

Paycheck Protection Program Loan and Forgiveness Update

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PPPFA WHAT DID IT DO?

- Existing borrowers can now choose a 24-week forgiveness period, or “covered period.”
- The deferral period is extended from six months to the date that forgiveness is paid by SBA (or ten months from the end of the covered period if no forgiveness application is submitted).
- Lowers the required payroll expenditures to 60% of forgiven amount from 75%, thereby helping more borrowers obtain full forgiveness.
- Extends maturity of loans made (approved) on or after June 5, 2020 to five years from two.
- Allows contemporaneous participation in payroll tax deferral program



PPPFA WHAT DID IT NOT DO?

- **DID NOT** Require use of the 24-week forgiveness period. Existing borrowers still can (and hopefully will) avail themselves of the eight-week period.
- **DID NOT** Require extension of maturity of loans made prior to June 5, 2020. Those can stay at two years or be extended in the discretion of the lender.
- **DID NOT** Extend the deadline for making new loans beyond June 30.
- **DID NOT** Allow borrowers to use a forgiveness period other than 24 or eight weeks.
- **DID NOT** Change the maximum loan amount.



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REGULATORY UPDATES



Regulators have been hard at work updating rules and related forms to address PPPFA



Issued three new interim final rules, two new forgiveness applications, and the related instructions as of June 17



New rules align requirements with PPPFA and also give borrowers additional flexibility

PPPFA RULE HIGHLIGHTS

Up to 24 weeks of employee pay can be used toward forgiveness if the 24-week covered period is used (i.e., \$46,154 per individual)

- Great benefit to borrowers that do not have significant other expenses such as rent or utilities

Up to 2.5 months of 2019 profit (capped at \$20,833) can be used as “owner compensation replacement” for self-employed individuals if a 24-week covered period is used

Borrower eligibility slightly expanded



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Other Changes to PPP

Payroll Costs

- Incurring and/or paid during covered period
- Companies with a bi-weekly or more frequent payroll cycle may elect an alternative payroll covered period - Include wages, salary, or commission payments to furloughed employees
- Bonuses or hazard pay during the covered period

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Other Changes to PPP

Payroll Costs - owner-employees/self-employed

- Eligible payroll costs can be no more than the lesser of 8/52 (or 24/52) of 2019 compensation or \$15,385 (\$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 owner compensation replacement
- General partners are capped by their 2019 net earnings from self-employment multiplied by .9235

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Other Changes to PPP

Reductions to loan forgiveness

- FTE reduction
- Salary/hourly wage reduction



FTE is calculated by dividing the average number of hours paid for each employee per week by 40, capping the quotient at 1.0



Borrower can elect to use actual quotient or 0.5 for each part time employee

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Other Changes to PPP

Nonpayroll costs

- Must be paid during the covered period; or
- Incurred during the covered period and paid on or before the next regular billing date
- Advance payments of interest on mortgage obligations are not eligible for loan forgiveness

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NEW STANDARD FORGIVENESS APPLICATION

- Generally consistent with the last form, except the two covered periods are incorporated as well as the 60% payroll cost requirement
- Calculation of the salary reduction safe harbor is tricky – read carefully
 - What is the period for measuring average compensation for purposes of the safe harbor?
- Remember that salary and FTE reduction safe harbors operate independently, but there is no double-counting

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NEW EZ FORGIVENESS APPLICATION

WHO IS ELIGIBLE?

Self-employed/independent contractors with no employees

Employers that

- Did not reduce compensation by more than 25% compensation for employees making \$100,000 or less annually AND
- Did not reduce headcount or average paid hours between January 1, 2020, and the end of the covered period (with exceptions if you were unable to rehire, unable to hire replacements or if offers to restore hours were refused)

Employers that

- Did not reduce compensation by more than 25% compensation for employees making \$100,000 or less annually AND
- Were unable to operate at the same level of activity during the covered period due to governmental coronavirus restrictions



PPPFA NEW EZ FORGIVENESS APPLICATION

What does it get you?

- A shorter, easier application with fewer calculations and schedules
- Potentially more document retention requirements

Due to required certifications for application eligibility

Substantial reduction in schedules likely to be useful

Likely most useful to sole proprietors and independent contractors (and their lenders)



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POTENTIAL BORROWER PITFALLS



Choosing the right “covered period” for pre-PPPFA borrowers



Do not relax – just like the tax return deadline extension



Do not miss the fact that opting for the longer covered period means restrictions on headcount and salary reductions remain in place during the covered period.



Most borrowers should model the two options.

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RECOMMENDED STEPS FOR BORROWERS

Complete the existing forgiveness application.

- Current application will be superseded, but try to find out where your questions lie.

Ask your accountant to review your forgiveness application to ensure you've maximized your forgiveness.

- Did you choose the right covered period start and end dates?
- Did you include all of the allowed expenses?
- Did you use the optimal payroll periods and accrue payroll?

Consider your future personnel strategies.



TAX EFFECTS OF PPP LOAN FORGIVENESS

- Under the CARES Act, PPP loans forgiven are not includable in taxable income.
- IRS has issued IRS Notice 2020-32 to address tax deductions from expenses paid with PPP loan funds that are forgiven.
 - IRS has determined that any PPP loan amounts used for covered expenses will not be deductible to the extent such loans are forgiven.
 - This substantially reduces the benefit of a forgiven PPP loan.
 - There is no net tax difference on “picking” expenses eligible for forgiveness as long as all of the expenses are otherwise deductible.

ACCOUNTING FOR THE LOAN AND FORGIVENESS

Paycheck Protection Program is unique, does not fit within any existing accounting standards

Legal form – Debt; In substance – Government grant

AICPA issued Technical Question and Answer 3200.18 – prescribes two main alternatives:

- FASB ASC 470 – Debt model – any business or NFP can use, most conservative, easiest
- IAS 20 – Government grant model – must be “probable” conditions will be met
- Disclosure of the accounting method is required



ACCOUNTING FOR THE LOAN AND FORGIVENESS CONTINUED

Debt Model

- Record debt liability when received
- Record interest as incurred
- Remove/reduce by recording a gain on extinguishment when legally released (forgiven)

Grant Model

- Record deferred income liability or refundable advance when received
- Reduce liability with offset through earnings as costs are recognized to which loan relates (payroll, rent, utilities, etc)
- Could be “other income” or a reduction of the related in expense



QUESTIONS?



IMPORTANT NOTE

This information was provided in connection with commentary made during a live session. As a result, it does not include important information that would accompany these notes. This presentation is not intended to constitute legal advice.

