

# CARES Act Paycheck Protection Program (PPP)

The Loan Forgiveness Process

August 5, 2020

## SPEAKERS

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*Your guide forward*





# Agenda

- ▶ Where are we now?
- ▶ Forgiveness
  - Calculations
  - Limitations
- ▶ Documentation required
- ▶ Other Issues
- ▶ How can we help

# PPP Loans

- ▶ Available for employers with 500 or fewer worldwide employees and those meeting certain tangible net worth and average annual net income requirements determined on an affiliated group basis
- ▶ Can be used for wages and other payroll costs, rent, utilities and interest
- ▶ An evolving program



# SBA releases PPP 2 Forgiveness Applications and More Interim Final Regulations

- ▶ 8 or 24 week covered periods
- ▶ Wages must be 60% of forgiveness costs
- ▶ Restrictions for owner-employees
- ▶ Documentation requirements





Forgiveness

# Payroll Costs Incurred or Paid

- ▶ Must be at least **60% of loan forgiveness** amount
- ▶ Option of **56 days** **OR** **168 days** of wages paid and incurred for employees whose primary residence is in the US, beginning either:

On the PPP loan funding date, or for borrowers with bi-weekly or more frequent payroll, day of first pay period after loan funding

Wages incurred in forgiveness period and paid after forgiveness period ends are included

Payrolls are effective as of date of distribution of paychecks or effective date that ACH deposits are originated

For employees other than owner-employees, no more than \$15,385 per person (8 weeks) OR \$46,154 (24 week option)

# Payroll Costs Incurred or Paid

- ▶ **8 weeks OR 24 weeks** of wages beginning when the loan is funded for employees whose principal residence is in the US
  - Severance pay for terminated employees included
  - Earned payrolls paid in first payroll after loan funding included
    - By starting period on day of loan funding, may include more than **56 days (or 168 days)** of wages
  - Reasonable bonus payments can be paid provided that no single employee receives more than **\$15,385 during the 8 week period OR \$46,154 during the 24 week period**
  - For owner-employees no more than **\$15,385 during the 8 week period OR \$20,833 during the 24 week period**, capped at the 2.5 month equivalent of their 2019 compensation
  - Mandated paid leave wages cannot be included

# Other Payroll Costs Incurred or Paid

- ▶ Qualified health care costs for employees only
  - Employer share of costs paid during the 8 (or 24) week period
    - Pre-tax amounts included in gross wages
  - Includes health care premiums and costs of a self-insured plan
  - Includes dental, vision, HDHPs, HRAs, FSAs and other usual health coverages (but not HSAs or QSEHRAs)
  - Self-insured health benefits paid from the employer's general assets or a special health plan bank account will be included



# Other Payroll Costs Incurred or Paid

- ▶ Retirement plan contributions for employees only
  - Employer share of costs paid during the 8-week (or 24-week) period
    - Pre-tax amounts included in gross wages
  - 2019 contributions not previously paid if funded in the 8-week (or 24 week) period
  - 2020 contributions for employer match, discretionary profit sharing contributions and maximum allowable defined benefit plan contributions if funded in the 8-week (or 24-week) period, but contributions cannot be accelerated from periods outside the 8-week or 24-week period

# Restrictions for Owner-Employee Forgiveness Amounts

- ▶ Owner-employees includes any shareholder of a C corporation or S corporation, any member of an LLC, any partner of a partnership and all sole proprietors
- ▶ Amount forgiven is limited to lesser of \$15,385 during the 8 week period or \$20,833 during the 24 week period, capped at the 2.5 month equivalent of their 2019 compensation
  - Cap applies to cash compensation and not benefit costs
  - Retirement plan costs are capped at 2.5/12 of the 2019 employer retirement contribution

# Restrictions for Owner-Employee Forgiveness Amounts

- ▶ For 2% S corporation shareholders, no adjustment for group health benefits
  - Retirement plan costs are capped at 2.5/12 of the 2019 employer retirement contribution
- ▶ For partners, wages are defined as SE income (reduced by certain items) multiplied by .9235
  - Payments need to be made to partners during the covered period
- ▶ Amounts included in gross wages, SE income or Schedule C or F amounts
  - Group health plan benefits and retirement contribution not separately included

# Rent and Mortgage Interest

- ▶ Rents under leases and interest on mortgages for real or personal property used in the business
- ▶ Covers rents and mortgage interest for obligations that were in place as of 2/15/20 and renewals of those lease obligations and mortgages
- ▶ Evidence of leases or promissory notes must be provided
- ▶ Past due amounts can be included
- ▶ Prepaid mortgage interest cannot be included; prepaid rent apparently can be included

# Utilities In Place As of 2/15/20

- ▶ Payment for a service to include:

Electricity

Gas (natural gas service)

Water

Telephone (including cell phones),

Internet access

Transportation fees paid to state and local governments

- ▶ Prepayments and past due amounts can be included
- ▶ Evidence of utility obligations must be provided
- ▶ Payments for trash pickup, recycling pickup, outdoor maintenance, VPN service, email service, and other IT support cannot be included

# Reduction of Loan Forgiveness Amounts

- ▶ Allowable expenses submitted for loan forgiveness are reduced if annual salary/hourly wages or full time equivalent (FTE) employment levels are reduced
- ▶ A longer forgiveness period increases loan forgiveness
- ▶ Assume \$1,000,000 loan with \$1,000,000 of expenses incurred in the 8-week covered period and \$2,000,000 of expenses in the 24-week covered period
  - Assume further that the borrower experienced a 10% reduction in employment levels in 8 weeks and a 60% reduction of employment levels in 24 weeks.
  - Loan forgiveness using the 8-week covered period - \$900,000
  - Loan forgiveness using the 24-week covered period -\$1,000,000

# Safe Harbors to Avoid Loan Forgiveness Reductions

- ▶ Use the EZ Application if permitted
  - Only owner employees with no employees
  - No reduction in annual salary or hourly wage of more than 25% below such amount for the 1<sup>st</sup> quarter of 2020 for any individual who did not receive, during any single pay period in 2019, an annualized rate of pay of more than \$100,000, and, either
    - No reduction in the number of employees or average paid hours of employees between 1/1/20 and end of the Covered Period (ignoring those who could not be hired back, voluntary terminations and terminations for cause), or
    - Borrower unable to operate during Covered Period at same level of business activity as before 2/15/20, due to compliance with requirements established or guidance issued between 3/1/20 and 12/31/20 by HHS, CDC or OSHA, related to maintenance of standards of sanitation, social distancing or work or customer safety related to COVID-19

# Safe Harbors to Avoid Loan Forgiveness Reductions

- ▶ Meet safe harbor for annual salary/ hourly wage levels
  - No reduction if the average annual salary/hourly wage between 2/15/20 and 4/26/20 is less than the annual salary/hourly wage on 2/15/20, and the average annual salary/hourly wage as of the earlier of 12//31/20 or the date of the loan forgiveness application is equal to or greater than annual salary/hourly wage on 2/15/20
- ▶ Meet safe harbor for FTE employment levels
  - No reduction if the FTE employment levels between 2/15/20 and 4/26/20 is less than the FTE employment levels on 2/15/20, and the FTE employment levels as of the earlier of 12//31/20 or the date of the loan forgiveness application is equal to or greater than FTE employment levels for the pay period that included 2/15/20



# Reduction of Loan Forgiveness

## Reduction for reduced employment levels

Lenders shall grant forgiveness at **100% of the allowable expenses incurred or a lesser % based on one of the following ratios (borrower's choice) determined on a payroll by payroll basis:**

$$\frac{\text{Average \# of FTE employees per month for the 8 (or 24) week period following loan closing}}{\text{Average \# of FTE employees per month for the period of 2/15/19 through 6/30/19}}$$

**OR**

$$\frac{\text{Average \# of FTE employees per month for the 8 (or 24) week period following loan closing}}{\text{Average \# of FTE employees per month for the period of 1/1/20 through 2/29/20}}$$

**OR, for seasonal employers**

$$\frac{\text{Average \# of FTE employees per month for the 8 (or 24) week period following loan closing}}{\text{Average \# of FTE employees per month for any consecutive 12-week period between 5/1/19 and 9/15/19}}$$

# Reduction Calculations

## ► Guidance on FTE calculations:

Employees paid for 40 or more hours per week are full time and count as 1 employee.

For employees working < 40 hours a week, the average number of hours paid per week are divided by 40, rounded to the nearest tenth and averaged for the period.

Borrowers can use a simplified method which uses .5 for any employee working less than 40 hours per week. This is calculated on a weekly basis and averaged for the required period.

# Salary/Wage Reduction Calculations

- ▶ Unless position filled by new employee, the following non-employees can be counted as employed:
  - Any employee if the borrower made a good-faith, written offer to rehire the employee for same hours and wages during the forgiveness period and that offer was rejected by the employee can be counted as employed.
    - Borrower needs to document reason for rejection but no written rejection from employee is required.
    - Borrower needs to inform unemployment office of rejection of employment
  - Employees who voluntarily resigned, were fired for cause or voluntarily requested and received a reduction in hours can be counted as employed.

# Salary/Wage Reduction Calculation

- ▶ Guidance on salary reduction calculations:
  - The reduction is evaluated on an employee-by-employee basis.
  - Employees who earned > \$100,000 annualized based on a single pay period in 2019 are not counted
  - Mandatory reduction only applies to employees whose hourly wage or annual salary was reduced by more than 25% during the forgiveness period as compared to their hourly wage or annual salary during the first quarter of 2020.
    - Wages are based on annual salary or hourly wage only, without regard to overtime, bonuses, commissions, or other types of variable or non-predictable compensation.



# Documentation Requirements

# Documentation requirements

## Lender will determine forgiveness

- ▶ Payroll reports, tax forms (e.g. Form 941), cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments of wages, covered mortgage obligations, payments on covered lease obligations, and covered utility payments.
- ▶ FTE support for reference period prior to forgiveness period
- ▶ Documentation supporting calculations for the mandatory forgiveness reductions will not be provided to the PPP lender but must be retained in borrower's files;



# Documentation requirements

## Other required loan documentation

- ▶ Support for borrower's certification of necessity for the loan on loan application date
- ▶ Support for borrower's eligibility for the loan
  - Entities included in affiliated group, as required
  - Employee count including foreign and domestic employees
  - Alternative tangible net worth on 3/27/20 and average net income for prior two years
- ▶ Maintained for 6 years after forgiveness or repayment



# How can Borrowers Prepare?

- ▶ Start tracking eligible forgiveness payments at the time of PPP loan disbursement
- ▶ Gather copies of lease agreements, mortgage documents, and evidence of utility services in place as of 2/15/20
- ▶ Save evidence of payments, payroll reports, and bank statements
- ▶ Careful planning around levels of qualifying expenditures
- ▶ Plan to avoid mandatory forgiveness reductions for FTE and salary/wage levels,
  - FTE percentage reduction especially detrimental





Other Issues

# Loan Forgiveness

## Timing of Forgiveness Decision

- ▶ Loan forgiveness applications must be filed with the lender within 10 months of loan funding
- ▶ No later than 60 days after the date on which a lender receives an application for loan forgiveness from an eligible recipient, the lender will issue a decision on the forgiveness application.
- ▶ Flexibility Act eliminates the requirement for employers to end deferral of employer share of social security tax on wages of up to \$137,700 upon forgiveness approval

## Taxability

- ▶ Any amount forgiven is not included in gross income for federal tax purposes
- ▶ Amounts paid which are used for loan forgiveness are not deductible

# Unanswered Questions

- ▶ Treatment of PPP loans in sales or mergers
- ▶ Retroactive elimination of the employee retention credit when entity with a PPP loan joins the controlled group
- ▶ Can FTE reduction be included in a forgiveness application filed before the end of the Covered Period?
- ▶ If forgiveness application filed before the end of the forgiveness period are \$15,385, \$20,833, \$46,154 and 2019 compensation maximum limits reduced for the shorter period during which expenses are included?



# Cherry Bekaert Assistance

# What Questions Do You Have?

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