

PPP Loan Forgiveness

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- *This presentation considers guidance provided by the SBA and US Department of the Treasury through **[JUNE 29, 2020]**. Additional guidance is being provided on a regular basis, please refer to the US Department of the Treasury website (<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>) for recent updates.*





Recent Developments

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PPP Flexibility Act – June 5, 2020

- Extends Covered Period to 24 weeks
 - Existing borrowers can retain 8 week period
 - IFR issued 6/22 clarified that borrower can request forgiveness before the end of extended 24 week period
- Set minimum term for new loans at 5 years
- Forgiveness requested within 10 months of CP end
 - Yes - Extends deferral period until forgiveness is remitted to the lender
 - No - Start servicing loan



PPP Flexibility Act

- At least 60% payroll test/no more than 40% nonpayroll
 - Originally interpreted as a minimum threshold for eligibility
 - Interim Final Rule on 6/10/2020 clarified that this will be applied as a proportional forgiveness test
 - ◇ treat the same as the previous 75/25 test for forgiveness limitations, just with 60/40 ratios

PPP Flexibility Act

- Safe harbors for FTE reduction test
 - Not able to rehire previous employees AND are unable to hire similarly qualified employees for unfilled positions
 - Unable to return to same level of business activity due to compliance with OSHA, CDC or other requirements
 - ◇ IFR from 6/22 provides implementation guidance
- Allows Employer FICA deferral
- DID NOT address deductibility of expenses

Loan Forgiveness Application(s)

- Loan Forgiveness Application (and Instructions) updated 6/16
- New EZ Form and Instructions issued 6/16
 - Self-employed with no employees
 - Meet safe harbors for no wage or headcount reductions
 - Meet safe harbors for no wage reduction and new “unable to operate at prior level of business activity”



Loan Application Insights

- Caps on wages for employees and owners (see below – based on IFR)
- Clarifications on health insurance and retirement plan costs includable for owners
- Safe harbor application
 - Wage and FTE elimination measured at earlier of 12/31 or forgiveness application date
 - “Unable to Operate” measured through end of CP



IFR issued June 22nd

- Forgiveness timing
 - Can apply before the end of CP once all loan proceeds used for which forgiveness is requested
 - If wage reduction applicable, apply for full 24 weeks
 - No guidance on implementation beyond wage reduction
 - No guidance on how to reflect on applications

IFR issued June 22nd (Continued)

- Owner-Employee matters
 - Includes owner-employees of C-corps
 - ◇ Cash comp limited to 8 weeks or 2.5 months of 2019 comp
 - ◇ Can include ER paid healthcare and retirement
 - S-Corp owner-employees
 - ◇ Cash comp limited to 8 weeks or 2.5 months of 2019 comp
 - ◇ Can include ER paid retirement, but NOT ER paid healthcare
 - Schedule C/F and General Partners
 - ◇ Limited to 2019 Schedule C/F or K-1, 8 weeks or 2.5 months
 - ◇ Can not include ER paid healthcare or retirement

IFR issued June 22nd (Continued)

- “Business Activity” Safe Harbor
 - Exempts from FTE Reduction test
 - Document reduction in business activity during CP stems directly or indirectly from COVID requirements or guidelines set by HHS, CDC or OSHA
 - ◇ State and local government shutdown orders based on federal agency guidelines
 - ◇ Relevant Borrower Financial Records



IFR issued June 16th – Revisions to IFR's 3 and 6

- Additional conforming changes
- Clarified payroll limitations
 - Employees (8 or 24 weeks)
 - Owners (8 weeks or 2.5 months (if using 24 week CP))



IFR issued June 10th – Revisions to First IFR

- Starts to bring PPP Flexibility Act into Rules
- Clarified 60% payroll requirement will be interpreted as a proportional limit on nonpayroll rather than a threshold for receiving any forgiveness
- Clarified that new deferral terms relate to all PPP loans



IFR on Loan Forgiveness (May 22nd)

- Concept of Paid or Incurred and Paid Eligible for Forgiveness
- Payroll Costs:
 - Bonuses and hazard pay are allowable
 - Line 9 (all subject to \$100k annualized max – currently \$15,385, maybe higher)
 - ◇ For owner-employees (W-2 in S-corp or C-corp), use 2019 W-2 wages and HC and RP contributions allowable
 - ◇ For SE use 2019 Schedule C, Line 21, no HC or RP costs
 - ◇ For General Partners, use 2019 K-1 reduced by various amounts, no HC or RP costs
 - Only include employer portion of HC and RP costs
- Nonpayroll Costs – example shows that more than 2 months of allowable costs for utilities/rent will be eligible for forgiveness
- Still don't have firm guidance on:
 - Prepayments (likely not)
 - Amounts in arrears (i.e. 2019 bonuses or RP contributions)



SBA Review Procedures (May 22nd)

- Will have 6 years to review
 - Potential impact on future merger and acquisitions
- Elements of review
 - Eligibility (except for “necessity” safe harbor if < \$2 million)
 - Loan amount and use of proceeds
 - Loan forgiveness
- Unclear if \$2M threshold for “total review” will be measured at Affiliated Group Level or individual loan



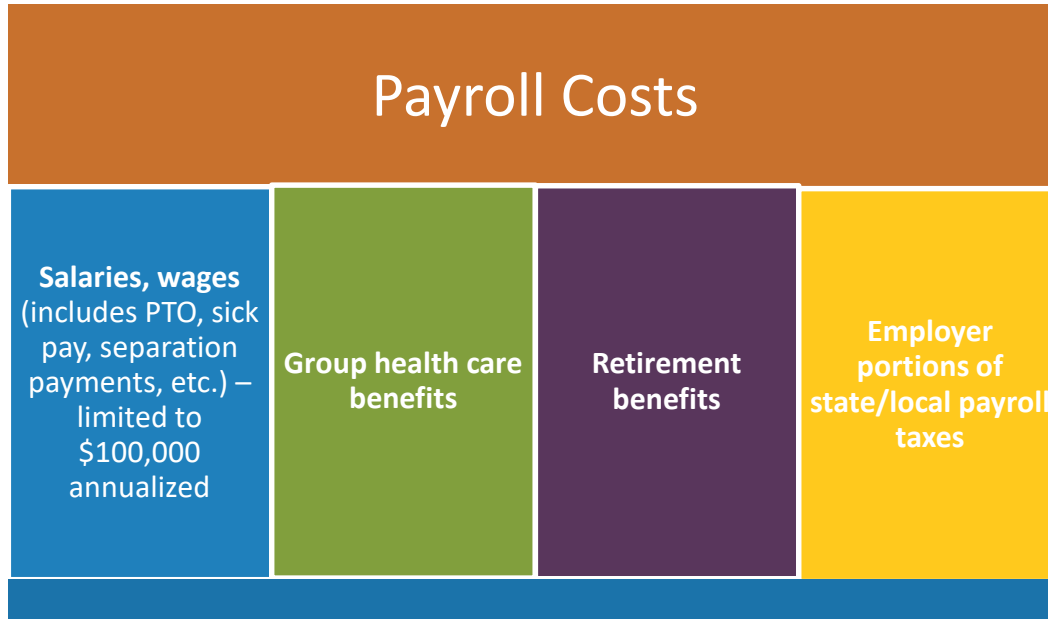


Forgiveness Basics

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Payroll Costs



Payroll Costs

- For bi-weekly or more frequent payrolls - ***Alternative Payroll Covered Period (APCP)*** starting first day of first pay period following PPP loan disbursement
- Submit on **Schedule A** and **Schedule A Worksheet**
- Flexibility to include costs incurred during CP or APCP and ***paid on or before next regular payroll date***
- Potential to include payroll costs incurred prior to the CP or APCP ***if paid during the CP or APCP***
- Subject to max during the period (\$100,000 prorated for period)
- Non-cash payroll costs (healthcare, retirement, ER state taxes) must be paid during CP or APCP



Payroll Costs – Limitations on Cash Compensation

8 – week period - \$15,385

- Employees – based on comp during CP/APCP
- Owners – based on 2019 (W-2, Schedule C or K-1)

24-week period

- Employees - \$46,154 ($24/52 * \$100k$ max)
- Owners - \$20,833 (2.5 months of 2019 amount subject to \$100k max)

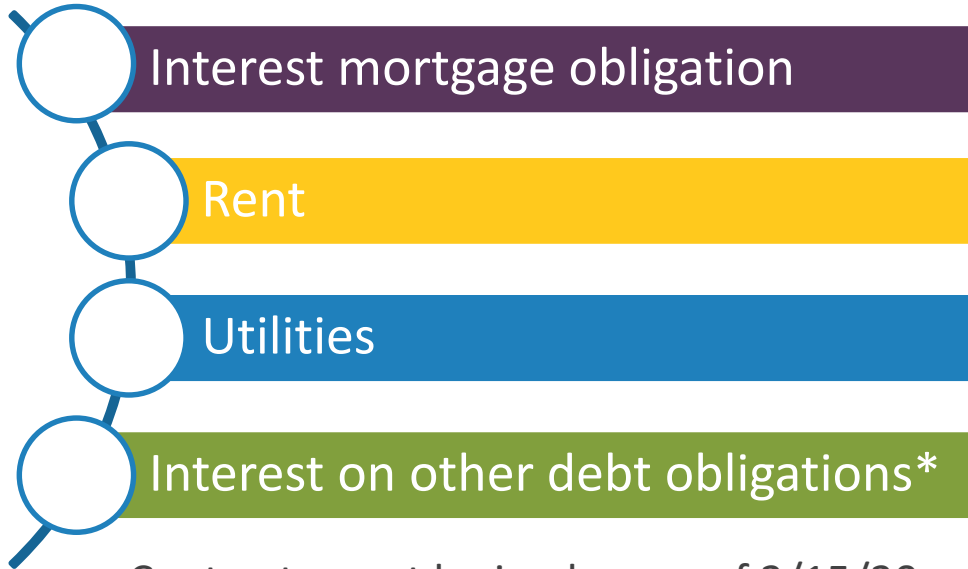


Payroll Costs – Non-cash Costs

- Non-cash payroll costs (healthcare, retirement, ER state taxes) must be paid during CP or APCP
- For owners-
 - Health care costs excluded for SE, GP and S-Corp Owners, only included for C-corp owners
 - Retirement contributions
 - ◇ Excluded for SE and GP
 - ◇ Included for C & S-corp owners, capped by 2019 contribution and either 8/52nds (8 week CP) or 2.5 months (24 week CP)



Non-Payroll Costs



- Contracts must be in place as of 2/15/20
- All the above are considered non-payroll costs

*May not be considered for forgiveness

Non-Payroll Costs

- Flexibility to include costs incurred during the CP if *paid on or before next regular billing date*
- No prepayments of future interest on mortgage debt, but unclear about rent and utilities expenses
- Potential to include additional non-payroll costs incurred prior to the CP *if paid during the CP*
- Max forgiveness amount of 40% for non-payroll costs



Forgiveness – Items to Consider

Lowest of the three amounts calculated below

#1 How much did the entity spend on allowable costs?
(lines 1 -4)

#2. Did the entity maintain wages at least 75% of prior quarter?
(excludes high earners)
(line 5, Schedule A, line 3)

#3. Did the entity maintain FTEs?
(includes re-hires thru 6/30)
(line 7, Schedule A , line 13)

#4. What was the PPP loan amount?
(line 9)

#5. Was enough of that spending on payroll? (40% limit on non-payroll)
(line 10)

#6 Did entity receive EIDL advance (up to \$10,000)?



Resources

- Treasury Website –

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

- SBA Website –

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>

- CLA's COVID Relief Center

Bi-weekly Livestreams

<https://www.claconnect.com/COVID19>

- US Chamber of Commerce

<https://www.uschamber.com/coronavirus>





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