-week deadline for the PPP and we based our numbers for owner salaries to be at the \$100K. Can we use money during the 8-week period for all employees including owners but then extend to the 24-week period but only use the money toward the employee payroll and not the owners' salaries?</p>	<p>Yes, you could choose to use the funds for payroll for individuals who are not paid more than \$100K on an annualized basis.</p>