



# Another PPP Presentation and Other Income Tax Issues



June 18, 2020 Update

INFORMATION SUBJECT TO CHANGE BASED ON FURTHER  
GUIDANCE PROVIDED BY SBA OR OTHER FEDERAL  
AGENCIES.



# Rule Sources

- Coronavirus Aid, Relief, and Economic Security (CARES) Act
  - <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.xml>
- FAQs provided by SBA
  - <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>
- PPP Loan Forgiveness Application (updated June 17, 2020)
  - <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.>
- Interim Final Rules (updated regularly)
  - <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- PPP Flexibility Act of 2020 – signed into Law June 5, 2020
  - <https://www.congress.gov/bill/116th-congress/house-bill/7010/text>

# Forgiveness Application Needs

- PPP Loan Amount and disbursement date.
- Disclosure if EIDL Advance received. Reduces forgiveness.
- Employee counts: time of loan app and time of forgiveness app.
- Disclosure of Pay frequency schedule.
- Checkbox for \$2 Million borrower level (affiliates included).
- Reps and Certifications signed by borrower.
- 6-year document retention requirement.

# Requesting Forgiveness

- Submit Loan Forgiveness Application to Lender
  - Due Date -10 months after CP under New Act
  - Submit the PPP Loan Forgiveness Calculation Form
  - Submit PPP Schedule A and Substantiation
  - Lender has 60 days to review and make a decision; SBA has another 90 days after that; total of 5 months
- Determine if you qualify for EZ form or need to file the Long Form.
- Begin to gather substantiation needed now.
- PPP Schedule A Worksheet is not required to be submitted but must be completed regardless.
- PPP Borrower Demographic Information is optional.

# Documentation Requirements

- The loan forgiveness application instructions (updated June 17, 2020) details documents required to be submitted.
- Interim Final Rule has a section highlighting requirements as well.
- The more complete your submitted forgiveness application is, the less burdensome it will be for lenders to review.

# Covered Period – 8 or 24?

- Covered Period: Day 1 = same as PPP Loan Disbursement Date; runs for 168 or 56 days. Ex. Begins on a Monday, ends on a Sunday.
- Alternative Payroll Covered Period:
  - Borrowers with Bi-Weekly (or more frequent) payroll schedules may elect to adjust their Covered Period to begin on the first day of their next Pay Period.
  - Borrowers who make this election must apply the Alternative Period in calculations where referenced.
  - If elected, applies to Salary and FTE calculations.
  - Does not apply to Non-Payroll Costs. Creates two separate measurement periods.

# Forgiveness Amount

Forgiveness Amount is defined as the LESSER OF:

- PPP Loan Amount,
- Eligible Payroll Costs / 60%, OR
- Total Eligible Payroll and Non-Payroll Costs reduced by the Total Salary/Hourly Wage Reduction multiplied by the FTE Reduction Quotient



# Eligibility

“Costs incurred AND payments made” (Sec. 1106(b)) during the period changed...

Flexibility Added: Changed to “incurred OR paid” on Forgiveness Calculation

Instructions for Line 1. A play on words may have big impact as indicated in IFR.

# Eligibility

- Payroll Costs
  - Eligible for forgiveness for PR costs paid AND PR costs incurred during the Covered Period.
  - Payroll costs are “paid” on the date paychecks are distributed or the borrower originates an ACH credit transaction.
  - Payroll Costs are “incurred” on the day the E/E’s pay is earned.
  - Wages earned through final day of covered period can be paid after covered period on or before the next regular payroll date.

# Eligibility

- Non-Payroll Costs (cannot exceed 40% of the total forgiveness amount)
  - Covered Rent, mortgage interest and Utility payments must be paid during covered period (even if incurred prior to...) OR,
  - Incurred during covered period and paid before the next regular billing date
- Count Payroll and Non-Payroll Costs BOTH Paid and incurred only once.

# Payroll Cost Eligibility

- Decide on Covered Period or Alternative Covered Period
- Day 1 – Payroll paid on or after Day 1 that includes wages earned prior to Day 1 – IS THIS ELIGIBLE?
- Day 168 or 56 – Include hours worked through this day even if paid after, but no later than next pay period.
- \$100,000 cap as pro-rated
  - \$15,385 for 8 weeks
  - \$46,154 for 24 weeks (except owners)

# Payroll Cost Eligibility

- Non-Cash Compensation PR Costs allowed for:
  - ER contributions for EE health insurance
  - ER contributions to EE retirement plans
  - ER state and local taxes assessed on EE comp
- “*Owner-Employees*” have separate rules.
- *Self-employed* individuals and Partners are excluded since they are not “employees.”
- Provides for different treatment depending on business structure.

# Owner-Employees

- Includes Shareholders of S-Corps and C-Corps.
- PPP Schedule A separates Owner Comp from other employees
  - Owners are not included in Table 1 or 2
- *Owner-Employees* forgiveness requested is capped at \$15,385 (8/52) OR \$20,833 (2.5 months) OR equivalent 2019 *Cash compensation*, WHICHEVER IS LOWER depending on CP chosen.
  - Do NOT include S-Co Owner-employees ER Health Insurance separate from Comp.
  - DO include S & C Corp Owner-employees ER retirement contributions separate from Comp.
- *Owner-Employees* will not enter into the calculation of the FTE reduction or reduction in wages.
- It is not clear if attribution rules apply here for related parties on payroll.
- Total Cap applies in total “across all businesses.”

# Self-Employed and Gen. Partners

- Schedule C filers are capped by the amount of their *Owner Compensation Replacement*, calculated based on 2019 net profit – not to exceed \$15,385 (8 wk) or \$20,833 (2.5 months if electing 24 wk CP).
  - Wages and benefits paid for other employees count – See IFR Issued 4/14/20
- General partners are capped (not to exceed amounts above) by the amount of their 2019 net earnings from self-employment less Sec. 179 deduction and unreimbursed partnership expenses.
- No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals.

# Non-Payroll Cost Eligibility

- Covered Mortgage Interest only; Not Principal; debt must be in place before 2/15/20 – covers real or personal property debts.
  - Office location, warehouse purchased, business automobiles or fleet
- Covered Rent obligations in force before 2/15/20 for real or personal property “*pursuant to lease agreements.*”
- Covered Utilities for services beginning by 2/15/20 includes electricity, gas, water, transportation (gas for business vehicles?), telephone, or internet access.
- Besides Pre-paid Interest being specifically disallowed, are other Prepayments allowed under “paid” or “incurred” model? Seems likely under IFR Page 12 Example. Uses word “In addition” ...



# PPP Schedule A Worksheet

- **Table 1** – Lists E/E's who were employed during Covered period AND paid < \$100K annualized rate for ALL pay periods in 2019 OR were NOT employed at any point in 2019.
  - Removes fears about salary reductions (in addition to FTE reduction) for former EE's not paid during Covered period.
    - Very Borrower Friendly. Only a reduction of annualized salary or pay rates.
  - Average FTE – each single EE capped at 1.0 for 40-hour week.
  - Salary / Hourly Wage Reduction - > 25% only
    - See Instructions for PPP Sch. A Worksheet Pg. 4-5 Steps 1-3 to determine reduction for each employee listed.

# PPP Schedule A Worksheet

- **Table 2** –Lists E/E's who were employed during Covered period AND paid > \$100K annualized rate for ANY pay period in 2019.
  - List Cash Compensation paid or incurred during covered period or Alternative Period; capped at \$15,385 (8 wk) or \$46,154 (24 wk) per E/E.
  - Average FTE – capped at 1.0 for 40-hour week.
  - Salary / Hourly Wage Reduction – N/A.

# Salary / Hourly Wage Reduction

- Compare EACH employee making less than \$100,000 annually (Table 1) and compare their annual salary OR hourly wage for the Covered period against 1<sup>st</sup> quarter annualized wages. Follow Instructions for PPP Schedule A Worksheet to Line 5 of PPP Loan Forgiveness Application.
- Employee #1 – determine avg. annual salary based on avg. wage rate for 1Q 2020 by pay period.
  - Ex. Q1 Pay = \$10,000 / 13 weeks = \$769.23 / wk
  - On a 52-week year - \$40,000 annually

# Salary / Hourly Wage Reduction (EZ)

- Employee #1 – 8-week period Pay =  $\$4,500 / 8 \text{ weeks} = \$562.50 / \text{wk}$
- On a 52-week year -  $\$29,250$  annually
- Divide  $\$29,250 / \$40,000 = 73.125\% =$  Fail for this employee
- Reduce amount of Loan forgiven dollar for dollar by  $\$115$ 
  - $\$40,000 \times 75\% = \$30,000 - \$29,250 = \$750$
  - $\$750 \times 8 = \$6,000 / 52 = \$115$

Check box on PPP Schedule A Line 3 if NO Reductions and enter "0" on Line 3. If so, consider EZ form.

# Salary/Hourly Wage Reduction Safe Harbor

If Borrower meets Circumstances, reduction of Loan Forgiveness is reduced:

1. Applies only if annual salary OR hourly wage is reduced from 2/15/20 – 4/26/20 and,
2. That rate is restored by earlier of 12/31/20 or date of forgiveness application; by employee, no cliff effect. Is this just for a moment in time leading to 1-day raises to meet the safe harbor?
3. Must complete the PPP Schedule A worksheet to determine based on instructions provided.

# Salary/Hourly Wage Reduction Exclusion

To ensure that borrowers are not doubly penalized, the salary/hourly wage reduction applies ONLY to the portion of the decline in employee salary and wages that is NOT attributable to the FTE Reduction.

- Ex. In IFR – E/E drops from 40 hours to 20 hours per week. Pay rate stays the same. Because the drop in pay is entirely attributable to the FTE reduction, borrower is not required to conduct a wage reduction calculation for that E/E.

# FTE Reduction Quotient

DEFINED: Total Average FTEs (Tables 1 + 2)/ Average FTE during borrower's chosen reference period (not to exceed 1.0)

Average FTEs (for each employee) per week for Covered period. Enter on PPP Schedule A Worksheet (Tables 1 & 2). Then, choose your reference period; The Lesser of:

The avg. FTEs per week – 2/15/19 – 6/30/19 OR

The avg. FTEs per week – 1/1/20 – 2/29/20

Enter on Line 11 of PPP Schedule A.

# FTE Reduction Quotient

FTEs equal the avg. number of employees you have over a given period

Divide # of hours paid by # of weeks. 40-Hour week confirmed in Instructions. Max amount per E/E is 1.0.

Ex.  $8,160 \text{ hours} / 8 \text{ weeks} / 40 \text{ hrs} = 25.2 \text{ FTEs}$

- Round to nearest tenth
- Simplified method allowed for 1.0 at > 40 hours or 0.5 for < 40 hours
  - Choose the option that maximizes your Quotient.

NOTE: The FTE Quotient comes after reduction for Salary/Hourly Wages, thus the Salary/Hourly Wage reduction gets reduced proportionately by the FTE Quotient. This is borrower favorable.



# FTE Reduction Safe Harbor #1 (EZ)

If Borrower meets Safe Harbors, they are granted an automatic 1.0 for FTE Reduction Quotient

- Unable to operate between 2/15/20 and end of CP at the same level due to compliance with requirements established by:
  - Secretary of Health and Human Services
  - Centers for Disease Control
  - Occupational Safety and Health Administration

## FTE Reduction Safe Harbor #2

If Borrower meets Safe Harbors, they are granted an automatic 1.0 for FTE Reduction Quotient

1. If the FTEs drop from 2/15/20 – 4/26/20 and,
2. The reduction is restored to 2/15/20 levels by earlier of (not later than) 12/31/20 or the date the forgiveness application is submitted.

# FTE Reduction Simple Safe Harbor (EZ)

PPP Schedule A provides after Line 10 a checkbox to allow a borrower to skip the complex math for FTEs if they have NOT reduced:

1. The Number of Employees and
2. Average paid hours “between” 1/1/20 and the end of the Covered Period.
  1. If passed, consider filing EZ form.

# FTE Reduction Exceptions

Borrower's loan forgiveness is NOT reduced by FTE reductions in the following cases:

- **Written** re-hire offers made during covered period rejected by E/E. Borrower must inform State Unemployment Ins.
- Unable to replace lost job with similar qualifications before 12/31/20.
- Any E/E fired for cause.
- Any E/E who voluntarily resigned.
- Any E/E who voluntarily requested a reduction in hours.
- Documentation will be required. Get it in writing!

# New Legislation

PPP Flexibility Act of 2020 amends forgiveness provisions of the CARES Act by:

- Extending repayment period from 2 to 5 years (mutual agreement required for loans prior to June 5, 2020).
- Repayment Period begins on date forgiveness is determined and remitted to lender instead of 6-month deferral.
  - No later than 10 months after the CP ends if you fail to apply for forgiveness.
- 1% interest stays.

# New Legislation

PPP Flexibility Act of 2020 amends forgiveness provisions of the CARES Act by:

- Extends Covered Period to 24 weeks but provides for an election to keep the Original 8-week period for loans prior to June 5<sup>th</sup>.
- Keeps an FTE reduction in place with certain exemptions for inability to rehire and replaces original 6/30 replenishment date with 12/31/20.
- IFR clarifies that borrower's forgiveness will be proportional to 60% of loan proceeds used for payroll costs and MAY use up to 40% for non-payroll costs.
- Law also provides for a deferral of ER Social Security payroll taxes.

# New Legislation

Things to consider:

- 56 days just got stretched to 168 days.
- Sal/Hrly Wage levels maintained at least 75% for 168 days.
- Plan to extend your 2020 Business Tax return waiting on Forgivable Amount to be confirmed.
- If borrower reaches max forgiveness before 24 weeks runs out, can they apply early if Wage and FTE levels have been maintained?

# New Legislation

Things to consider:

- For some businesses electing to keep the 8-week CP should not be ruled out if:
  - Your PPP funds have been spent on eligible costs during 8 weeks.
  - FTE levels were maintained at 2/15/20 levels or you are unable to re-hire or a safe harbor exemption applies. Will require written documentation.
  - No reduction in salary / wage levels have occurred.



# New Legislation

## Things to consider:

- Businesses that need debt off their Balance Sheet for other Debt Covenant Calculations at year end for Banking requirements should consider 8-weeks.
- Businesses with more employees will have more homework to compute FTE's for a period 3 x longer.

# Taxation of Forgiven Debt

- Cancelled debt is generally taxable however,
- CARES Act Section 1106(i) excludes from gross income the debt forgiven under Section 1106(b).
- IRS Released Notice 2020-32 that Code Section 265 disallows deductions otherwise allowable which is allocable to income exempt from tax.

# Taxation of Forgiven Debt

IRS Notice 2020-32 Deductibility of expenses paid using PPP forgivable loan proceeds:


- Congress and the AICPA argue this goes against the original intent of Section 1106(i) of the CARES Act which provides that PPP loan recipients will not recognize taxable income if the loan is forgiven.
- Senate Bill 3612 (Small Business Expense Protection Act of 2020) introduced into Congress on 5/5/2020 (John Cornyn, R. TX) to provide that tax deductions will be allowed for expenses paid using PPP loan proceeds that are forgiven.

# Taxation of Forgiven Debt

- How do you estimate 2020 taxes at this point?
- Is there a chance Estimated Tax Penalties get waived for some part of 2020?
- Does Sec. 265 apply if eligible costs are disbursed in 2020, but forgiveness doesn't apply until 2021?

# H.R. 6800 (Heroes Act)

- Health and Economic Recovery Omnibus Emergency Solutions Act
- Introduced by Nita Lowey (D. NY); 1,854 pages
  - Passed the House 5/15/20; moved to Senate
  - 6/1/20 - Read the 2nd time by Senate
  - 6/10/20 – A committee held a meeting for consideration
- Focused on providing funding for federal agencies and government
- Provides additional \$1,200 stimulus to individuals
- Expands paid sick days and Family and Medical Leave, Unemployment, etc.
- Division I - Small Business Provisions:
  - Expands and modifies PPP (may be DOA due to Flexibility Act)



Contact us at 813.875.7774  
with questions.