PPP Loan Forgiveness and Planning
Paycheck Protection Program Flexibility Act of 2020

The CARES Act provided the initial funding the Payroll Protection Program- the PPP loans. On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 was enacted which 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.

The SBA and Treasury continued to change the rules of the program and they do this by issuing and revising the “Interim Final Rules”. On June 17, 2020, the SBA and Treasury released the 3rd revision to the 6th version of the program’s Interim Final Rules.

They also update their Frequently Asked Questions (FAQs), the latest from the SBA was August 11, 2020. The AICPA also releases FAQs to clarify the members frequently asked questions about the program- the latest release from them was August 26, 2020.
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.
  - The election is made on the forgiveness application by indicating the covered period dates
  - Borrowers who receive loans after June 5, automatically have a covered period of 24 weeks
  - The covered period cannot extend beyond December 31, 2020, the last loans were given on August 8, 2020- which gives those borrowers 20 weeks to spend the funds.

- Loans disbursed after June 5, 2020 have a five year maturity, loans disbursed before that date have a 2 year maturity. The borrower and lender may mutually agree to extend the term of those early loans to five years. Interest rate remained at 1%.

- Borrowers must now spend at least 60% of the proceed of the loan on payroll costs.
PPP Flexibility Act of 2020

- Opportunity to avoid FTE or Salary/Wage reduction penalties if headcount or salary/wages are restored by December 31 instead of June 30.

- 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.

- Loan Payments are deferred until the SBA determines the amount of loan forgiveness. If the borrower does not apply within 10 months of the last day of the covered period, payments will begin that month.
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

- Borrowers may apply for the PPP and other SBA financial assistance, cannot use the proceeds from the PPP for the same purpose as your other SBA loan(s). Loan proceeds would need to cover payroll for a different period or other qualifying costs.

- If a business applied for PPP and also received up to $10,000 in a grant from an EIDL (Economic Injury Disaster Loans), the amount of grant received (up to $10,000) will reduce the forgiveness amount of the PPP.
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 - more than 5% shareholder
  - Capped at the lesser of $20,833 or 2.5 months’ worth of 2019 net profit for 24-week covered period borrowers ($100k / 12 months * 2.5 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:
  - Either 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.
  *Note, additional guidance indicates that if you apply before the end of your 24 week covered period, you must prorate the maximum compensation limit allowed. For example- if you apply 12 weeks into your covered period, the maximum wages per standard employee would be $23,077. ($46,154/24*12)

- 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 $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.
PPP Loan Forgiveness - Clarity from the Final Interim Rules

- Owner-employees, self-employed individuals and general partner payroll costs for the 24-week covered period is capped at the lesser of 2.5 months of $100,000 annualized ($20,833) or 2.5 months of 2019 compensation across all businesses. The owners can choose how to allocate the total allowed compensation across the different businesses.

- Based on guidance provided, the portion of health insurance premiums and retirement contributions attributable to employees will be added to payroll costs for individuals with employees. For self-employed individuals with no employees, the loan amount is determined based on net profit from Form 1040 Schedule C only.

- 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.
PPP Loan Forgiveness-
Clarity from the Final Interim Rules

- The amounts included for health insurance and retirement for owner-employees
  - For owner-employees of a **C-corporation**: Employer health insurance contributions and retirement contributions are eligible expenses. Retirement costs are capped at 2.5/12 of 2019 employer retirement contribution. These payments do not count toward the $15,385/$20,833 cap per individual.
  - For owner-employees of a **S-corporation**: Employer health insurance contributions are not included for owners (and their family members) of at least a 2% stake of an S-corporation. Employer retirement contributions made on behalf of an owner-employee of an S corporation are included and do not count toward the cash compensation cap per individual.
  - For self-employed individuals and general partners: Employer health insurance contributions and employer retirement contributions made on behalf of self-employed individuals or general partners are not included as eligible expenses.
PPP Loan Forgiveness - Clarity from the Final Interim Rules

- Payments to related parties for rent are limited to the amount of the mortgage interest owed on the property during the covered period and the lease and mortgage must have been entered into prior to Feb. 15, 2020.

- Rent expense must also be reduced by any sub-lease income received, or an allocation must be made to the eligible interest expense allowed if the property has tenants other than the borrower.
Why are we advising our clients to wait to apply for forgiveness?

- Lenders will dictate the loan forgiveness application process. Many lenders have made “forgiveness portals” or other automation options that are now available.

- If they received the 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 us time to plan we must consider- allocation of expenses for various loans/grants; some 24-week periods may not be over yet, also when the loan is forgiven the expenses used for loan forgiveness are not deductible for tax purposes.

- We advised them to wait to so they could use the tools developed by their payroll providers to produce the detailed payroll reports needed for the calculations.

- SBA & Treasury continue to change the rules.

- Awaiting a decision on Automatic Forgiveness- which will drive additional changes.

*For loans of $150,000 or less.
PPP- Loan Forgiveness Application

PPP Forgiveness Calculation

You will need the salary and hourly wage information for the time periods and dates below.

- Reduction period. Feb. 15 - April 26, 2020
- As of February 15, 2020
- Your Covered period
- YTD Dec. 31, 2020

*All major payroll companies are ready to produce these reports for our clients.*
PPP- Loan Forgiveness Application

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.
PPP- Loan Forgiveness Application

- 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 need to calculate for any employee 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%.
PPP- Loan Forgiveness Application

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

- American Institute of CPAs (AICPA) and Intuit [https://www.pppforgivenesstool.com/](https://www.pppforgivenesstool.com/)

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.
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.”