

WEBINAR SERIES

Navigating PPP Loan Forgiveness & Tax Provisions of the CARES Act



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Paycheck Protection Program

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Eligible Small Businesses and Organizations

- In addition to small business concerns, any business concern, IRC Section 501(c)(3) non-profit organization, IRC Section 501(c)(19) veterans organization, Tribal small business concern (defined under the Small Business Act), individuals who operate as sole proprietors or independent contractors, eligible self-employed individuals is eligible to receive a covered loan if they employ not more than the greater of:
 - 500 employees; or
 - If applicable, the SBA size standard for employees in the industry in which the borrower operates determined by NAICS code;
 - Many manufacturers, etc. can exceed 500 employees under these SBA Standards (i.e., 750 – 1,500 employees); or
 - Meets Alternative Size Standard - Net tangible net worth must be not more than \$15 million and average after-tax net income for prior two years must be not more than \$5 million.
- Employee - Includes individuals employed on a full-time, part-time or other basis.
- For business concerns with more than one physical location and a NAICS Code beginning with 72 (e.g., hotel/food services industry), the 500-employee requirement can be measured per physical location.
- The normal affiliation rules do not apply to businesses operating as a franchise or that receives financial assistance from an approved Small Business Investment Company.
- Eligibility requirements must be met for the period beginning on February 15, 2020 and ending on June 30,

.... Latest Paycheck Protection Program Statistics

As of June 6, 2020:

- Total PPP loans: **4.5 million loans**
- Total loan amount: **\$511.4 billion**
- Average loan size: **\$113,000**
- **Breakdown of PPP Loan Size:**
 - 64.9% below \$50,000
 - 79.4% below \$100,000
 - 85.7% below \$150,000
 - 0.6% \$2 million and above
- **\$130.7 billion in PPP funding still available**

.... General Definitions Under the Paycheck Protection Program

- **Covered Loan** means a loan made under the CARES Act Paycheck Protection Program during the covered period.
- **Covered Period** means the period beginning on February 15, 2020 and ending on December 31, 2020. It also means the 8-week or 24-week period after date of the PPP Loan (as modified by the PPP Flexibility Act).
- **Eligible Recipient** means an individual or entity that is eligible to receive a covered loan.
- **Eligible Self-Employed Individual** has the meaning given the term in Section 7002(b) of the Families First Coronavirus Response Act.
 - Regularly carries on a **trade or business within the meaning of IRC Section 1402.**
 - Would be entitled to receive paid leave pursuant to the Emergency Paid Sick Leave Act if the individual were an employee of an employer (other than himself or herself).
- **Nonprofit organization** means a tax-exempt organization that is described in IRC Section 501(c)(3).
- **Small Business Concern** has the meaning given the term in **Section 3 of the Small Business Act.**

FTE Definition - Paycheck Protection Program (SBA IFR Issued on 5-22-20)

- The CARES Act uses the standard of “full-time equivalent employees” (**FTEs**) to determine whether loan forgiveness must be reduced in the measurement period.
- The SBA Loan Forgiveness Application provides for a calculation of **average FTEs which is calculated as the average number of hours paid per week, divided by 40** and rounded to the nearest tenth.
- The maximum for each employee is **capped at 1.0**.
- A **simplified method** is provided that assigns a 1.0 for employees who work 40 hours or more per week and **.5 to employees who work fewer hours**.
- **Owner employees, self-employed individuals and general partners are not included** in the FTEs calculation (Per SBA Loan Forgiveness Application).

.... Waiver of Requirements and Fees

- **Refinancing** - Certain SBA Loans made during the period beginning on January 31, 2020 and ending on June 30, 2020 may be refinanced as part of a covered loan.
- **Nonrecourse Provision** - The SBA has no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan **unless it is used for an unauthorized purpose**.
- **Waiver of Personal Guarantee** - **Between February 15, 2020 and June 30, 2020**, no personal guarantee is required for the covered loan and no collateral is required for the covered loan.
- **Credit Elsewhere** - Between February 15, 2020 and June 30, 2020, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in Section 3(h) of the Small Business Act, **shall not apply** to a covered loan.
- **Fee Waiver** - **Between February 15, 2020 and June 30, 2020**, with respect to covered loan, the SBA will not collect a fee.

Borrower Certification Requirements

- An eligible recipient applying for a covered loan **must make a good faith certification** to the lender that:
 - The **uncertainty of current economic conditions makes necessary** the loan request to support the ongoing operations of the eligible recipient.
 - The borrower is taking into account their current business activity and their ability to **access other sources of liquidity** to support their ongoing operations **in a manner that is not significantly detrimental to the business.**
 - The borrower will **use the funds to retain workers** and maintain payroll or **make mortgage, lease, and utility payments.**
 - **Note, there appears to be no tracing rule as to the use of the proceeds.**
 - **Not more than 40% (was 25%)** of the loan proceeds will be **used for non-payroll costs.**
 - Borrower does not have an application pending for a loan **duplicative of amounts** applied for here.
 - From February 15, 2020 through December 31, 2020, the borrower has not received a loan **duplicative of the purpose** and amounts applied for here.

.... Refinancing an SBA EIDL Loan

- If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan.
- If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan.
- If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan.
- Proceeds from any advance up to \$10,000 on the EIDL loan will be **deducted from the loan forgiveness amount on the PPP loan.**

.... Allowable Uses of Loan Proceeds

- The loan proceeds **must be used for the following costs:**
 - **Payroll costs;**
 - Costs related to the continuation of **group health care benefits** during periods of **paid sick, medical, or family leave**, and **insurance premiums**;
 - **Employee salaries**, commissions, or similar compensations;
 - **Interest on any mortgage obligation** (excludes payment or prepayment of principal);
 - **Rent** (including rent under a lease agreement);
 - **Utilities**; and
 - **Interest on any other debt obligations** that were **incurred before February 15, 2020**.
- Note, while maximum amount of loan is determined based on payroll costs, the use of the proceeds **can be used for other specified non-payroll costs (up to 40%)** as well.

.... Maximum Loan Amount – Definition of Payroll Costs

Payroll Costs include:

- **For Employers:** The sum of payments of any compensation with respect to employees that is a:
 - **Salary, wage**, commission, or similar compensation;
 - Payment of **cash tip** or equivalent;
 - Payment for **vacation, parental, family, medical or sick leave**;
 - Allowance for **dismissal or separation**;
 - Payment required for the provision of **group health care benefits, including insurance premiums, and retirement**; or
 - Payment of **state or local tax assessed** on the compensation of employees.
- **For Sole Proprietors, Independent Contractors and Self-Employed Individuals:**
 - The sum of payments of any compensation to or income of a **sole proprietor or independent contractor** that is a wage, commission, income, net earnings from self-employment, or similar compensation and **that is in an amount not exceeding more than \$100,000 in 1 year**, as prorated for the applicable reference period.

.... **Maximum Loan Amount – Payroll Costs Not Included**

- **Payroll Costs shall not include** the following:
- The compensation of an individual employee **in excess of an annual salary of \$100,000** as prorated for the covered period.
- **Federal employment taxes imposed or withheld on wages for the covered period.**
 - FICA and Medicare taxes - employer and employee share (employee share is already in gross wages);
 - Railroad Retirement Act taxes - employer and employee (employee share is already in gross wages); and
 - Federal income tax withholdings (already in gross wages).
- Any compensation of an employee whose **principal place of residence is outside of the United States.**
- **Qualified sick leave and/or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.**

.... Maximum Loan Amount - Most Employers

- The maximum loan amount under the PPP is **the lesser of:**
 - \$10,000,000, or
- The sum of:
 - **2.5 x the average total monthly payroll costs** incurred during the **1-year period before the loan date or calendar year 2019;**
 - **Plus** the outstanding amount of any Emergency Injury Disaster Loan (EIDL) **obtained between January 31, 2020 and April 3, 2020, less the amount of any "advance" under an EIDL COVID-19 loan** (because it does not have to be repaid) which is to be refinanced under this loan.

.... Maximum Loan Amount – Seasonal Employers

- For **seasonal employers** (as determined by the SBA), the maximum loan amount under the PPP is **the lesser of:**
 - \$10,000,000, or
- The sum of:
 - **2.5 x the average total monthly payroll costs** for:
 - **The period from February 15, 2019, or March 1, 2019** (decided by the loan recipient) **through June 30, 2019; or**
 - **A consecutive 12-week period between May 1, 2019 and September 15, 2019 (added by SBA IFR issued on 4-27-20).**
 - **Plus** the outstanding amount of any Emergency Injury Disaster Loan (**EIDL**) **obtained between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan** (because it does not have to be repaid) which is to be refinanced under this loan.

.... Maximum Loan Amount – New Employers

- For otherwise eligible employers **not in business** during the period **beginning on February 15, 2019 and ending on June 30, 2019**, the maximum loan amount under the PPP is **the lesser of:**
 - \$10,000,000, or
- The sum of:
 - **2.5 x the average total monthly payroll costs** incurred **from January 1, 2020 through February 29, 2020;**
 - **Plus** the outstanding amount of any Emergency Injury Disaster Loan (EIDL) **obtained between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan** (because it does not have to be repaid) which is to be refinanced under this loan.

Maximum Loan Amount - Self-Employed Individuals

.... Calculate your maximum loan amount as follows:

- **Step 1:** Compute 2019 payroll by adding the following:
 - Your 2019 Form 1040 **Schedule C, line 31** net profit amount:
 - If you have not yet filed a 2019, fill it out and compute the value.
 - If this amount is over \$100,000, reduce it to \$100,000.
 - If this amount is less than zero, set this amount at zero.
 - **2019 gross wages and tips paid to our employees** computed using 2019 IRS Form 941 Taxable Medicare wages & tips (line 5c—column 1) from each quarter plus any pre-tax employee contributions for health insurance or other fringe benefits excluded from Taxable Medicare wages and tips.
 - Subtract:
 - Any amounts paid to any individual employee in excess of \$100,000 annualized and;
 - Any amounts paid to any employee whose principal place of residence is outside the United States; and

Maximum Loan Amount - Self-Employed Individuals

- **2019 employer health insurance contributions** (health insurance component of Form 1040 Schedule C line 14), **retirement contributions** (Form 1040 Schedule C line 19), and **state and local taxes assessed on employee compensation** (i.e., SUTA).
- **Step 2:** Calculate the average monthly amount (divide the amount from Step 1 by 12).
- **Step 3:** Multiply the average monthly amount from Step 2 by 2.5.
- **Step 4:** Add the outstanding amount of any EIDL made between January 31, 2020 and April 3, 2020 that you seek to refinance, less the amount of any advance under an EIDL COVID-19 loan (because it does not have to be repaid).

Loan Forgiveness Amount

- An eligible recipient is eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following **costs incurred** and **payments made** during **the 8-week or 24-week period beginning on the date of the origination of a covered loan but ending not later than December 31, 2020:**
 - **Payroll Costs.**
 - **Interest Payments** on indebtedness or a debt instrument incurred 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.
 - **Rent Payments** made under a lease agreement **dated before February 15, 2020.**
 - Make sure **written related party lease agreements** are in place.
 - **Utility Payments** related to the distribution of **electricity, gas, water, transportation, telephone or internet access** for which service began before February 15, 2020.
 - **Tipped Workers** - A eligible recipient with tipped employees may receive forgiveness for additional wages paid to those employees.

.... Loan Forgiveness - Covered Period

- When does the covered period (24 weeks or 8 weeks) begin to determine the amount of the forgiveness for the PPP loan?
- The covered period begins on the date the lender makes the first disbursement of the loan.
- Borrowers who received loans prior to June 5, 2020 can elect an 8-week covered period or a 24-week covered period.
- Borrowers who received loans on or after June 5, 2020 will have a 24-week covered period.
- The loan forgiveness application released on May 15, 2020 provides for an “alternative payroll covered period.”
 - Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the 24-week (or 8-week if elected) period that begins on the first day of their first pay period following their loan disbursement date.

.... Loan Forgiveness - Payroll Costs

Payroll Costs Eligible for Loan Forgiveness.

- In general, **payroll costs paid or incurred** during the 8-week (56 days) or 24-week (168 days) covered period are eligible for forgiveness.
- Borrowers may seek forgiveness for payroll costs for the 8 or 24 weeks beginning on either:
 - The date of disbursement of the borrower's PPP loan proceeds from the Lender (i.e., the start of the covered period); or
 - The first day of the first payroll cycle in the covered period **(the "alternative payroll covered period")**.

.... Loan Forgiveness - Payroll Costs - Paid or Incurred

- **Payroll costs are considered paid** on the day that paychecks are distributed or the borrower originates an ACH credit transaction.
- **Payroll costs incurred during the borrower's last pay period** of the covered period or the alternative payroll covered period are eligible for forgiveness **if paid on or before the next regular payroll date**;
 - Otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness.
- **Payroll costs are generally incurred on the day the employee's pay is earned** (i.e., on the day the employee worked).
 - **For employees who are not performing work** but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

.... Loan Forgiveness - Payroll Costs - Example

Example: A borrower has a bi-weekly payroll schedule (every other week). The borrower's **8-week covered period begins on June 1 and ends on July 26**. The **first day of the borrower's first payroll cycle** that starts in the covered period is **June 7**. The borrower may elect an alternative payroll covered period for payroll cost purposes that **starts on June 7 and ends 55 days later (for a total of 56 days) on August 1**. Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness as long as they are paid on or before the first regular payroll date occurring after August 1. **Payroll costs that were both paid and incurred during the covered period (or alternative payroll covered period) may only be counted once.**

.... Loan Forgiveness - Payroll Costs - Bonuses, Etc.

- Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?
 - **Yes.** The CARES Act defines the term “payroll costs” broadly to include compensation in the form of salary, wages, commissions, or similar compensation.
 - If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are eligible for forgiveness **as long as they do not exceed an annual salary of \$100,000, as prorated for the covered period.**

Loan Forgiveness - Payroll Costs - Caps

- Are there **caps** on the amount of loan forgiveness available for **owner-employees** and **self-employed individuals**' own payroll compensation?
 - Yes, the amount of loan forgiveness requested for **owner-employees and self-employed individuals**' payroll compensation **can be no more than the lesser of: 8/52 of 2019 compensation or \$15,385 (or possibly 24/52 of 2019 compensation or \$46,154)** per individual **in total across all businesses**.
 - **Owner-employees** are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf.
 - **Schedule C filers** are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.
 - **General partners** are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235.
 - **No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income.**

.... **Loan Forgiveness - Nonpayroll Costs - Paid or Incurred**

Nonpayroll Costs Eligible for Loan Forgiveness.

- A nonpayroll cost is eligible for forgiveness if it was:
 - **Paid** during the covered period; or
 - **Incurred** during the covered period **and paid on or before the next regular billing date**, even if the billing date is after the covered period.

Example: A borrower's **covered period begins on June 1 and ends on July 26**. The borrower **pays its May and June electricity bill** during the covered period and **pays its July electricity bill on August 10**, which is the next regular billing date. The borrower may seek loan forgiveness for its May and June electricity bills, because they were paid during the covered period. **In addition, the borrower may seek loan forgiveness for the portion of its July electricity bill through July 26** (the end of the covered period), because it was incurred during the covered period and paid on the next regular billing date.

- Appears **prepayments will not qualify** for loan forgiveness.

Amounts Eligible For Loan Forgiveness - Self-Employed Individuals

- Payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee (for 8 weeks, a maximum of \$15,385 per individual or possibly 24 weeks, a maximum of \$46,154 per individual).
- Payroll costs includes covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums).
- Payroll costs do not include health insurance and retirement benefits for owners.

Amounts Eligible For Loan Forgiveness - Self-Employed Individuals

- **Owner compensation replacement**, calculated based on 2019 net profit as amount limited above, with forgiveness of such amounts limited to 8 weeks worth (8/52) or possibly 24 weeks (24/52) of 2019 net profit.
 - Excludes any qualified sick leave equivalent amount for which a credit is claimed under Section 7002 of the FFCRA or qualified family leave equivalent amount for which a credit is claimed under Section 7004 of FFCRA.
- **Payments of interest on mortgage obligations on real or personal property** incurred before February 15, 2020, to the extent they are deductible on Form 1040 Schedule C (business mortgage payments).
- **Rent payments** on lease agreements in force before February 15, 2020, to the extent they are Schedule C (business rent payments).
- **Utility payments** under service agreements dated before February 15, 2020 to the extent they are deductible on Form 1040 Schedule C (business utility payments).

.... Loan Forgiveness - Reductions

- The CARES Act specifically requires certain reductions in a borrower's loan forgiveness amount based on reductions in FTEs or in employee salary and wages during the covered period.
- These reductions are subject to an important statutory exemption for borrowers who have rehired employees and restored salary and wage levels by December 31, 2020 (with limitations).

Reduction of Loan Forgiveness - FTEs Reduction

- The **amount of loan forgiveness shall be reduced** (but not increased) by multiplying the tentative loan forgiveness amount as determined per above by the **quotient obtained by dividing:**
 - The average number of full-time equivalent employees (**FTEs**) during the **8-week or 24-week covered period** by:
 - The average number of **FTEs** during the period **February 15, 2019 through June 30, 2019, or if elected, the period January 1, 2020 through February 29, 2020.**
 - **Seasonal eligible employers** can also use either of the two preceding periods **or a consecutive 12-week period between May 1, 2019 and September 15, 2019** (added by SBA IFR issued on 5-22-20).
- **No more than 40% (was 25%)** of the loan forgiveness amount may be attributable **to non-payroll costs.**
- **The amount of loan forgiveness shall not exceed the principal plus accrued interest amount of the loan.**

Loan Forgiveness - FTEs Reduction

- **What effect does a reduction in a borrower's number of FTEs have on the loan forgiveness amount?**
 - In general, a reduction in FTE employees during the covered period or the alternative payroll covered period reduces the loan forgiveness amount by the same percentage as the percentage reduction in FTE employees.
 - **The borrower must first select a reference period:** (i) February 15, 2019 through June 30, 2019; (ii) January 1, 2020 through February 29, 2020;
 - In the case of a **seasonal employer, either of the two preceding methods** or a **consecutive 12-week period between May 1, 2019 and September 15, 2019.**
 - If the average number of **FTE employees during the covered period** or the alternative payroll covered period **is less than during the reference period**, the total eligible expenses available for **forgiveness is reduced proportionally** by the percentage reduction in FTE employees.
 - **For example**, if a borrower had 10.0 FTE employees during the reference period and this declined to 8.0 FTE employees during the covered period, the percentage of FTE employees **declined by 20 percent and thus only 80 percent of otherwise eligible expenses are available for forgiveness.**

.... Reduction of Loan Forgiveness - Reduction in Wages

- The amount of **loan forgiveness shall also be reduced** by the amount of any **reduction in total salary** (based on average annual salary or hourly wage) of any employee **during the period February 15, 2020 and April 26, 2020** that is **in excess of 25%** of the **total salary** (based average annual salary or hourly wage) of such employee **between January 1, 2020 and March 31, 2020.**
 - **This reduction rule only applies to employees who did not receive** during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount **more than \$100,000.**
 - To ensure that borrowers are **not doubly penalized**, the salary reduction **applies only to the portion of the decline in employee salary that is not attributable to the FTE reduction.**

.... Loan Forgiveness - Reductions Restoration

- If a borrower restores reductions made to employee salaries and wages or FTE employees **by not later than December 31, 2020 (was June 30, 2020),** can the borrower avoid a reduction in its loan forgiveness amount?
 - **Yes.** If certain employee **salaries and wages were reduced** between **February 15, 2020 and April 26, 2020 (the safe harbor period)** but the borrower **eliminates those reductions by December 31, 2020 or earlier**, the **borrower is exempt from any reduction in loan forgiveness** amount that would otherwise be required due to reductions in salaries and wages.
 - Similarly, if a borrower **eliminates any reductions in FTE employees** occurring during the safe harbor period **by December 31, 2020 or earlier**, the **borrower is exempt from any reduction in loan forgiveness** amount that would otherwise be required due to reductions in FTE employees.

Loan Forgiveness - Reductions Restoration - Employee Declines

- Will a borrower's loan forgiveness amount be reduced if the borrower laid-off or reduced the hours of an employee, then offered to rehire the same employee for the same salary and same number of hours, or restore the reduction in hours, but the employee declined the offer?
- **No.** Employees whom the borrower offered to rehire are generally exempt from the loan forgiveness reduction calculation.
- This exemption is also available if a borrower previously reduced the hours of an employee and offered to restore the employee's hours at the same salary or wages.
- In calculating the loan forgiveness amount, a borrower may exclude any reduction in FTEs that is attributable to an individual employee if:

Loan Forgiveness - Reductions Restoration - Employee Declines

- The borrower made a **good faith, written offer** to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;
- The offer was for the **same salary or wages and same number of hours** as earned by such employee in the last pay period prior to the separation or reduction in hours;
- The **offer was rejected** by such employee;
- The borrower has **maintained records documenting** the offer and its rejection; **and**
- The borrower **informed the applicable state unemployment insurance office** of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

Loan Forgiveness - Reductions Restoration - Employee Termination, Etc.

- Will a borrower's loan forgiveness amount be reduced if an employee is fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction?
 - **No.** When an employee of the borrower is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period (FTE reduction event), the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the FTE employee reduction penalty.

.... Reduction of Loan Forgiveness Example - Loan Calculation

Maximum Loan:

Payroll Costs paid during 2019 - **\$1,200,000**

Average Monthly Total Payroll Costs - **$\$1,200,000/12 = \$100,000$**

Maximum Loan - **$\$100,000 \times 2.5 = \$250,000$**

Reduction of Loan Forgiveness - Example 1 - FTE /Salary Reduction

Loan Forgiveness Calculation:

Payroll Costs during the 8-week or 24-week covered period,- **\$130,000**

Non-Payroll Costs during the 8-week or 24-week covered period - **\$100,000 (limited to 40% of the loan)**

Total Costs spent during 8-week or 24-week covered period - **\$230,000**

Less: Salary Wage reduction - **\$10,000**

Subtotal - **\$220,000**

FTE Reduction:

of FTEs per month during 8-week or 24-week covered period - **15**

of FTEs per month during the base period (2/15/19 to 6/30/19 or optional 1/1/20 to 2/29/20 period or consecutive 12-week period between 5/1/19 and 9/15/19 if seasonal employer) - **20**

Quotient - **15/20 =75%**

a) Loan Forgiveness Amount - **$\$220,000 \times 75\% = \$165,000$**

b) Payroll Cost Limit (**$\$130,000 / .60$**) - **\$216,667**

c) PPP Loan Amount - **\$250,000**

PPP Loan Forgiveness Amount (lower of a, b, or c) - \$165,000

(will be reduced by \$10,000 EIDL Grant, if any)

Reduction of Loan Forgiveness - Example 2 - Payroll Cost Limit

Loan Forgiveness Calculation:

Payroll Costs during the 8-week or 24-week covered period, - **\$130,000**

Non-Payroll Costs during the 8-week or 24-week covered period - **\$100,000 (limited to 40% of loan)**

Total Costs spent during 8-week or 24-week covered period - **\$230,000**

Less: Salary Wage reduction - **\$0**

Subtotal - **\$230,000**

FTE Reduction:

of FTEs per month during 8-week or 24-week covered period - **15**

of FTEs per month during the base period (2/15/19 to 6/30/19 or optional 1/1/20 to 2/29/20 period or consecutive 12-week period between 5/1/19 and 9/15/19 if seasonal employer) - **20**

Quotient - **20/20 = 100% (full restoration safe harbor)**

a) Loan Forgiveness Amount - **$\$230,000 \times 100\% = \$230,000$**

b) Payroll Cost Limit (**$\$130,000 / .6$**) - **\$216,667**

c) PPP Loan Amount - **\$250,000**

PPP Loan Forgiveness Amount (lower of a, b, or c) - \$216,667
(will be reduced by \$10,000 EIDL Grant, if any)

Reduction of Loan Forgiveness - Example 3 - 24 Weeks

Loan Forgiveness Calculation:

Payroll Costs during the 8-week or 24-week covered period, - **\$390,000**

Non-Payroll Costs during the 8-week or 24-week covered period - **\$100,000 (limited to 40% of loan)**

Total Costs spent during 8-week or 24-week covered period - **\$490,000**

Less: Salary Wage reduction - **\$30,000**

Subtotal - **\$460,000**

FTE Reduction:

of FTEs per month during 8-week or 24-week covered period - **15**

of FTEs per month during the base period (2/15/19 to 6/30/19 or optional 1/1/20 to 2/29/20 period or consecutive 12-week period between 5/1/19 and 9/15/19 if seasonal employer) - **20**

Quotient - **$15/20 = 100\%$**

a) Loan Forgiveness Amount - **$\$460,000 \times 75\% = \$345,000$**

b) Payroll Cost Limit (**$\$390,000 / .6 = \$650,000$**)

c) PPP Loan Amount - **\$250,000**

PPP Loan Forgiveness Amount (lower of a, b, or c) - \$250,000
(will be reduced by \$10,000 EIDL Grant, if any)

Loan Forgiveness – Application and Documentation Requirements

- An eligible recipient seeking loan forgiveness **shall submit to the lender an application** which shall include the following:
 - **Documentation verifying the number of FTEs** on payroll and pay rates.
 - **Payroll tax filings** reported to the IRS and State income, payroll, and unemployment insurance filings.
 - **Documentation, including cancelled checks, payment receipts**, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
 - **Certification from an authorized representative of the eligible recipient that:**
 - The documentation presented is true and correct; and
 - **The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments.**
 - **Proof – Open separate account for loan proceeds?**
 - **Any other documentation the SBA determines is necessary.**
- **Decision** - The **lender shall issue a decision** on the application **no later than 60 days** after the lender receives the loan forgiveness application.

.... Loan Forgiveness Tax Issues

- CARES Act provides that PPP loan forgiveness amount is **excluded from gross income**.
 - However, the IRS issued ***IRS Notice 2020-32*** stating that pursuant to ***IRC Section 265***, the **expenses paid that are allocable to the loan forgiveness are not deductible** up to the amount of the loan forgiveness.
- CARES Act (Section 2301) **Employee Retention Tax Credit** provision is **not available** if PPP loan is received.
- CARES Act (Section 2302) **Employment Taxes Payment Deferral** provision **was not originally available** if PPP loan is forgiven.
 - The PPP Flexibility Act modified this to **now allow for the employment tax deferral** even if all or a portion of the PPP loan is forgiven.

.... Terms of the Unforgiven Portion of the Loan

What are the terms of the loan and the interest rate?

- The interest rate will be 1%.
- The maturity of the loan is 2 years for loans made prior to June 5, 2020 and 5 years for loans made on and after June 5, 2020.
- Loans with a maturity of 2 years can be extended to 5 years with the agreement of the lender.
- Payments are deferred until a determination of the amount of forgiveness is made by the SBA.
- If the borrower does not apply for forgiveness within 10 months after the last day of the covered period, payments will be due that month.
- Interest will accrue on the loan beginning with disbursement.

Paycheck Protection Program Flexibility Act

...Covered Period Increased

- **Current borrowers 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.
- **New borrowers have a covered period of 24 weeks after the loan proceeds are received or December 31, 2020, whichever is earlier.**
 - The deadline for PPP loan applications continues to be June 30, 2020.

....The 75% Payroll Expenditure Requirement is Reduced to 60%

- Lower the requirements that **75% of a borrower's loan proceeds** must be used for payroll costs **and** that **75% of the loan forgiveness amount** must have been spent on payroll costs during the 24-week loan forgiveness covered period **to 60% for each of these requirements.**
- **If a borrower uses less than 60% of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness,** subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs. ***Per SBA IFR issued on 6-11-20.***
- Because the **loan amount is based on 2.5 months of payroll,** borrowers may have a good chance of meeting the 60% requirement with the covered period extended to 24 weeks.

...FTE Reduction Safe Harbor Extended Until December 31st

- **Opportunity to avoid FTE Reduction penalties if headcount is restored by December 31 instead of June 30.**
 - Borrowers have a longer period of time to restore workforce.
 - It is unclear if the borrower can claim the safe harbor was met prior to December 31. Additional guidance is needed.
- **New exceptions for FTE reduction provided if borrower:**
 - **Documents an inability to rehire individuals** who were employees of the borrower on February 15, 2020, **and an inability to hire similarly qualified employees** for unfilled positions on or before December 31, 2020; **or**
 - **Documents an inability to return to the same level of business activity** as before February 15, 2020, due to compliance with safety requirements established or guidance issued by the government (HHS, CDC, or OSHA) during the period March 1, 2020 through December 31, 2020 related to COVID-19.

...Other Changes

- **Repayment period extended to five years for new loans.**
 - Existing PPP loans can have maturity extended if lender and borrower agree.
 - Interest rate to remain at 1%.
- **PPP Borrowers can now qualify for the deferral of employer's share of payroll taxes available under the CARES Act.**
 - Deferral of Social Security payments (6.2%).
 - 50% due in 2021, remainder due in 2022.
- **Loan Payments are deferred until the SBA determines the amount of loan forgiveness and remits to the lender.**
 - Had been a 6-month deferral.
 - However, if borrower doesn't apply for forgiveness within 10 months after the last day of the covered period, payments will be required at that 10th month.

Questions Where Additional Guidance is Needed

- Can a borrower whose loan was received before June 5, 2020 use the June 30, 2020 FTE reduction and salary reduction safe harbors instead of December 31, 2020?
- What happens if you restore FTEs and salaries using safe harbors before December 31, 2020 but do not maintain the safe harbor levels through December 31, 2020?
 - Do you lose the loan forgiveness restoration benefit?
- Does the loan forgiveness limit on cash compensation change to $\$100,000 \times 24/52$ (\$46,154) from $\$100,000 \times 8/52$ (\$15,385)?
- Can you apply for loan forgiveness before the end of the 24-week covered period if all the PPP loan funds are spent, FTE reductions and salary reductions are restored and you calculated 100% loan forgiveness at that time, or do you have to wait until the end of the 24-week covered period?
- With the new 24-week covered period, borrowers will most likely spend well beyond their PPP loan amount. How do borrowers document what costs were paid from PPP loan funds vs. other funds?
 - This could be a problem for borrowers that spent most of their PPP loan funds, where more than 40% of which, were for non-payroll costs. Can you now go back and reallocate and state that these non-payroll costs came from other funds and that the PPP loan funds that were restored will be used for future payroll costs?
 - Also, will the FTE reduction quotient now apply to the smaller PPP loan amount vs. the amount spent?

CARES ACT: Payroll Tax Provisions

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** *(Act Section 2301)*

- **FAQ's now on IRS website:** <https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>.
- Provides for a **refundable payroll tax credit for 50% of qualified wages** paid by eligible employers to certain employees during the COVID-19 crisis.
 - **Credit limited to employer paid employment taxes.**
 - IRC Section 3111(a) - old-age, survivors, and disability insurance. **FICA (6.2 %)**.
 - IRC Section 3221(a) - Railroad Retirement Act (RRTA) insurance (6.2%).
 - **Does not apply to Medicare portion (1.45%).**

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** *(Act Section 2301)*

- An **Eligible Employer** is any employer, including non-profits, which is carrying on a trade or business **during calendar year 2020**, with respect to any calendar quarter in which:
 - **Operations are fully or partially suspended** during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to the coronavirus disease 2019 (COVID-19); **or**
 - Where there is a **“significant decline in gross receipts.”**

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** *(Act Section 2301)*

- **Significant decline in gross receipts:**
 - **Beginning with the first calendar quarter** beginning after December 31, 2019, for which gross receipts for the calendar quarter are **less than 50 percent of gross receipts** for the same calendar quarter in the prior year; and
 - **Ending with the calendar quarter** following the first calendar quarter beginning after a calendar quarter described above for which gross receipts of such employer is **greater than 80 percent of gross receipts** for the same calendar quarter in the prior year.

.... Employee Retention Credit for Employers Subject to Closure Due to COVID-19 *(Act Section 2301)*

- The term **"qualified wages"** includes health benefits and is capped at the first \$10,000 in wages paid by the employer to an eligible employee.
- **Qualified wages:**
 - For employers who had an average number of full-time employees in 2019 of **100 or fewer**, all employee wages are eligible, **regardless of whether the employee is furloughed.**
 - For employers who had **greater than 100** average number of full-time employees in 2019, only the wages of **employees who are furloughed or face reduced hours** as a result of their employers' closure or reduced gross receipts are eligible for the credit.

.... **Employee Retention Credit for Employers Subject to Closure Due to COVID-19** *(Act Section 2301)*

- Limitations.
 - No credit is available with respect to an employee for any period for which the employer is **allowed a Work Opportunity Credit** (Code Section 21) with respect to the employee.
 - **Not available to employers receiving PPP Loans** under Section 1102 of the Act.
- The credit applies to wages paid after March 12, 2020 and before January 1, 2021.
- The IRS is granted **authority to advance payments** to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit.
 - **New IRS Form 7200.**

.... **Delay of Payment of Employer Payroll Taxes** *(Act Section 2302)*

- Allows taxpayers to defer paying the **employer portion** of certain payroll taxes through the end of 2020. Notwithstanding any other provision of law, the payment for **"applicable employment taxes"** for the **"payroll tax deferral period."** Won't be due before the **"applicable date."**
- **Applicable employment taxes:**
 - Social Security Taxes - 6.2% (IRC Section 3111(a)).
 - Railroad Retirement Tax Act - RRTA. (IRC Sections 3211(a) and 3221(a)).
 - Self-employment tax. (IRC Section 1401(a)).
 - **Self-employed individuals** can defer paying 50% of the applicable self-employment taxes due on a quarterly basis and that amount will not be subject to the underpayment penalty.
 - **DOES NOT** include the **employer portion of Medicare taxes.**

.... **Delay of Payment of Employer Payroll Taxes** *(Act Section 2302)*

- **Payroll tax deferral period:**
 - Period beginning on the date of enactment of the Act (March 27, 2020) and ending before January 1, 2021.
- **Applicable date:**
 - **December 31, 2021**, with respect to **50%** of the amounts to which Act Section 2302(a) (employment taxes) and Act Section 2302(b) (self-employment tax), as the case may apply; and
 - **December 31, 2022**, with respect to the **remaining 50%** of those amounts.

.... **Delay of Payment of Employer Payroll Taxes** *(Act Section 2302)*

- *What this means:*
 - **Payment for half of these taxes will not be due until the end of 2021, and the other half will not be due until the end of 2022.**
 - Technically, this interest-free loan is accomplished by providing that, notwithstanding IRC Section 6302 (which authorizes IRS to set deadlines for tax deposits), an employer will be treated as having timely made all deposits of applicable employment taxes deferred by the CARES Act if all such deposits are made no later than the applicable date.

....

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