

# CARES Act/Payroll Protection Program – Updates & Planning Recommendations for Maximizing Loan Forgiveness & Tax Credits

Presented to the University of Pittsburgh  
Institute for Entrepreneurial Excellence

As of May 15, 2020

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# Paycheck Protection Program (PPP)

## Overview

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# Overview of Paycheck Protection Program (PPP)

## Who Is Eligible?

- Small Businesses
- Non-Profit Organizations
- Veteran's Organizations
- Sole-Proprietors
- Independent Contractors
- Self-Employed Individuals

## How Much Can I Borrow?

- 7(a) Loan: maximum amount is the lesser of
  - 2.5 x average monthly payroll costs for previous 12 months for calendar year 2019 for non-seasonal businesses; Plus the outstanding EIDL loan balance made after January 31, 2020 and refinanced under 7(a)
  - Or \$10,000,000

## Considerations For Approval

- In operation on February 15, 2020
- Had employees for whom the borrower paid salaries and payroll taxes or paid an independent contractor
- Is affected by COVID-19
- Not more than the greater of:
  - 500 employees
  - Size standard in number of employees under SBA rules
- Business with not more than 500 people per physical location with an NAICS code beginning with 72 (Hospitality, Bars and Restaurants) are eligible

## Allowable Uses

- Payroll support:
  - Employee salaries
  - Paid sick or medical leave
  - Insurance premiums
- Payments of interest on mortgage obligations
- Rent
- Utility payments



# Overview of Paycheck Protection Program (PPP)

## Loan Terms

- Loan Interest:
  - 1%
- Loan Duration:
  - 2 years
- No prepayment fees
- Complete payment deferment of payments for 6 months from the loan disbursement date
  - Interest will continue to accrue over this period
- Borrower and lender fees are waived
- During Covered Period (2/15-6/30):
  - Requirement that a small business concern is unable to obtain credit elsewhere does NOT apply to this loan
  - Collateral and personal guarantee requirements are waived under this program
  - **Ability to access to other sources of liquidity to support ongoing operations– Not defined or interpreted!**
- May apply for loan forgiveness after June 30, 2020 and before October 31, 2020

## Source of Capital

- SBA approved banks have the delegated authority to approve loans
- Loans are 100% guaranteed from the federal government

## Exclusion

- Borrowers that have received a 7(b)(2) SBA Economic Injury Disaster Loan beginning on January 31, 2020 and ending on date Covered loans are made available for the purposes of paying payroll costs and other obligations allowed under 7(a). Duplication Rule

# Included vs. Excluded Payroll Costs

## Included Payroll Costs

- Salary or wage
- Payment of cash tip or equivalent
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums and self-insured plan contributions
  - Excludes pre-tax or after tax contributions by employees
- Payment of any retirement benefit
- Payment of employer state or local tax assessed on the compensation of employees (e.g. state unemployment insurance tax)
- Housing allowance and stipends

## Payroll Costs Excluded

- The compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the Covered Period
- Payments to independent contractors (1099) and sole proprietors are not included in payroll cost
- Any compensation of an employee whose principal place of residence is outside of the United States
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act
- Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

# Allowable Uses – Detailed View

## Covered Mortgage Obligation

- Any interest costs incurred on any indebtedness or debt instrument in the ordinary course of business that –
  - Is a liability of the borrower;
  - Is a mortgage on real or personal property; and
  - Was incurred before February 15, 2020.

## Covered Rent Obligation

- Any rent obligation under a leasing agreement in force before February 15, 2020

## Utility Payments

- Any payment for a service for the distribution of –
  - Electricity
  - Gas
  - Water
  - Transportation
  - Telephone
  - Internet Access
- Service had to begin before February 15, 2020



# Paycheck Protection Program (PPP) Loan Forgiveness Requirements

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# Loan Forgiveness Terms

## Terms

- Loan proceeds spent within the 8 weeks (Covered Period) following receipt of the loan on any of the following will be forgiven:
  - Payroll Costs
  - Mortgage Interest
  - Rent
  - Utilities Payments
- Funds spent on anything else, or spent outside the 8 week Covered Period may result in a reduction of the forgiveness amount
- Must spend at least 75% of the loan on payroll costs to avoid reduction in forgiveness
- You may also have a reduction in your loan forgiveness if you do not maintain your staff and payroll levels
  - Number of Staff: Your loan forgiveness may be reduced if you decrease your average full-time employee equivalent headcount
  - Level of Payroll: Your loan forgiveness may also be reduced if you decrease salaries and wages by more than 25% subject to the forgiveness calculations
  - Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020, to avoid potential loan forgiveness reductions

# Loan Forgiveness Issues

## Issues and Unknowns

- **Rules are being interpreted and changed by Treasury that are contrary to the legislation in the CARES Act**
  - 12 Interim Final Rules and 47 FAQs issued subsequent to the Act
  - Treasury is building the plane as they are flying it
- **Companies are receiving public scrutiny for taking loans**
  - Round 1 average loan size ~ \$200,000 / Round 2 average loan size ~\$80,000
  - Testing the “Adequate sources of liquidity to support the business’s ongoing operations” requirement
  - Companies took the loan with the anticipation of potential need to support operations – yet, evidence of need may be months away
  - Companies cannot adequately manage operations and headcounts when guidance is issued well after loan was received
  - Borrowers with loans > \$2M = subject to “audit” / May return funds by May 18<sup>th</sup> / Deemed to have made good faith certification of loan necessity
  - Borrowers with loans < \$2M = Safe Harbor = Deemed to have made good faith certification of loan necessity
- **Loan Forgiveness Application not issued until May 15, 2020**
- **Conflicting guidance between CARES Act and FAQs**
  - Example: Application defined total number of employees as full time and part time employees; Application uses average FTE for forgiveness
- **The FAQs published by Treasury have not fully addressed forgiveness issues**
  - Treasury Secretary has indicated that additional technical fixes will occur

# Heroes Act Proposals Affecting PPP Loans

## Proposed Legislative Modifications

- **Health and Economic Recovery Omnibus Emergency Solution Act (HEROES Act)**
  - Passed by House on May 15, 2020 – unlikely to pass Senate approval
- **Allow deductions for expenses paid or incurred with proceeds from the PPP loans that are ultimately forgiven**
- **Allow PPP loan participants to defer payment of eligible payroll taxes, even after the date of forgiveness**
- **All nonprofits would be eligible for SBA PPP loans**
  - Currently, only 501(c)(3), (12), (19) and tribal organizations are eligible
- **Extend the covered period from eight weeks to 24 weeks and from June 30, 2020, to December 31, 2020**
- **Requirement that no more than 25% of the forgiven amount may be for non-payroll costs would be eliminated**

# Loan Forgiveness Application

As of May 15, 2020

- **4 Components to the Application**
  - Loan Forgiveness Calculation Form
  - Schedule A
  - Schedule A Worksheet
  - Borrower Demographic Information Form (Optional)
- **Application Expires October 31, 2020**
- **Application submitted to lender in paper form or electronically**
- **Instructions provide listing of required information – important metrics**
  - Number of employees at time of loan application
  - Number of employees at time of forgiveness application
  - PPP Loan disbursement date
  - Payroll schedule (Weekly, Biweekly, Semi-monthly, Monthly, Other)
  - Covered Period - 8 week (56 day) period of loan
    - Must be same as the PPP Loan disbursement date

# Loan Forgiveness Application

As of May 15, 2020

➤ **Instructions provide listing of required information – important metrics (continued)**

- Borrowers with a bi-weekly or more frequent payroll schedule:
  - Election (**Alternative Payroll Covered Period**) – calculate eligible payroll costs using 8 week period being on 1<sup>st</sup> day of their pay period following PPPL disbursement date
  - Example:
    - PPPL Disbursement Date = Monday April 20
    - 1<sup>st</sup> day of Alternative Payroll Covered Period = Sunday April 26
    - 8 week period = Sunday April 26 through Saturday June 20
- PPP Loans in excess of \$2M must check a box

OMB Control Number 3245-0407  
Expiration Date: 10/31/2020

<b>Business Legal Name ("Barrowco")</b>	<b>DBA or Tradename, if applicable</b>	
<b>Business Address</b>	<b>Business TIN (EIN, SSN)</b>	<b>Business Phone</b>
	<b>Primary Contact</b>	<b>E-mail Address</b>

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10): \_\_\_\_\_



OMB Control Number 3245-040  
Expiration Date: 10/31/2022

## Line 13. FTE Reduction Quotient (divide line 12 by line 11) or enter 1.0 if FTE Safe Harbor is met: \_\_\_\_\_



OMB Control Number 3245-0407  
Expiration Date: 10/31/2020

# Loan Forgiveness Calculation Overview

As of May 15, 2020

1. Determine total eligible payroll costs incurred or paid during the Covered Period or the Alternative Payroll Covered Period
    - a) Enter the amount from PPP Schedule A, line 10 (See separate calculation)
  2. Determine amount of business mortgage interest payments (Covered Mortgage Obligations) during the Covered Period for any business mortgage obligation on real or personal property incurred before February 15, 2020
    - a) Do not include prepayments
  3. Determine amount of business rent or lease payments (Covered Rent Obligations) for real or personal property during the Covered Period, pursuant to lease agreements in force before February 15, 2020
  4. Determine amount of business utility payments (Covered Utility Payments) during the Covered Period, for business utilities for which service began before February 15, 2020
- NOTE: Not required to report payments in 2,3, or 4 that you do not want to include in forgiveness amount**
5. Determine amount of loan forgiveness reduction required for salary / hourly wage reductions in excess of 25% for certain employees
    - a) Determined at Schedule A (line 3) using Schedule A worksheet Table 1 (See separate calculation)
  6. Determine amount of Total Eligible Costs from lines 1-4 above and subtract any reduction for salary / wages in excess of 25%
  7. Determine the amount of the FTE Reduction Quotient – head count reduction - Schedule A – Line 13 (See separate calculation)
  8. Loan forgiveness reduction determined by multiplying 6 and 7 (Total Eligible Costs less salary / wage deduction multiplied by headcount reduction quotient)
  9. Determine PPP Loan amount
  10. Determine 75% of payroll costs by multiplying 1 above by 75%
  11. **Forgiveness amount = Lowest of #8, #9 or #10**



# Loan Forgiveness Calculation Overview

As of May 15, 2020

## ➤ Observations

1. Conceptually consistent with previously published guidance
2. Certain issues have been clarified through definition and calculations – discussed later
3. Continues to provide incentive to spend PPP loan proceeds on at least 75% of payroll costs during the Covered Period or Alternative Covered Period
4. Provides safe harbor to assist companies with restoring wages before June 30 to wages that existed at February 15
5. Provides flexibility for the borrower to choose an average weekly full-time equivalency (FTE) – discussed later
6. Still creates problems for borrowers that had to make operational decisions prior to and subsequent to the loan date since guidance was not issued until May 15<sup>th</sup>
  - Some operational decisions may be irreversible relating to compensation levels and especially head count
7. Forms are complex to understand and require rigorous record keeping

# Loan Forgiveness Calculation Details

## Eligible Payroll Costs

- Eligible Payroll Costs Defined
  - Considered paid on the day that paychecks are distributed or the Borrower originates an ACH credit transaction
  - Costs are considered incurred on the day that the employee's pay is earned
  - Payroll costs incurred but not paid during the Borrower's last pay period of the Covered Period (or Alternative Payroll Covered Period) are eligible for forgiveness if paid on or before the next regular payroll date
  - Total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period
    - \$15,385 cap amount = 8 week equivalent
  - Count payroll costs that were both paid and incurred only once
- Eligible Non-payroll Costs
  - Must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date
    - Even if billing date is after the Covered Period (example – utilities incurred through June 15<sup>th</sup> and paid on or before billing date of June 30<sup>th</sup>)
  - Eligible non-payroll costs cannot exceed 25% of the total forgiveness amount
  - Count non-payroll costs that were both paid and incurred only once

# Loan Forgiveness Calculation Details

## Eligible Payroll Costs

- Total eligible payroll costs incurred or paid during the Covered Period or the Alternative Payroll Covered Period (Schedule A – Line 10) (Determined from Schedule A Worksheets)
  - Cash compensation to employees (limited to \$100,000 on an annualized basis - \$15,385 during 8 week period)
    - Salary, wages, tips, commissions, paid leave (vacation, family, medical or sick leave (excluding CARES Act leave), allowances for dismissal or separation incurred)
  - Owner-employees / self employed individual / general partners total amounts paid (separate determination from an employee)
  - Non-cash compensation
    - Employer contributions for Employee health insurance
    - Employer contributions to Employee retirement plans
    - Employer paid state and local taxes assessed on Employee compensation
  - Salary / Hourly Wage Reduction (See separate calculation)

# Loan Forgiveness Calculation Details

## Salary / Hourly Wage Determination

- Based on a January 1, 2020 through March 31, 2020 Period compared to 8 week Covered Period or Alternative Payroll Covered Period
  - Prepared on an individual employee basis
  - Any FTE reductions in the following cases do not reduce the Borrower's loan forgiveness
  - Identify FTEs of:
    1. Any positions for which Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and
    2. Any employees who during the Covered Period or the Alternative Payroll Covered Period
      - a) were fired for cause
      - b) voluntarily resigned
      - c) voluntarily requested and received a reduction of their hours.
  - Only include these FTEs as Reduction Exceptions if the position was not filled by a new employee

# Loan Forgiveness Calculation Details

## Salary / Hourly Wage Reduction – 2 Way to Avoid Reduction

- Step 1. Determine if employee pay was reduced more than 25%:
  - a) Determine average annual salary or hourly wage during 8 week Covered Period or Alternative Payroll Covered Period
  - b) Determine average annual salary or hourly wage between January 1, 2020 and March 31, 2020
  - c) Divide the value entered in 1.a. by 1.b.:
    - i. If Covered Period salary or wages ratio to January to March salary and wages is 0.75 or more = no salary / hourly wage reduction for that employee
    - ii. If Covered Period salary or wages ratio to January to March salary and wages is 0.75 or less proceed to Step 2 = may be salary / hourly wage reduction for that employee
- Step 2. Determine if the Salary/Hourly Wage Reduction Safe Harbor is met:
  - a) Determine annual salary or hourly wage as of February 15, 2020
  - b) Determine average annual salary or hourly wage between February 15, 2020 and April 26, 2020
    - February – April salary and wages = or > February 15 salary wages - skip to Step 3. Otherwise – Step 2C.
  - c) Determine average annual salary or hourly wage as of June 30, 2020:
    - If June 30 salary or wages is = or > February 15 salary or wages then= Salary/Hourly Wage Reduction Safe Harbor has been met
    - If not = then a reduction exists and go to step 3

# Loan Forgiveness Calculation Details

## Salary / Hourly Wage Reduction

- Step 3. Determine the Salary/Hourly Wage Reduction.
  - a) Multiply average annual salary or hourly wage between January 1, 2020 and March 31, 2020. by 0.75
  - b) Subtract average annual salary or hourly wage during Covered Period or Alternative Payroll Covered Period from 3.a.
    - Results in determination of a compensation floor as a base and Covered Period payroll period comparison
  - *If employee is an hourly worker, compute the total dollar amount of the reduction that exceeds 25% as follows:*
  - c) Determine average number of hours worked per week between January 1, 2020 and March 31, 2020
  - d) Multiply the amount entered in 3.b. (average hourly wage below wage floor) by the average number of hours worked per week between January 1, 2020 and March 31, 2020
    - Multiply this amount by 8 – arrives at amount of weekly wages under wage floor during the 8 week Covered Period
    - Results in hourly wage reduction amount for the individual employee during the 8 week Covered Period
  - *If the employee is a salaried worker, compute the total dollar amount of the reduction that exceeds 25% as follows:*
  - e) Multiply the amount entered in 3.b. (average annual salary under salary floor during period) by 8
    - Divide this amount by 52:
    - Results in hourly wage reduction amount for the individual employee during the 8 week Covered Period

# Loan Forgiveness Calculation Details

## Salary / Hourly Wage Reduction

- Observations
  1. Using base period of January through March to drive comparison to salary/wages throughout Covered Period
    - If covered period exceeds 75% of January through March comparison period for all employees = no reduction and stop calculations
  2. Safe Harbor created – and no reduction exists - for payroll that exists at June 30, 2020 that is greater than payroll at February 15, 2020
    - a) Provided February 15 payroll is greater than average salary or hourly wage for February 15 through April 26th
  3. Choice of Covered Period or Alternative Covered Period permits alignment with payroll cycles
  4. Clarifies that calculations are performed on an individual employee basis
  5. Clarifies questions regarding head count, timing to rehire, issues with ability to rehire and replacement of positions not filled
  6. Clarifies employee wage and head count recordkeeping for the following periods and dates
    - a) January through March 2020 compensation
    - b) February 15, 2020 payroll amounts
    - c) February 15 through April 26, 2020 payroll amounts
    - d) June 30 payroll amounts

# Loan Forgiveness Calculation Details

## Average Full Time Equivalent

- Average Full Time Equivalent Calculation – Used to determine the FTE Reduction Safe Harbor
  - Determine average hours paid per week per employee during the Covered Period
  - Divide by 40
  - Round to the nearest 10<sup>th</sup>
  - Maximum capped at 1.0 for each employee
  - Simplified method = 1.0 for all employees averaging > 40 hours and 0.5 for employees averaging < 40 hours
  - Example:
    - Employee A averages 35 hours paid for work during the 8 week Covered or alternative period
      - ✓ Method 1 = 35 hours / 40 hours = .875 FTE during the period chosen
      - ✓ Method 2 = .5 FTE since average hours less than 40
  - *Issue = Not clear if method can be chosen on an individual basis or must be consistent for all employees. Instructions appear to imply that same method must be chosen for all employees.*
    - *Run calculations under both methods to achieve most favorable Average FTE number*



# Loan Forgiveness Calculation Details

## Full Time Equivalent Reduction Safe Harbor

### ➤ FTE Reduction Safe Harbor

1. Exempts certain borrowers from the loan forgiveness reduction based on FTE employee levels
2. Borrower is exempt from the reduction in loan forgiveness based on FTE employees if both of the following conditions are met
  - Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020;and
  - Borrower restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

### ➤ If Safe Harbor Not Met – Results in FTE Quotient Reduction

1. Determine Borrower's Chosen Reference Period
  - a. February 15, 2019 to June 30, 2019
  - b. January 1, 2020 to February 29, 2020
  - c. in the case of seasonal employers, either of the preceding periods or a consecutive twelve-week period between May 1, 2019 and September 15, 2019.
2. For each employee, follow the same method that was used to calculate Average FTE on the PPP Schedule A Worksheet
3. Divide Total Average FTE during Covered Period by FTE in Borrower's Chosen Reference Period

# Loan Forgiveness Calculation Details

## Full Time Equivalent Reduction Safe Harbor Calculation

### ➤ FTE Reduction Safe Harbor

1. Determine the total average FTEs between February 15, 2020 and April 26, 2020
  - Must follow same method as Average Full Time Equivalent Calculation during Covered Period or Alternative Covered Period
2. Determine total FTEs in pay period inclusive of February 15, 2020
  - Must follow same method used in step 1
3. If total FTEs in pay period inclusive of February 15, 2020 > total average FTEs between February 15, 2020 and April 26, 2020 = compare to Total FTEs as of June 30, 2020
  - If total average total FTEs in pay period inclusive of February 15, 2020 > total FTEs between February 15, 2020 and April 26, 2020 = Safe Harbor Not Available
  - Will require additional calculations since evidence of a head count reduction
4. If number FTEs at June 30 is ≥ or = number of FTEs at February 15, 2020 = Safe Harbor has been met and no reduction in forgiveness for FTE Reduction
5. If number of FTEs at June 30 is < than or equal to number of FTEs in Step 2 (February 15, 2020) = Safe Harbor has not been met
  - Calculation % percentage reduction

# Loan Forgiveness Calculation Details

## Full Time Equivalent Reduction

- FTE Reduction Quotient Observations
  1. Calculation is consistent with previously published guidance
  2. Borrower will want to meet Safe Harbor if possible
  3. If Safe Harbor not possible – select the lowest number of FTEs from the Borrower's Chosen Reference Period to mitigate any reduction
  4. FTE Reduction Quotient is applied to all payroll and non-payroll costs after salary / wage reductions have been deducted
    - Result is then compared to the PPP Loan amount and 75% of Payroll Cost Amount to determine the Forgiveness Amount
  5. Even if 75% of the loan proceeds has been spent on payroll costs – reduction in compensation or reduction in headcount or both could result in significant amounts of loan forgiveness

# Loan Forgiveness Required Submitted Documentation

## Payroll

- Documentation verifying 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 amount of cash compensation paid to employees
  - b. Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with Covered Period or Alternative Payroll Covered Period:
    - i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
    - ii. State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.
  - c. Payment receipts, cancelled checks, or account statements documenting amount of any employer contributions to employee health insurance and retirement plans that the Borrower included in forgiveness amount

# Loan Forgiveness Required Submitted Documentation

## Full Time Equivalents

- Documentation showing (at the election of the Borrower):
  - a. Average number of FTE employees on payroll per month employed by the Borrower between February 15, 2019 and June 30, 2019;
  - b. Average number of FTE employees on payroll per month 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 month employed by the Borrower
    - i. between February 15, 2019 and June 30, 2019
    - ii. between January 1, 2020 and February 29, 2020; or
    - iii. any consecutive twelve-week period between May 1, 2019 and September 15, 2019
- Selected time period must be same time period selected by borrower for chosen reference period
- Documents may include payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941) and state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state
- Documents submitted may cover periods longer than the specific time period

# Loan Forgiveness Required Submitted Documentation

## Non-Payroll Costs

- Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period
  - a. Business mortgage interest payments:
    - i. Copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments from Covered Period; or
    - ii. Lender account statements from February 2020 and the months of the Covered Period through one month after end of the Covered Period verifying interest amounts and eligible payments
  - b. Business rent or lease payments:
    - i. Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or
    - ii. 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:
    - i. Copy of invoices from February 2020 and those paid during the Covered Period and
    - ii. Receipts, cancelled checks, or account statements verifying those eligible payments

# Loan Forgiveness Required Maintained Documentation

## PPP Schedule A Worksheet or Equivalent

- A. Documentation supporting the listing of each individual employee in PPP Schedule A 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 Worksheet Table 2;
  - 1. Specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000.
- C. Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule
- D. Documentation supporting the PPP Schedule A Worksheet “FTE Reduction Safe Harbor.”

# Loan Forgiveness Required Maintained Documentation

## Other Maintenance Requirements

- A. All records relating to Borrower's PPP loan, including:
  - 1. Documentation submitted with its PPP loan application
  - 2. Documentation supporting Borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan
  - 3. Documentation necessary to support Borrower's loan forgiveness application
  - 4. Documentation demonstrating the Borrower's material compliance with PPP requirements.
- B. Borrower must retain all such documentation in its files for six years after the date the loan is forgiven or repaid in full
- C. Borrower must permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request



# Loan Forgiveness Application Certifications

As of May 15, 2020

- The dollar amount for which forgiveness is requested:
  - was used to pay costs that are eligible for forgiveness
  - includes all applicable reductions due to decreases in number of full-time equivalent employees and salary/hourly wage reductions;
  - does not include non-payroll costs in excess of 25% of amount requested;
  - does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner, capped at \$15,385 per individual
- If funds were knowingly used for unauthorized purposes, federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges
- Borrower has accurately verified the payments for eligible payroll and non-payroll costs for which Borrower is requesting forgiveness
- Submitted to Lender required documentation verifying payroll costs, the existence of obligations and service (as applicable) prior to February 15, 2020, and eligible business mortgage interest payments, business rent or lease payments, and business utility payments.
- Information provided in this application and information provided in all supporting documents and forms is true and correct in all material respects
- Tax documents submitted to Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency
- Understand, acknowledge, and agree that SBA may request additional information for purposes of evaluating Borrower's eligibility for PPP loan and for loan forgiveness, and that Borrower's failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower's loan forgiveness application.

# Paycheck Protection Program (PPP)

## Best Practices

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# Best Practices

- **Use the loan for it's intended purpose**
- **Document thoroughly the necessity for the loan**
  - Mandated closure of business or reduction of hours
  - Loss of revenues
  - Incurrence of additional costs to meet state and federal guidelines
  - Uncollectable accounts payable
  - Inability to meet payroll
  - Inability to pay secured and unsecured creditors
  - Reduction in sales pipeline and backlog
- **Spend as much of the loan proceeds as possible on payroll costs – limit payments on non-payroll costs to 25% of loan proceeds**
- **In some instances, it makes sense to treat proceeds as a loan and not a grant**
  - Impacts necessity to meet forgiveness guidelines
  - Interest rates are attractive
  - Short term enhancement to cash flow – 2 year payback period

# Best Practices

- **Align beginning of 8-week Covered Period with beginning of the pay period immediately following loan disbursement date, rather than date loan proceeds are received**
  - Will provide borrowers more opportunity to use the PPP funds for their primary purpose – keeping employees on the payroll
  - Aligns to the borrower's operations will result in a more efficient, consistent approach
- **If you have reduced compensation below 75% during the Covered Period, when compared to the 1<sup>st</sup> quarter of 2020 - consider restoring compensation before the end of the 8 week Covered Period in amounts necessary to achieve the 75% floor**
- **If you have reduced compensation subsequent to February 15<sup>th</sup> and it appears that the average weekly salary / wages as of June 30<sup>th</sup> will be less than the February 15<sup>th</sup> amount – consider restoring salary / wages to attempt to raise them to February 15<sup>th</sup> levels before June 30<sup>th</sup>**
- **If you have furloughed employees between February 15th and April 26th– consider bringing back as many employees as makes business sense as soon as possible to avoid significant reductions to head count and loan forgiveness**
- **Utilize the simplified method for determining FTEs when part time employees are working less than 20 hours per week on average**
  - Will boost the FTE head count and reduce the potential amount of forgiveness

# Best Practices

- Take advantage of the FTE Reduction Safe Harbor if possible by restoring FTE employee levels to levels that existed at February 15<sup>th</sup>
  - Must be done before June 30th
- **Appropriately document good-faith, written offers to rehire employees during the Covered Period or Alternative Covered Period which was rejected by the employee**
- **Appropriately document reductions during the Covered Period or Alternative Covered Period for employees:**
  - Fired for cause
  - Voluntary resignation
  - Voluntary requested and received a reduction of their hours
- **Work with your payroll provider to obtain reports of all the necessary required documentation**

# Paycheck Protection Program (PPP)

## Accounting and Attestation

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# Accounting and Attestation

- **No authoritative guidance in GAAP to account for government assistance for business entities**
- **Forgiveness amount becomes a government grant under ASC 958-605 ( Not For Profit Revenue Recognition – by analogy)**
  - Not subject to Government Single Audit requirements
- **Forgiveness amount will be recorded as:**
  - Other Income – For Profit Entities
  - Grant Income – Not for Profit Entities
- **Do not record debt extinguishment until loan is legally forgiven (ASC 405-20-40-1) or Conditions for forgiveness are substantially met (IAS 20)**
- **Record paid expenses in your normal expense categories in the Statement of Operations**
  - Do not offset grant income with expenses paid
- **Loan amounts in excess of \$2M apparently will receive some level of scrutiny**
  - By whom? SBA, Lender, Accounting firm engaged by Company or Lender?
  - Accounting Firms can perform agreed upon procedure (AUP) engagements or consulting engagements
- **PPP Loan Forgiveness Calculators are being developed and will be released shortly**

# Paycheck Protection Program (PPP) Frequently Asked Questions

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# Loan Forgiveness FAQs

- **When does the 8 week period begin for purposes of loan forgiveness?**
  - At the loan disbursement date
- **What is the minimum amount that can be spent on payroll costs to achieve full forgiveness?**
  - Must spend at least 75% of the loan on payroll to minimize reduction in forgiveness
- **If I reduce compensation below 75% for employees during the Covered Period, can I restore it?**
  - Yes, amount below 75% can be restored above 75% by June 30, 2020 to obtain loan forgiveness
  - Must be for all employees with wages reduced below 75% to obtain loan forgiveness
  - *See Best Practices*
- **Can I pay bonuses with the loan proceeds?**
  - Guidance is based on cash compensation and does not specifically address bonuses

# Loan Forgiveness FAQs

- **What is the measurement period for the head count reduction requirement?**
  - Key dates are February 15<sup>th</sup> and June 30<sup>th</sup> to meet safe harbor
  - Compare average number of FTEs during Covered Period to Borrower Chosen Reference Period to determine Reduction Quotient
  - *See Best Practices*
- **What are the measurement dates for headcount reduction requirements?**
  - Average number of FTE for either January and February 2020 or same metric for 2/15/2019 to 6/30/2019
  - Compare average number of FTE per month during the 8 week Covered Period to either metric above
- **What is the level of payroll that must be maintained to avoid reduction for an employee?**
  - Must keep individual employee compensation levels during the Covered Period at 75% of the employee's compensation for the quarter January 1, 2020 through March 31, 2020 (8 weeks vs. 12 weeks) (*See Best Practices*)
- **What if I have employees that I furloughed – do I need to hire them back?**
  - If you can – it may minimize any reductions in loan forgiveness due to head count reductions
  - Not everyone can keep employees busy
  - Employees are receiving more on the enhanced unemployment program than they would if they were hired back
  - *See Best Practices*

# Loan Forgiveness FAQs

- **If an employee leaves voluntarily, does it count against maintaining my head count**
  - No – Borrower must make a good faith, written offer of rehire and employee rejection must be documented. *See Best Practices*
- **I have full-time and part-time employees. How do I determine average full-time equivalent employees for loan forgiveness purposes**
  - Based on a 40 hour work week with an alternate method of .5 FTE for employees working less than an average of 40 weeks
- **Are the loan proceeds taxable?**
  - No – the proceeds are non-taxable for Federal tax purposes
- **Are the expenses paid with the loan proceeds deductible?**
  - No – the expenses are non-deductible since this would create a double benefit
  - This issue is currently being debated and may change
- **Does a Company need to provide documentation to support “current economic uncertainty makes this loan request necessary to support the ongoing operations**
  - Forgiveness Application and Certifications explicitly require documentation to support this need – maintained but not submitted with Application for Forgiveness
  - *See Best Practices*

# About Cohen & Company

- Named one of the fastest growing accounting firms in the country
- Offer assurance, tax and advisory services to clients throughout the U.S. and worldwide
- Serve a broad range of clients, from privately held companies and their owners; to public and private funds, advisors and fund service providers within the investment industry; to Fortune 1000 multinational enterprises
- More than 650 associates in Illinois, Maryland, Michigan, New York, Ohio, Pennsylvania and Wisconsin; and an international presence in the Cayman Islands and Ireland

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