

PPP Loan Forgiveness

(Payroll Protection Program)

2020 Federal Legislative Response to COVID-19

Covid-19 was declared a pandemic by the World Health Organization on March 11, 2020. This declaration has severely impacted our personal lives, as well as the economy on global scale.

Business and management teams had to implement disaster plans that may have been written, *but not tested*, or for most small - medium size businesses neither written nor tested.

Leadership in all levels of business were making decisions in the moment. They had

to identify:

- mission-critical processes;
- identify process that could be performed remotely;
- keep employees informed and safe; and
- identify critical vendors and customers and determine the best way to communicate the plans with them.

2020 Federal Legislative Response to COVID-19

At the same time, Government had to respond to the pandemic and the way this disruption in business was affecting our economy. They needed to:

- keep employees paid;
 - reduce taxes for both individuals and businesses; and
 - inject cash quickly into the economy
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- ❖ The **Families First Coronavirus Response Act (FFCRA)** was signed into law on 3/18/2020. The act expanded on the Family Medical Leave Act (FMLA), created emergency paid sick leave and created refundable employment tax credits.
 - ❖ The **Coronavirus Aid, Relief, and Economic Security Act (CARES Act)** was signed into law on 3/27/2020. This act created tax relief for businesses and individuals and provided for economic stabilization and assistance through the creation of government loan programs to be administered through the Small Business Administration (SBA), including the *Paycheck Protection Program (PPP)*.

Paycheck Protection Program (PPP)

The CARES Act initially provided for \$349 billion in **forgivable loans** to small businesses. The intent of the loan program was to provide immediate cash to businesses so they could continue to pay their employees while businesses were shut down in response to measures put in place to flatten the curve of COVID-19 cases.

The loans are administered through the SBA and their lending partners. The initial loan application was publicized on 3/31/20 and banks were expected to accept the 2-page loan applications on 4/3/20. At that time, there was little understanding of the rules and requirements for the loan program and, for banks and lenders, uncertainty about the guarantees from the Government.

Loan applications were being accepted by most main stream banks by 4/6/2020, after they rushed to create their own on-line application process, while the final guidance for the program were released by SBA and Treasury on 4/29/2020.

Paycheck Protection Program Flexibility Act of 2020

From April through the end of May, SBA and Treasury continued to issue “Interim Final Rules” weekly which addressed frequently asked questions about the program. Then, on June 5, 2020, the **Paycheck Protection Program Flexibility Act of 2020** was enacted.

This act provided borrowers with forgiveness flexibility by amending some of the rules and regulation for the program, including:

- a new 24-week covered payroll period,
- payroll expenditure requirement reduced to 60% , and
- for those loan amounts not forgiven, a repayment period of 5 years.

On June 17, 2020, the SBA and Treasury released the 3rd revision to the 6th version of the program’s *Interim Final Rules*. This revision incorporated the new provisions of the PPP Flexibility Act.

PPP Flexibility Act of 2020

- Borrowers who received loans prior to June 5 have the option to extend the 8-week period to 24 weeks
 - Provides flexibility for borrowers that may make it easier to achieve full or near-full forgiveness if current conditions aren't conducive to bringing back employees.
 - Election is made on the forgiveness application by indicating the covered period dates
 - Borrowers who receive loans June 5 or later have a covered period of 24
 - The covered period cannot extend beyond December 31, 2020
- The deadline for PPP loan applications continued to be June 30, 2020- *however, this has since been extended to August 8, 2020.*
- The 75% payroll expenditure requirement is reduced to 60%
- Opportunity to avoid FTE or Salary/Wage reduction penalties if headcount or salary/wages are restored by December 31 instead of June 30.

PPP Flexibility Act of 2020

- New exceptions for FTE reduction provided if borrower documents an inability to:
 - Rehire individuals who were employees of the eligible recipient on February 15, 2020; and
 - Hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
 - Return to the same level of business activity as before Feb. 15, 2020, due to compliance with requirements established or guidance issued related to COVID-19.

- Repayment period extended to five years for loans made on or after June 5; existing PPP loans can have maturity extended if lender and borrower agree (interest rate to remain at 1%)

PPP Flexibility Act of 2020

- PPP Borrowers can now qualify for the deferral of employer's share of payroll taxes available under the CARES Act
 - Deferral of Social Security payments (6.2%)
 - 50% due in 2021, remainder due in 2022
- Loan Payments are deferred until the SBA determines the amount of loan forgiveness and remits to the lender

PPP Loan Forgiveness- Clarity from the Final Interim Rules

- Eligible payroll costs per employee
 - Capped at \$46,154 for 24-week covered period borrowers
 - Remains capped at \$15,385 for 8-week covered period borrowers
- Rules for owner compensation were replacement
 - Capped at the lesser of \$20,833 or 2.5 months' worth of 2019 net profit for 24 - week covered period borrowers ($\$100k / 12 \text{ months} * 2.5 \text{ months} = \$20,833$)
 - Remains capped at \$15,385 for 8-week covered period borrowers

Note: instructions to loan forgiveness application indicate

- All owners are capped at these amounts (including S corp and C corp owners)
- Health insurance for S corp owners not allowed (in addition to self-employed and general partners)
- Retirement contributions for S corp owners are allowed (not allowed for self-employed and general partners)

PPP Loan Forgiveness- Clarity from the Final Interim Rules

- The borrower can select when the “covered period” begins:
 - On the date the lender makes the disbursement of the loan, or
 - The “alternative” payroll period that begins on the first day of their first pay period following the loan disbursement date (if payroll is paid weekly or bi-weekly)
- The borrower may apply for loan forgiveness any time on or before the maturity date of the loan, including before the covered period is over, if the borrower has used all of the loan proceeds accordingly. *Note, the first loan payment is due 10 months after the end of your covered period.
- The CARES Act uses 40 hours as the standard to define “full-time equivalent employees” to determine any reduction of loan forgiveness for FTEs. A simplified approach is to assign a 1.0 for employees who work 40 hours or more a week and .5 to employees who work fewer hours.

PPP Loan Forgiveness- Clarity from the Final Interim Rules

- An FTE reduction in the following circumstances does not reduce loan forgiveness:
 - Borrower makes a good-faith, written offer to rehire or restore the reduced hours of an employee during the covered period or the alternative payroll covered period, the offer was rejected and the borrower has documentation of the offer and rejection.
 - Employee was fired for cause; employee voluntarily resigned; or employee requested and received a reduction of their hours
 - Borrower in good faith can document the inability to:
 - rehire individuals who were employees on February 15, 2020 and hires similarly qualified employees for unfilled positions on or before December 31, 2020 or
 - return to the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued related to COVID-19

PPP Loan Forgiveness- Clarity from the Final Interim Rules

- Employee salary increases in the form of bonuses, hazard pay and raises are eligible for forgiveness to the extent that the total compensation to an employee does not exceed \$100,000 on an annualized basis (\$46,154 for the 24-week period or \$15,385 for the 8- week period). *Owner compensation remains capped at the lower of \$20,833 for the 24-week period or \$15,385 for an 8-week period.
- In order to be forgiven, eligible non-employee costs must be “incurred” during the covered period, so prepaid costs do not qualify for forgiveness.
- The CARES Act defines utilities as electricity, gas, water, transportation, telephone or internet access for service which began prior to February 15, 2020. Further guidance added gas used when driving a business vehicle. Other common utilities such as garbage collection or security monitoring may also be classified as a utility, but a business should confirm with the lending institution.

Applying for Forgiveness- Should I wait?

- Your lender will dictate the loan forgiveness application process. Most lenders are not ready as of today, since they are developing “forgiveness portals” or other automation options.
- You have 10 months from the end of your “covered” payroll period to apply for forgiveness and your bank has 60 days to determine if they will forgive the loan.
- If you received your loan before June 5, 2020, you can choose an 8 week or 24 week “covered” payroll period. After June 5, it is an automatic 24 week period. This gives you options and time to plan.
- Be sure to use the tools developed by your payroll provider.
- New FAQs have not been released by SBA & Treasury in weeks.
- Awaiting a decision on Automatic Forgiveness- which will drive additional changes.

Paycheck Protection Program (PPP), the next steps- Loan Forgiveness

PPP Forgiveness Calculation

Step 1

Track total eligible costs incurred and paid during the covered period following the loan funding

- Payroll costs include:
 - ✓ Compensation to employees including salary, wages, commissions or similar compensation,
 - ✓ Cash tips or the equivalent
 - ✓ Payment for sick leave, vacation
 - ✓ Allowance for separation or dismissal
 - ✓ Group health care coverage, insurance premiums paid less amounts withheld
 - ✓ Retirement contributions, employer match
 - ✓ Payment of state and local taxes assessed on the compensation of employees.

Paycheck Protection Program (PPP), the next steps- Loan Forgiveness

- Mortgage interest on real or personal property, for mortgages in effect prior to 2/15/2020
- Rent under a leasing agreement, for agreements in effect prior to 2/15/2020
- Utilities, includes payment for electricity, gas, water, transportation, telephone, or internet access, and service must have been established prior to 2/15/2020

Step 2

Calculate any reduction in payroll that is greater than 25%

- Only for any employees whose salary was less than \$100K during 2019
- If their average annual salary or hourly wage during the covered period decreased by more than 25% from January 1, 2020 and March 31, 2020 you must reduce the forgivable amount by the reduction that exceeds 25%.

Paycheck Protection Program (PPP), the next steps- Loan Forgiveness

Step 3

Calculate any percentage decrease in FTEs from covered period versus the following periods:

- February 15 through June 30, 2019 or, at the borrower's election, January 1 through February 29, 2020
- Seasonal businesses will use February 15 to June 30, 2019; between January 1 and February 29, 2020 or any consecutive 12-week period between May 1, 2019 and September 15, 2019

Step 4

Calculate any adjustment because FTEs and salary/wages were restored by December 31, 2020. If "restore" criteria are met, the decreases in loan forgiveness calculated in steps 3 and 4 are ignored.

Step 5

Calculate payroll costs for forgiveness floor. 60% of eligible costs are to be used for payroll or forgiveness will be reduced.

PPP Loan Forgiveness Landscape

There are plenty of PPP loan Forgiveness tools that are available on the internet. I suggest you work with one from a company that you trust, such as your CPA, your bank, your payroll company or another trusted resource, such as

- ▶ American Institute of CPAs (AICPA) and Intuit <https://www.pppforgivenessstool.com/>
- ▶ Intuit https://aidassist.intuit.com/app/home?cid=ppc_ggl_click_us_iaa-fy20_en_qb-ppp_text_intuit-brand#/home

We are still awaiting guidance from SBA/Treasury- which we expect after the next bill is passed. There is bi-partisan support for automatic forgiveness for loans under \$150,000 and reduced requirements for loans under \$1m.

Most lenders will not accept applications before the final guidance from SBA. This is expected to happen after August 10, 2020.

Accounting and Technical Questions for Paycheck Protection Program

- A business entity should account for the loan as a financial liability and accrue interest in accordance with the interest method, whether it expects to repay the PPP loan or believes it represents, in substance, a grant that is expected to be forgiven.
- An entity **would not** impute additional interest at a market rate, even though the stated interest rate may be below market, because the interest rate is prescribed by a governmental agency.
- The proceeds from the loan would remain recorded as a liability until either:
 - (1) the loan is, in part or wholly, forgiven and the debtor has been “legally released”; or
 - (2) the debtor pays off the loan to the creditor.

Once the loan is, in part or wholly, forgiven and legal release is received, a non-public governmental entity would reduce the liability by the amount forgiven and record a gain on extinguishment.

SBA Documentation Requirements

The SBA has provided the following list of documents (listed in detail below) that must be maintained by each borrower for 6 years after the date the loan is forgiven or repaid in full. SBA reserves the right to inspect the documentation upon request. *They can be maintained in an electronic format.

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: Payroll tax filings reported, typically Form 941 and state quarterly unemployment tax filing
- 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

SBA Documentation Requirements

FTE: Documentation showing (at the election of the Borrower):

- a. The average number of FTE employees on payroll per week employed by the Borrower between February 15, 2019 and June 30, 2019;
- b. The average number of FTE employees on payroll per week employed by the Borrower between January 1, 2020 and February 29, 2020; or
- c. In the case of a seasonal employer, the average number of FTE employees on payroll per week employed by the Borrower between February 15, 2019 and June 30, 2019; between January 1, 2020 and February 29, 2020; or any consecutive 12-week period between May 1, 2019 and September 15, 2019.

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.

SBA Documentation Requirements

Nonpayroll (continued):

- 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.

Additional, if applicable:

- a. Documentation supporting the listing of each individual employee in PPP Schedule A, Employee Worksheet Table 1, including the “Salary/Hourly Wage Reduction” calculation, if necessary.
- b. Documentation supporting the listing of each individual employee in PPP Schedule A, Employee Worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000.

SBA Documentation Requirements

Additional, if applicable (continued):

- c. Documentation regarding any employee job offers and refusals, refusals to accept restoration of reductions in hours, firings for cause, voluntary resignations, written requests by any employee for reductions in work schedule, and any inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020.
- d. Documentation supporting the certification, if applicable, that the 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 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. This documentation must include copies of the applicable requirements for each borrower location and relevant borrower financial records.
- e. Documentation supporting the PPP Schedule A, Employee Worksheet "FTE Reduction Safe Harbor 2."