

# COVID-19 Update

## So you applied for a Paycheck Protection Program loan—now what?



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# Today's Speakers



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# COVID-19 Update

So you applied for a Paycheck Protection Program loan—now what?



**Morgan Nighan, Partner**  
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## PPP updates

- The Paycheck Protection Program (PPP) is officially out of funding.
- If you've been approved by both the lender *and* the SBA, then money has been earmarked for you.
- If not, then wait until the next round of funding (currently being negotiated).
- SBA issued its most recent guidance on 4/17/20.
- Guidance issued to date does not address loan forgiveness.
- SBA has until 4/27/20 to issue guidance on loan forgiveness.

# PPP eligibility basics

- Businesses with 500 employees or fewer are eligible for a loan that amounts to 2.5 times the average monthly “Payroll costs” from the 12 months before the loan application.
- “Payroll costs” is the same definition used for the loan forgiveness calculation.
- \*New eligibility criteria: A business can qualify for the PPP if it meets both tests in SBA’s “alternative size standard” as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) average net income after federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.

## “Payroll costs”

“Payroll costs” includes any compensation paid to employees\* — that is: (1) salary, wage, commission, or other similar compensation; (2) cash tips or equivalent; (3) vacation, parental, family, medical, or sick leave; (4) allowance for dismissal or separation; (5) healthcare benefits, including insurance premiums; (6) payment of retirement benefits; (7) and state or local tax assessed on the compensation of employees.

Employee salaries are capped at \$100,000 (non-cash benefits are in addition to the capped salary amount).

Payroll costs are calculated on a gross basis without regard to federal taxes imposed or withheld.

Partnership distributions are now included at up to \$100,000.

# Loan forgiveness

- “Covered Period” = **8 weeks from the date of origination of the covered loan (when the borrower receives the funds)**
- The lender must disburse the loan to the borrower not less than 10 calendar days after the loan is approved by the SBA





A close-up, shallow depth-of-field photograph of a person's hands. One hand is holding a pen over a laptop, while the other hand is actively using a calculator on a wooden desk. The background is softly blurred, showing the laptop and a warm, natural light source.

## Loan forgiveness (cont'd)

**A borrower shall be eligible for forgiveness of indebtedness on a covered loan equal to the “costs incurred” and “payments made” during the 8 week period for:**

- **“Payroll costs”** (as previously defined)
- **Rent** (under leases entered prior to 2/15/20)
- **Utilities** (for plans entered prior to 2/15/20)
- Mortgage **interest** (on debt incurred before 2/15/20)

# 75% Rule

**The loan forgiveness is based on the amount spent on approved purposes in the first 8 weeks after funding is received.**

**Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.**

**The majority (at least 75%) of the loan should be spent on “payroll costs” in order to be eligible for forgiveness. (Purpose of PPP – keep workers paid and employed)**

**See previous definition of “payroll costs”:**

- Employees making over \$100,000 are capped at \$100,000 in salary (for eight weeks, a maximum of \$15,385 per individual). Non-cash benefits are in addition to this cap.

# No forgiveness without documentation

## Loan forgiveness application shall include

- **Documentation verifying the full number of FTEs on payroll and the pay rates for the applicable periods, including**
  - Payroll tax filings
  - State income, payroll, and unemployment insurance filings
- **Documentation of expenses, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments**
- **60 day decision deadline for lender**







## What expenses are eligible for fund use and best practice suggestions

- **Only expenses incurred and paid AFTER funding and during the 8-week loan forgiveness period are eligible for forgiveness.**
  - Do not use PPP money to “pre-pay” expenses that are not due until after the forgiveness period (might not be forgiven)
- **Consider opening a separate account for PPP proceeds and expenditures.**



# Loan forgiveness

There are two separate tests applied to determine the reduction in the loan forgiveness amount

Both tests are used (not a choice):

1. Reduction for FTEs; and
2. Reduction for employee salaries reduced more than 25%

# Reduction in FTEs

**Forgiveness amount multiplied by:**

**Avg. number of monthly FTEs during forgiveness period,  
divided by either**

- (1) monthly FTEs from 2/15/19-6/30/19 or
- (2) monthly FTEs from 1/1/20 – 2/29/20
  - Choice is at the borrower's election
  - Seasonal: 2/15/19 – 6/30/19

## Reduction in salaries

**Reduction in employee\* salaries:** The forgiveness amount may be reduced by “the amount of any reduction in the total salary or wages” for employees during the forgiveness period that was in excess of 25% of the total salary or wages of the employee during the most recent full quarter. (Q1 for most companies)

**\*Employees = those making less than 100k**



## Exemption for re-hires

- Loan forgiveness shall be determined without regard to reduction in FTEs or reduction in employee salaries **as long as the employer eliminates the reduction by June 30, 2020.**
- In other words, if you re-hire employees, more of your payroll costs will be forgiven.
- The purpose of PPP is to encourage employers to keep paying their workers and to hire back any laid-off workers.
- This is only with respect to layoffs that occurred from February 15, 2020 – April 27, 2020.

# Balance of loan not forgiven

- The amount of the loan not forgiven shall be on a two-year maturity at 1% interest.
- No pre-payment penalties
- Not taxable income





# Coping with COVID-19

## Loan Forgiveness & Tax Considerations Under the CARES Act



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# Example of PPP Loan Forgiveness

## Assumptions

Company has 10 FTEs during base period  
Half of the people make 100k per annum and the others make 50k  
Each person receives 15k in annual fringe benefits

### PPP loan calculation

• Company annual payroll costs	\$ 900,000
• Loan amount	\$ 187,500

### Forgiveness calculation

Assumes no reduction in FTEs

• Payroll costs during eight weeks	\$ 138,462
• Permissible other related expenses	<u>46,154</u>
• Forgiveness	\$ <u>184,615</u>

### Forgiveness calculation

Assumes 20% reduction in FTEs and benefits

• Payroll costs during eight weeks	\$ 110,769
• Permissible other related expenses	<u>36,923</u>
• Total Spent	\$ 147,692
• 20% Reduction in forgiveness	\$ <u>(29,538)</u>
• Forgiveness	\$ <u>118,154</u>

## Forgiveness calculation

Assumes 20% reduction in FTEs but not benefits

• Payroll costs during eight weeks	\$ 115,385
• Permissible other related expenses	\$ <u>38,462</u>
• Total spent	\$ 153,846
• 20% reduction in forgiveness	\$ <u>(30,769)</u>
• Forgiveness	\$ <u>123,077</u>

### Conclusion

Spending \$4,616 during period saves you \$4,923 in forgiveness plus potential tax savings

## More Questions

- What if employee left for their own reasons or was fired for performance issues?
- Are the expenses when determining forgiveness on a cash or accrual basis?
- Is debt forgiveness truly tax free?
- Are payments to related parties (rent) an allowable expense?
- What is the definition of a pay period?
- How long does an employee who was rehired by 6/30 need to be employed for to qualify for forgiveness?





# Employee Retention Credit

- Business is not eligible if it receives a loan under the paycheck protection program
- Only applies if the operation of business was active in 2020 and was fully or partially suspended by the government due to covid-19 or
- The business had seen a significant decline in gross revenue (50% less than the same quarter as last year) until the business recovers to 80% of the prior year's revenue
- Employee retention credit as a refundable payroll tax credit for employers equal to 50% of wages up to 10k per employee
- For employers with more than 100 full-time employees, only wages paid to employees who are not working due to covid-19 circumstances
- For employers with 100 or less full-time employees, all wages qualify regardless of whether the employer is open or closed due to a shutdown order
- Includes health insurance and wages paid or incurred from March 13 through December 31, 2020
- Average number of employees are based on 2019



# Delay of Payment of Payroll Taxes

- Business is not eligible if loan is forgiven under the paycheck protection program
- Applies to employer's share of social security (6.2%) and 50% of self-employment tax between now and December 31, 2020
- 100% deferral for wages paid between March 27 and December 31, 2020
- 50% will be payable on 12/31/21 with the remainder payable on December 31, 2022



# Business Tax Provisions

- Increases 163(j) limit to 50% of adjusted income for the years beginning in 2019
- The interest limitation remains at 30% for partnerships, although disallowed interest can be carried forward to 2020 at 50%
- Technical correction to bonus provisions related to qualified improvement property retroactive to 2018
- 5-year NOL carryback retroactive to 2018
- Relief from 461(l) limitations retroactive to 2018
- Increase in charitable deductions for c corps to 25% of taxable income
- Increase in charitable deductions for food inventory to 25% of taxable income





# State Tax Deadlines and Payments



# Changes Affecting Individuals

- Federal tax due date moved to 7/15/20
- 2019 tax payments and Q1 and Q2 estimates due 7/15/20
- Need to review state due dates
- Same as business changes
- \$300 above the line amount for cash contributions for 2020
- Repeals the requirement for over-the-counter medical items to be prescribed by a physician in order to use tax preferred funds



# Retirement Plan Provisions

- Penalty-free covid-19 related distributions up to 100k from tax-favored plans during 2020
- Ability to recontribute over the next 3 years
- flexibility for loans from retirement plans
- Waiver of minimum pension distributions for 2020
- Extension of contribution to IRA until 7/15



# THANK YOU

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