

## **PPP Loan Forgiveness Rules Provide Clarifications and Flexibility**

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With the release of the PPP loan forgiveness application on May 15, 2020, and the forgiveness regulations on May 22, 2020, you have more detailed guidance on how to maximize the forgiveness of your PPP loan. Recall that your PPP loan amount is based on 10 weeks of your payroll costs. But the “Covered Period” for spending and loan forgiveness is 8 weeks, with some new flexibility discussed here.

I have previously recommended that you use a spending schedule to plan and record payment of allowable expenses to maximize forgiveness of your PPP loan. Now, while still maintaining that spending schedule, start preparing your PPP loan forgiveness application and the required supporting documentation.

The allowable expenses for forgiveness still fall into the two categories of payroll costs and non-payroll costs. The forgiveness application requires supporting information for both expense categories.

Payroll Costs. You must substantiate your payroll costs with documents like those you submitted with your PPP loan application (third party payroll service provider reports, IRS form 941). Additionally, the application itself includes a worksheet for listing each employee, their compensation and average monthly full time equivalent (FTE) hours. FTE is essential to determining how much of your PPP loan can be forgiven and is discussed further below.

Non-payroll Costs. You must substantiate your non-payroll costs with third party documentation that confirms your obligation to pay the allowable costs existed before February 15, 2020 and continued through the 8 weeks following your receipt of your PPP loan proceeds. You must also include proof of payment, such as cancelled checks or receipts.

In other words, your PPP loan forgiveness application is a transcript of 8 weeks of spending on the allowable expenses. Start building your application now.

Alternative Payroll Covered Period. The forgiveness regulations provide some flexibility for getting 8 weeks of payroll costs to line up with your 8-week “Covered Period” that starts with your receipt of your PPP loan funds. If you have a bi-weekly (or more frequent) payroll cycle you may elect to use an “Alternative Payroll Covered Period” that begins on the first day of the first payroll cycle in the Covered Period and continues for the following eight weeks. I recommend that if you are eligible for this election you work through both the original Covered Period and the new Alternative Payroll Covered Period to determine which is best for you. The Alternative Payroll Covered Period is available only for a “bi-weekly (or more frequent) payroll cycle.” A

“twice a month” payroll does not qualify for the Alternative Payroll Covered Period. The loan forgiveness application clearly delineates various payroll cycles for application of the Alternative Payroll Covered Period.

Additional flexibility is now available in that payroll costs incurred and/or paid within the expanded pay period are eligible for forgiveness. Payroll costs are considered paid on the day the paycheck is distributed or the borrower originates an ACH credit transaction. The payroll cost is incurred when the employee earns the pay. Payroll costs incurred during your last pay period of the Covered Period or the Alternative Payroll Covered Period are eligible for forgiveness if you pay them on or before your next regular payroll date.

A non-payroll cost is eligible for forgiveness if it is either paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. For non-payroll costs, the Covered Period is still the 8 weeks that start with your receipt of your PPP loan funds. While there has been considerable talk about a change, as of this writing, non-payroll expenses still cannot exceed 25% of the total forgivable amount.

Owner-employees. The forgiveness regulations provide a formula to apply to the compensation of owner-employees that results in their forgiveness amounts being consistent with the forgiveness formula for self-employed PPP borrowers. The forgiveness amount for this group is essentially 8 weeks of compensation, less one-half the applicable FICA. The forgiveness application has separate listings for employees and owner-employees. Organize your supporting documentation accordingly.

FTE and Wage Reductions. Your forgiveness amount is subject to reduction if your FTE (full time equivalent employees) during the Covered Period is less than your FTE in your selected reference period, or if you have reduced wages more than 25% during the Covered Period as compared to the reference period. Your forgiveness amount will not be reduced if you cure these reductions by June 30, 2020. Even with this opportunity to cure, or if you have no reduction in FTE or wages, the forgiveness application requires an accounting of this information for each employee during the Covered Period and the reference period. As mentioned above, the Covered Period is the 8 weeks starting with your receipt of your PPP loan funds. You may elect a reference period of either i) January 1, 2020—February 29, 2020, or ii) February 15, 2019—June 30-2019. Seasonal employers may select either of these reference periods or a consecutive 12-week period between May 1, 2019 and September 15, 2019.

Your application for PPP loan forgiveness should be well organized and compiled as you work through your Covered Period. As critical as the new forgiveness regulations are, you should remain mindful of the volumes of PPP regulations previously issued and still in effect. You should expect still more PPP regulations, and watch for significant changes in the PPP law.