



The Long and Winding Road to Achieving Loan Forgiveness Under the Paycheck Protection Program

Since the enactment of the CARES Act on March 27, 2020 it has garnered considerable attention. One program that generated significant excitement is the Paycheck Protection Program (PPP), because it appeared to offer small business owners an incredible opportunity for relief from the economic crisis caused by the Coronavirus pandemic. Unfortunately, guidance has been released in a piecemeal fashion making it difficult to know the requirements. With all the challenges business owners have faced so far in maneuvering the PPP provisions, the greatest test will be whether the average PPP borrower will be able to shift through all the guidance to find how to qualify for the maximum loan forgiveness amount. Owners will likely need assistance to make sure they are able to maximize forgiveness. This Counselor's Corner discusses some of the primary questions financial professionals are likely to face as they assist their business clients with their loan forgiveness applications.

Who Can Apply for the Paycheck Protection Program?

In general, only businesses that employ 500 or fewer employees that were in existence on February 15, 2020 and whose principal place of residence is in the United States qualify. This includes independent contractors, self-employed individuals, 501(c) not-for-profits, veteran organizations, tribal business concerns, and gig economy workers which in the past have not qualified for SBA loans. So, the universe of businesses that qualify is greatly expanded. It should be noted that independent contractors of a business do not count as employees for purposes of a business's PPP loan. Rather, independent contractors may apply for their own loan.ⁱ

In addition to meeting the above requirements, a business owner must be able to provide a good-faith certification to a few statements. For example, the borrower must certify that the funds will be used for specified purposes including maintaining payroll costs,

payment of interest on mortgage obligation, rent, and utilities. More importantly, the borrower must certify that the loan is necessary to maintain ongoing operation due to the uncertainty caused by the Coronavirus.

Borrowers need to take the certifications to heart. In response to a few high profile publicly traded businesses receiving PPP loans, the SBA issued guidance telling borrowers that if at the time of application they had access to other sources of liquidity that would not be significantly detrimental to the business they may not meet the good-faith certification.ⁱⁱ To further ensure the loans were limited to businesses in need, the SBA issued additional guidance indicating loans in excess of \$2 million, and other loans deemed appropriate, will be reviewed by the SBA at the time the lender submits a business's loan forgiveness. Businesses that accepted funds less than \$2 million will be assumed to have made the certification in good faith but can also be reviewed by the SBA.ⁱⁱⁱ Consequently, at the loan forgiveness phase it's possible for the SBA to challenge a business's eligibility. If the SBA determines that the business was not eligible for the loan, the business will be directed to repay those amounts and may be subject to liability.

What Are the Terms of the Loans?

Since the intent of the Act is to make it easy for small business owners to get relief expeditiously many of the normal procedures, costs, and lending criteria were eliminated or relaxed. For example, the loans are guaranteed by the SBA, so they do not require any collateral or personal guarantee. Also, lenders do not need to conduct independent verification supporting the loan request. Rather, they are permitted to rely on the certifications and documents of the borrowers to determine eligibility. Finally, the law provides that the lender cannot charge a fee and the loan can be prepaid at any time without incurring a penalty.



Ambiguities in the language used to describe the loan terms in the CARES Act created uncertainty at the inception of loan application process. Subsequent SBA guidance initially provided that any portion of the loan not forgiven had to be repaid over two years, after no less than a six-month deferral period (and no longer than one-year), at an interest rate of 1%. If the full amount of the loan is forgiven the borrower is not responsible for interest accrued during the covered period. However, for the amount not forgiven the interest will accrue during the deferral period. These terms were subsequently modified by the Paycheck Protection Program Flexibility Act (Flexibility Act) to extend the deferral period beyond six months to the date the amount of forgiveness is remitted to the lender by the SBA and expanded the repayment period from two years to a minimum of five years and a maximum of ten years.^{iv} It's important to note that this change only automatically applies to loans made after June 5th. For loans entered into on or before June 5th lenders and borrowers may mutually agree to extend the maturity date to conform to this new timeline.

How Much Can be Borrowed?

In general, the CARES Act stated that the maximum loan amount is the lesser of \$10 million or an amount equal to 2.5 times the "average monthly payroll costs." While this calculation seems simple enough, what constituted "payroll costs" caused mass confusion during the initial loan application process.

How is "Payroll Costs" Defined?

Payroll costs is used to determine the amount of loan proceeds a business qualifies for, what the loan proceeds may be used for, and the amount that may be forgiven. Because the same definition is used for all three purposes it is important to understand what this term includes. Since the initial loan application process the SBA has provided some clarifying guidance on this term. Unfortunately, the guidance appears to treat owners of different types of business entities differently.

For employees, payroll costs include:

- Salary, wages, commissions or cash tips (or equivalent) including bonuses, furlough and hazard pay^v unreduced by federal income tax withholding and employee's share of payroll taxes^{vi} for employees whose principal place of residence is in the United States capped at \$100,000 on an annual basis (maximum weekly amount of \$1,923);
- Employee benefit costs for vacation, parental, family, medical or sick leave (except amount required to be paid under Family First Coronavirus Response Act which qualifies for an employer tax credit); allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage including insurance premium; payment of retirement benefit^{vii}; and
- Payment of state or local tax assessed on the compensation of employees.
- Excludes the employer's portion of federal employment taxes imposed or withheld between 2/15/2020 – 6/30/2020 and qualified sick leave and family leave wages for which a credit is allowed under Family First Coronavirus Response Act.^{viii}

Payments to independent contractors are not included in these costs because they are eligible for their own loan. In general, businesses can calculate average payroll costs using data either from the prior 12 months or from calendar year 2019.^{ix}



While the SBA and Treasury limited cash compensation to \$100,000, guidance clarified that non-cash benefits such as employer contributions to retirement plans or payments for employee benefits consisting of group health care and payment of state and local taxes assessed on compensation of employees is not capped at \$100,000.^x Consequently, payroll for an employee with cash compensation greater than \$100,000 will be able to add the non-cash benefit on top of the \$100,000 cash compensation cap to determine the amount of the business loan.

For example, assume the business applying for the loan has 8 employees who earn less than \$100,000 with the prior year payroll of \$450,000, 1 employee with cash compensation of \$150,000, benefits for health insurance and retirement contributions of \$50,000 for the 9 employees (\$10,000 of this amount benefited the highly compensated employee who earned \$150,000), and an independent contractor who was paid \$50,000. The maximum loan will be \$125,000 ($\$600,000 \text{ payroll} / 12 \times 2.5$). The \$600,000 payroll is determined by adding the \$450,000 for the 8 employees with cash compensation under the cap plus \$100,000, of the \$150,000 earned by the highly compensated employee, plus \$50,000 non-cash benefits paid to the 9 employees. The compensation paid to the independent contractor is not included.

Recent guidance added a new limitation for compensation paid to **owner-employees**. Under the new rules a business owner's compensation cannot exceed:

- 8/52 of their 2019 net profit up to \$15,385 for an 8-week covered period; or
- 2.5 months' worth of 2019 net profits up to \$20,833 for a 24-week covered period.

The rule applies to all forms of businesses including self-employed and shareholders of S or C corporations. This limitation will certainly harm new businesses or businesses where owners take out low compensation.

In addition to the above owner compensation limitation, some of the biggest concerns center on the lack of equal treatment to all business owners. Specifically, there are differences in the way payroll is calculated for forgiveness and the amounts that can be forgiven for self-employed individuals, sole proprietors, and individuals who are general partners in a partnership. For these business owners, SBA guidance states that payroll is limited to net income and does not include the costs for the business owner's own health insurance or retirement contributions. For general partners recent guidance provided some relief. A partner's net income will not be reduced by Section 179 deductions, unreimbursed partnership expense, or depletion from oil and gas properties, multiplied by 92.35%. In addition, the latest loan forgiveness application indicates that payroll does not include health insurance contributions made on behalf of owner-employees of S corporations. There is hope that this might be modified, but at the time of the writing the SBA seems determined to prevent inclusion of these costs.

How Can the Loan Proceeds be Used? What Expenses are Eligible for Forgiveness?

The SBA and Treasury established specific limitations on how the proceeds can be used and the type of expenses eligible for forgiveness.^{xi} Since it is likely that most business owners obtained the loans with the intent of having all, or most of the proceeds qualify for tax-free forgiveness, borrowers wanting to take advantage of loan forgiveness must comply with specific requirements starting with making sure the proceeds are used to pay eligible forgivable expenses. Allowable expenses include the following payroll and non-payroll cost:

- 1) Payroll costs as described above
- 2) Payment on business rent obligations on real or personal property^{xii} under lease agreement in force before 2/15/2020
- 3) Business utility payments for which service began before 2/15/2020^{xiii}
- 4) Interest payments on business mortgage obligations on real or personal property incurred before 2/15/2020 (but not any prepayment or principal on a mortgage obligation)



It appears that rent, mortgage interest, or other covered expenses paid to a related party is forgivable if the expenses are reasonable and necessary for the operation of the business. Also, personal interest on home mortgage is partially forgivable for businesses with home offices. Borrowers are on notice that proceeds used for unauthorized purposes will be directed by the SBA to repay those amounts and may be subject to liability for fraud.

Can the Loan Be Used for Any Combination of Eligible Expenses?

While the amount that can be borrowed under the PPP is based solely on payroll costs, the loan proceeds may be used for both eligible payroll and non-payroll expenses. However, because the primary objective of the PPP is to encourage employers to maintain their workforce, the SBA's initial guidance stated that no more than 25% of the forgivable portion of the loan may be used for non-payroll costs.^{xiv}

Business owners and their advisors criticized this requirement as too restrictive. The PPP Flexibility Act changed this amount to 40%. So, to achieve the maximum forgiveness a minimum of 60% of the loan should be used for payroll costs. Some advisors were concerned that borrowers had to spend at least 75% (now 60%) on payroll expenses or not receive any forgiveness. The instructions to the forgiveness application indicate that loan forgiveness is possible even if 60% is not spent on payroll. However, where less than 60% of the total loan is spent on payroll the eligible non-payroll expenses cannot exceed 40% of the payroll forgiven.

For example, if the total loan is 100,000, and only \$50,000 is spent on payroll costs and the other \$50,000 is spent on non-payroll costs the borrower will only be able to count \$33,330 (\$50,000 x 66.66%) in non-payroll expenses.

What is the "Covered Period" for Use of the Loan for Forgiveness Purposes?

The CARES Act also stated the eligible expenses needed to be paid during the "covered period" to qualify for forgiveness. The SBA originally defined covered period

as the 8-weeks immediately following the receipt of the loan, regardless of whether the business restarted operations. Obviously, this covered period will be different for each borrower.

Businesses and their advisors raised concerns that the 8-week term was too onerous because much of the economy was shut down for longer than lawmakers expected when they designed the program. Consequently, lawmakers passed legislation giving borrowers more flexibility to spend the money while still qualifying for forgiveness. Now, borrowers with loans made before June 5th have the option of using the 8-week covered period or choosing the 24-week covered periods. Borrowers with loans made on or after June 5th must use the 24-week covered period. The loan forgiveness covered period for any borrower must end no later than December 31, 2020.^{xv}

Furthermore, in recognition that the above covered period did not align with many borrowers' payroll cycles, the SBA added an alternative payroll covered period. The alternative covered period is designed to provide administrative convenience for, and is limited to, borrowers with biweekly or more frequent payroll schedules. For borrowers who elect this option the covered period for payroll purposes begins on the first day of the first pay period that begins after disbursement of the PPP funds and ends 24-weeks later. Additionally, borrowers that elect this alternative payroll covered period cannot use this period for non-payroll costs. Consequently, borrowers who use the alternative covered period will need to establish two tracking systems, one for payroll and the other for the non-payroll expenses.

When is an Eligible Expense Considered Incurred and Paid?

The CARES Act also required the payroll and non-payroll costs to be incurred and paid during the covered period to be eligible for forgiveness. The phrase "costs incurred, and payments made" caused confusion because it could be subject to two possible interpretations. One interpretation would require the expenses to be both incurred and paid during the covered period. The other interpretation would permit expenses that are either incurred or paid during the covered period.



For example, assume a business that gets a PPP loan on April 2nd has payroll attributed to work performed in March that is payable on April 3rd. Under the incurred and paid interpretation, since the business incurred payroll expenses before the covered period, the expenses would not qualify as forgivable. However, under the either incurred or paid interpretation the March payroll would qualify as forgivable because it was paid during the covered period.

Fortunately, the loan forgiveness application clarified that for an eligible expense to qualify for forgiveness it may either be incurred or paid during the covered period. Under this interpretation eligible payroll expenses and non-payroll expenses paid during the covered period (or if elected alternative covered period for payroll costs) are eligible for forgiveness. In addition, borrowers can include amounts incurred, but not paid during the period selected as long as the amounts are paid before the next billing date (for eligible mortgage, rent, or utility payments) or on or before the next regular payroll date (for payroll costs). Payroll costs are deemed paid on the day the paycheck is distributed or the borrower originates an ACH credit transaction and deemed incurred on the day it is earned.

For example, assume a borrower's covered period begins on June 6th and ends 24-weeks later on November 21st. The borrower pays its May to October electric bill during the covered period and pays its November electric bill on December 10th which is the next regular billing date. The May to October bills will qualify for forgiveness because they were paid during the covered period. In addition, the borrower may seek loan forgiveness for the portion of the November electric bill through November 21st (the end of the covered period), because it was incurred during the covered period as long as it is paid on the next regular billing date.

How is the Amount of Loan Forgiveness Determined?

It is possible that most of the principal amount of the loan and any accrued interest can be forgiven especially with the added flexibility extended by the PPP Flexibility Act. However, to achieve maximum forgiveness the borrower must comply with several detailed requirements. Specifically, in addition to making sure the business owner uses the loan proceeds for eligible expenses in the correct proportion during the covered period, the number of full-time employees and compensation levels must be maintained.

So, once the business determines the payments eligible for forgiveness, two additional computations must be made to determine the amount ultimately forgivable. Both calculations are based on payroll. The first is a measurement of "Full-Time Equivalent Employees" (FTEs), which is a headcount, and the second is a measurement of the actual salary expense. The purpose of these calculations is to make sure that the debt forgiveness is related to the purpose of the CARES Act – to keep employees working at wages comparable to the pre-Coronavirus levels. A reduction of either the number of full-time employees or salary paid to any employee will reduce the amount of loan that can be forgiven. However, both reduction calculations are subject to important safe harbor exemptions. So, before examining the reduction calculations for headcount and salary it is important to understand the safe harbor exemptions.

What are The Full-time Equivalent Employee and Salary Safe Harbor Exemptions?

The CARES Act reduced forgiveness amounts for borrowers who did not maintain FTE headcount during the covered period as compared to certain pre-COVID lookback periods. It also required borrowers to keep each FTE's salary level during the covered period at least at 75% of the employee's salary level during the last fiscal quarter that they worked before the borrower applied for the PPP loan. The CARES Act and PPP Flexibility Act established three important safe harbor exemptions.

First, the CARES Act created a safe harbor date of June 30, 2020 that PPP borrowers could bring back FTE levels or salary to not have their forgiveness amounts reduced. The PPP Flexibility Act kept this safe harbor in place but



extended the date to December 31, 2020 to rehire workers for their headcount and salary to count toward forgiveness. So, if a business rehires or replaces employees laid off, or restores wages reduced, between February 15, 2020 and April 26, 2020 by December 31, 2020, the PPP loan will not be reduced.

In addition to extending the safe harbor date, the PPP Flexibility Act created two additional exemptions based on employee availability in which a reduction in FTE would not affect a PPP borrower's forgiveness amount. The law states that loan forgiveness is determined without regard to the reduction if a PPP borrower in good faith is able to document either:

- An inability to rehire individuals who were employees on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
- An inability to return to the same level of business activity that the business was operating at before February 15, 2020 due to compliance with requirements established or guidance relating to standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19

What Does "Full-time Equivalent Employee" Mean and How is It Calculated?

Businesses only qualify for full loan forgiveness if they maintain their number of full-time equivalent employees. Although the CARES Act referred to "average number of full-time equivalent employees" it did not define the term, nor did SBA guidance. The loan forgiveness application clarified the term.

There are two ways to calculate FTE to prove a business maintained its FTE level. A business can use either calculation on their loan forgiveness application as long as the calculation remains consistent. The calculation is not based on the number of hours worked, but instead based on the hours paid. Which is welcome news for employers who have been subject to shutdown orders but have continued to pay their employees. Note that the calculation is based on employees, so an owner-employee, self-employed individual, or general partner would not be included in the calculation.

The first way to calculate FTE is to take the average number of hours paid each week and divide by 40, and round to the nearest tenth. (hours paid each week / 40 = FTE). Since guidance defines a full-time employee as someone who works 40 hours or more a week, an FTE equal to 1.0 is the equivalent of 40 hours per week. Note FTE caps at 1.0 even if an employee works more than 40 hours a week. If the business has an employee who works 20 hours per week and another 30 hours the FTE would be $20/40 = 0.5$ and $30/40 = 0.75$. So, in this scenario a business FTE calculation would look like this:

Employee #1, 40 hours per week: 1.0
Employee #2, 20 hours per week: 0.5
Employee #3, 35 hours per week: 0.75

The second way to calculate FTE is to assign an FTE of 1.0 to each employee that works 40 or more hours per week and an FTE of 0.5 to employees who work less than 40 hours per week. So, in the above example employees #2 and #3 would count 0.5 each and #1 would remain at 1.



How Does a Reduction in Full-time Employees Affect Forgiveness?

If a business reduces its full-time employees during the covered period or alternative covered period the forgiveness is reduced by a ratio defined as the average number of FTEs during the covered period divided by the average number of FTEs during the “based period.” The business can select the most favorable base period from the following options:

- Base period #1: Average number of FTEs per month from 2/15/2019 through 6/30/2019
- Base period #2: Average number of FTEs per month from 1/1/2020 through 2/29/2020
- Base period #3: In the case of seasonal employer, either of the two proceeding or a consecutive 12-week period between 5/1/2019 and 9/15/2019.

To determine if a business has met this requirement determine average FTEs for:

- a. the covered period or alternative covered period^{xvi}
- b. the period covering 2/15/2019 to 6/30/2019 and
- c. the period covering 1/1/2020 to 2/29/2020



Divide a/b and a/c. Take the larger of the two. If this ratio results in a number equal to or larger than 1, the business has successfully maintained its FTE and will have met this requirement. If the ratio is less than 1 then take the ratio and multiple it by the loan amount that can be forgiven to get the amount that can be forgiven after reduction for decrease in FTEs.

For example, if “a” is 55 and “b” and “c” is 65 the ratio is 55/65 which is less than 1 to cause a reduction in loan that can be forgiven. If the loan amount that can be forgiven is \$500,000 \times 55/65 = \$423,077 amount able to be forgiven after this reduction.

It is important to note that a borrower forgiveness will not be reduced for an employee that is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or alternative cover period. The employee is counted at the same level before the reduction took place. This is so a business is not penalized for changes in headcount that are the result of employee actions. Furthermore, an employer will not lose PPP loan forgiveness if they make a good-faith, written offer to rehire a laid-off employee that consist of the same hours and wages. Under these circumstances, the borrower can exclude that employee from the loan-forgiveness reduction calculation required under the Act.^{xvii}

In the example above, if the employer offers to rehire the employees and provides evidence that the offer included the same wage and same hours and the employee refuses to come back this will not be held against the employer. The evidence needed will include the proof that they employee has refused the offer.^{xviii}



How Does a Reduction in Compensation Paid Affect Forgiveness?

To assure that employees' wages are similar to the pre-Coronavirus level, there is a penalty for businesses that reduce average annual salary or hourly wages for the covered period or alternative payroll covered period of any employee by more than 25% when compared to the first quarter of 2020.^{xix} However, for purposes of this calculation, only employees who make less than \$100,000 and who experienced a reduction during the appropriate covered period need to be considered. This formula focuses on a reduction to the rate of annual salary or hourly wages, not on the actual cash compensation paid. Also, this incentivizes businesses to restore wages of those making \$100,000 or less. The borrower must reduce the forgiveness amount by the total dollar amount of wage reductions that are in excess of 25%. The calculation is performed on a per employee basis.

For example, assume in the first quarter of 2020 an employee's average salary or wages is \$20,000 (\$80,000 annual average salary). Further assume that the employee's average salary during the 24-week covered period is reduced to \$24,000 (\$52,000 for average annual salary). A 25% reduction of \$80,000 would be \$60,000. Since salary of \$52,000 is a reduction of more than 25% by \$8,000 the SBA reduces the forgiveness amount by \$3,692 ($\$8,000 \times 24/52$).

To assure that a business is not doubly penalized the salary/wage reduction applies only to the portion of the decline in employee salary/wages that is not attributed to the FTE reduction. For example, an employee who had been working 40 hours (FTE employee 1.0) a week during the selected reference period is reduced to 20 hours (FTE employee 0.5) per week during the covered period. There was no change to the hourly wages paid to the employee. The business is not required to do a salary reduction calculation for the employee because the reduction in wages is attributable to the FTE reduction.

What Are the Tax Effects of Forgiveness? Are Payments Made with Forgiven Funds Deductible?

The CARES Act provides that the amounts forgiven on

a PPP loan are excluded from gross income for federal income tax purposes. It is not clear what amount might be subject to state or local taxes.

Additionally, the eligible expenses are typically deductible by the business. This has raised the question, "Is it possible to get both tax-exempt income and a deduction?" In Notice 2020-32 the IRS recently ruled that businesses that get their PPP loans forgiven cannot take a deduction for the associated wages and other expenses. This is to prevent double dipping where you get a deduction and tax-exempt income on the same transaction. However, Congress may seek a legislative adjustment to make the expenses deductible.^{xx}

When Must a Borrower Request Forgiveness?

PPP loans have a deferral period during which time the loan does not need to be repaid. There are a couple of reasons to wait to seek loan forgiveness. First, until the loan is forgiven a business has the option to delay paying the employer portion of Social Security taxes. Payments delayed do not need to be repaid until 2021 and 2022, with half due each year. Second, the amount of forgiveness is reduced by a reduction in wages or headcount. However, it is possible to overcome a reduction in wages or headcount by restoring salary and headcount levels by December 31, 2020. So, if a business has had to reduce wages or headcount it may be worth waiting to apply for forgiveness to see if circumstances permit improvement in those parameters.

A borrower must apply for forgiveness within 10 months after the last day of the covered period. If the borrower fails to apply for forgiveness within this period, the borrower will need to start repayment of the loan beginning on the day that is not earlier than 10 months after the last day of the covered period.

What is The Process for Loan Forgiveness?

In contrast to the ease of the loan application process, applying for forgiveness will be more complex and time consuming. One noticeable distinction between the two processes is the length of the forgiveness application and the estimated time needed to complete. The forgiveness application with instructions and optional demographic survey is 11 pages and is estimated to take an average of



180 minutes to complete, while the application was 4 pages and only took 8 minutes to complete.^{xxi}

Another difference between the two processes is the involvement of the SBA in the forgiveness process. With the forgiveness process the SBA can choose to review any size of loan at any time notwithstanding the SBA's previous suggestion that audits will be focused on loans of \$2 million or more. The SBA may review the borrower's eligibility for the loan, loan amount and use of proceeds, and forgiveness amount.

Where the SBA does not seek review prior to a lender's decision the process is as follows:

- The borrower must first complete and submit the loan forgiveness application and documentation to the lender.
- The lender has 60 days from receipt of the application to issue a decision to the SBA. If the borrower determines the borrower is entitled to forgiveness, of all or a portion of the loan, the lender must submit the forgiveness forms to the SBA and request payment. If the lender determines the borrower is not entitled to forgiveness in any amount it must submit the same forms to the SBA along with the reason for denial. In addition, the lender must notify the borrower in writing that the denial has been issued to the SBA.
- Within 90 days of the lender issuing its decision, the SBA will review the loan or loan application. Assuming the SBA agrees with the lender's determination the SBA will remit to the lender the appropriate forgiveness amount plus any interest accrued through date of payment. If the SBA determines that the borrower was not eligible for the PPP loan, or is not eligible for the loan amount or forgiveness amount claimed the SBA requires the lender to contact the borrower in writing with a request for additional information. The borrower can request a review.

Where the SBA chooses to review a loan prior to the lender's decision it will notify the lender in writing and the lender must notify the borrower within 5 business days of receipt. Within 5 days of receiving notice from the SBA, the lender must send the SBA the loan and forgiveness applications along with supporting documentation. Once the SBA has started a review the lender must not approve the application for forgiveness until the SBA has completed its review.

What Information and/or Documents is the Lender Required to Provide for Loan Forgiveness?

Each lender may require additional or different information, but below is a general list that the lender will most likely request:

- The documentation / information used to calculate FTE along with pay rates for the same period that was used to calculate the pay and staffing requirements.
- Documentation verifying the eligible compensation and non-cash compensation consisting of payroll reports (preferably from independent source) or bank account statements, Form 941 (payroll tax filings), state payroll filings, documentation verifying health and retirement amounts.
- Documentation verifying existence of obligations/service prior to February 15, 2020 and eligible payments for period of forgiveness including copy of lender amortization schedule, copy of lease agreement, and utility invoice from February 2020 along with bank statements, canceled checks, receipts for the payments seeking forgiveness.

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In addition to providing documentation, the business owner or representative must make a number of representations and certifications relating to the accuracy of the calculations. If a business owner cannot provide a complete application the CARES Act provides that the loan is not eligible for forgiveness. Finally, borrowers must retain PPP documentation for 6 years after the date the loan is forgiven or paid in full, and the SBA must be granted the files upon request.

In summary, it is important that financial advisors have a working understanding of the PPP provisions because business owners are concerned about making a mistake and will consider hiring a financial professional to assist them with the loan forgiveness application because it involves an understanding of the different options in the way loan forgiveness may be calculated – an understanding that business owners likely lack due to the multiple changes that have transpired since enactment of the initial CARES Act legislation.

ⁱ Initially many advisors believed that partners needed to apply for a loan separate from the business. SBA guidance eventually clarified that partners should be included with the business.

ⁱⁱ Paycheck Protection Loans Frequently Asked Questions A-31 published April 23, 2020. SBA gave borrowers an opportunity to return previously received PPP funds prior to May 18 to avoid potential legal liability.

ⁱⁱⁱ Id., A-46 published May 13, 2020.

^{iv} The Paycheck Protection Program Flexibility Act of 2020 was signed into law on June 5, 2020.

^v SBA Interim Final Rule filed May 22, 2020 citation 85 FR 33004.

^{vi} Paycheck Protection Loans Frequently Asked Questions A-16.

^{vii} The CARES Act states that payroll costs include employer payment for employee benefits consisting of group healthcare coverage, including insurance premium. It seems like this would include similar benefits such as dental, vision and group life plans, but further guidance is needed. Guidance indicates that payroll includes employer contributions to define benefit or defined contribution retirement plans, but is silent on non-qualified supplemental retirement benefit plans.

^{viii} Paycheck Protection Loans Frequently Asked Questions A-8.

^{ix} Paycheck Protection Loans Frequently Asked Questions A-14.

^x Paycheck Protection Loans Frequently Asked Questions A-7.

^{xi} SBA Interim Final Rule published April 14, 2020 citation 85 FR 20811.

^{xii} The inclusion of personal property in the loan forgiveness application helped to clarify that lease payments for cars and office equipment can be included in the calculation.

^{xiii} The CARES Act defined utilities as electricity, gas, water, transportation, telephone, or internet service. The inclusion of internet access and transportation as part of utilities is reinforced in the forgiveness application.

^{xiv} SBA Interim Final Rule published April 14, 2020 citation 85 FR 20811.

^{xv} SBA Interim Final Rule published April 14, 2020 citation 85 FR 20811.

^{xvi} It appears that a PPP borrower who opts into the 24-week covered period would have to retain FTE employee levels and salary levels during the new extended 24-week covered period instead of the 8-week period. Existing PPP borrowers should take this into account in determining whether to opt into the 24-week covered period.

^{xvii} It is not clear how to treat an employee who is on leave and being paid through a third-party insurance policy such as disability or worker's compensation. Nor is it clear how to treat an employee who has been terminated but is receiving salary continuation as severance during the applicable period.

^{xviii} Borrowers are required to report rejected rehire offers to state unemployment offices.

^{xix} It is not clear whether the quarter is the last full calendar quarter or the last non-calendar fiscal quarter for borrowers with fiscal years.

^{xx} The Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES) passed by the House included a provision to restore the deduction.

^{xxi} SBA has issued a streamlined loan forgiveness application that can be used by self-employed individuals, independent contractors, or sole proprietors who did not have employees at the time of the loan application. The form may also be used by businesses with employees where reduction in forgiveness for FTE or salary/wages are not required.

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