

The background features a dark gray gradient with large, 3D-rendered dollar signs (\$) scattered across it. A wooden ladder is positioned as if climbing one of the dollar signs. The text is overlaid on this graphic.

# Managing Your Business Through the Covid-19 Crisis Getting Your Paycheck Protection Program Forgiveness Application Right

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# Welcome



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# Today's Agenda

- Forgiveness Application Process
- SBA Audits
- Payroll Costs
- Non-Payroll Expenditures (rent, utilities, mortgage interest)
- Calculating FTE Count
- Computing Payroll Limitations In the Forgiveness Calculation
- Safe Harbor Provisions
- Certifications
- Bipartisan PPP Bill
- Other PPP Loan-Related Questions

# Today's Presenters



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# PPP Loan Forgiveness Application

- **Borrower must request the forgiveness of PPP loan proceeds by filing SBA Form 3508 and submitting it to their lender:**
  - 1) PPP Loan Forgiveness Calculation Form;
  - 2) PPP Schedule A;
  - 3) PPP Schedule A Worksheet (*may use equivalent reports from payroll system or payroll processor*); and
  - 4) An (optional) PPP Borrower Demographic Information Form
- Borrowers are required to submit items (1) and (2) to their lender



# Documents Submitted With Application

## ■ Payroll

- Third-party payroll service provider reports
- Payroll tax filings (Form 941)
- State quarterly business and individual employee wage reporting and unemployment insurance tax filings
- Employee health insurance and retirement plan account statements

## ■ Non-Payroll

- Mortgage lender account statements (amortization schedules)
  - Lease agreements/account statements
  - Utility invoices/account statements
- Support for all data on form
  - Retain for 6 years after the loan is forgiven or repaid in full

# PPP Loans Under \$2m (Safe Harbor)

- Any borrower that, together with its affiliates received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith
- According to the SBA, safe harbor is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans
- Promotes economic certainty as PPP borrowers with more limited resources endeavor to retain and rehire employees
- Enables SBA to conserve its finite audit resources and focus its reviews on larger loans, where the compliance effort may yield higher returns



# PPP Loans Over \$2m

- SBA Form 3508 requires that a borrower who, along with its affiliates, received aggregate PPP funds over \$2 million, check a box alerting the SBA to the size of the aggregate loan
- This provision flags PPP loans that the Treasury Department has already warned it will audit
- The form's instructions specifically limit the obligation to check this box to loans aggregated with affiliates "to the extent required under the SBA's interim final rule on affiliates issued April 15, 2020"
- That means that borrowers will still have to interpret the meaning of those affiliation rules to determine whether to check the box



# PPP Loans Over \$2m (FAQ #46)

- Still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance
- SBA has previously stated that all PPP loans in excess of \$2 million, and other PPP loans as appropriate, will be subject to review by SBA for compliance with program requirements set forth in the PPP Interim Final Rules and in the Borrower Application Form
- If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness
- If the borrower repays the loan after receiving notification from SBA, the SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request
- SBA's determination concerning the certification regarding the necessity of the loan request will not affect SBA's loan guarantee

# Forgivable Costs

- **Four broad categories of costs that are eligible for forgiveness:**
  - Payroll costs;
  - Business mortgage interest payments;
  - Business rent or lease payments; and
  - Business utility payments
- Forgiveness is generally available for costs incurred during the borrower's "Covered Period" (*eight-week period that begins on the date the PPP loan was disbursed*)
- At least 75% of the forgiven amount be attributable to payroll costs

# Payroll Costs

- Payroll costs must be “paid” or “incurred” during the borrower’s eight-week Covered Period (or an *Alternative Payroll Covered Period*)
- Payroll costs are considered paid on the day that paychecks are distributed or that the borrower originates an ACH credit transaction
- Payroll costs are considered incurred on the day that the employee earned the pay
- Payroll costs incurred but not paid during the borrower’s last pay period of the Covered Period (or *Alternative Payroll Covered Period*) are eligible for forgiveness if the borrower pays them by its next regular payroll date
- Otherwise payroll costs must be paid during the Covered Period (or *Alternative Payroll Covered Period*) to qualify

# Alternative Payroll Covered Period

- Applies to borrowers with a biweekly (or more frequent) payroll schedule
- Allows borrowers to elect to calculate eligible payroll costs using the eight-week period that begins on the first day of their first pay period following the disbursement of PPP proceeds
- Borrowers who opt for the Alternative Payroll Covered Period are still required to use the standard Covered Period for other costs



# Cash Compensation

- The total amount of cash compensation that is eligible for forgiveness for each individual employee **cannot exceed an annual salary of \$100,000, as prorated for the Covered Period** (it cannot exceed \$15,385)
- “Cash compensation” includes the sum of gross salary, gross wages, gross tips, gross commissions, paid leave (vacation, family, medical or sick leave, not including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred during the Covered Period (or the *Alternative Payroll Covered Period*)

# Non-Cash Compensation Payroll Costs

- **Non-cash compensation payroll costs are not subject to the \$100,000 prorated limit and include the following items:**
  - Employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan, but excluding any pre-tax or after-tax contributions by employees
  - Employer contributions to employee retirement plans but excluding any pre-tax or after-tax contributions by employees
  - Employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax), but not including any taxes withheld from employee earnings



# Compensation to Owners

- The SBA's guidance allows for the forgiveness of amounts paid to owners (e.g., owner-employees, a self-employed individual, or general partner)
- **The amount eligible for forgiveness is capped at the lower of:**
  - \$15,385 (the eight-week equivalent of \$100,000 per year) for each individual, or
  - The eight-week equivalent of the owner's applicable compensation in 2019

# Non-Payroll Costs

- “Business mortgage interest payments” are payments of interest (*not including any prepayment or payment of principal*) on any business mortgage obligation on real or personal property that was incurred before February 15, 2020
- “Business rent or lease payments” are for real or personal property pursuant to lease agreements that were in force before February 15, 2020
- “Business utility payments” are payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020
- Eligible non-payroll cost must either be (1) “paid” or (2) “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
- Eligible non-payroll costs cannot be more than 25% of the total forgiveness amount



# Reductions in Average FTE

- A borrower's forgiveness is limited where there is a reduction in the average number of full-time equivalent employees during the Covered Period as compared to a past reference period
- **The reference period is, at the Borrower's election, either:**
  - February 15, 2019 to June 30, 2019;
  - January 1, 2020 to February 29, 2020; or
  - In the case of seasonal employers, either of the preceding periods or a consecutive 12-week period between May 1, 2019 and September 15, 2019
- Congress wanted to see that the employer was maintaining its workforce before it would allow forgiveness of the full PPP proceeds

# Calculating Average FTE

- **Standard method:**

- Determine average number of hours paid per week for each employee during the Covered Period (*or the Alternative Payroll Covered Period*)
- Divide by 40 and round to the nearest tenth
- Maximum for each employee is capped at 1.0

- **Simplified method:**

- May be used at the borrower's election
  - Assign a 1.0 for employees who work 40 hours or more per week
  - Assign 0.5 for employees who work fewer hours
- Application asks for number of employees at date of loan application and date of forgiveness application

# FTE Reduction Exceptions

- **Borrower is not penalized for FTE reductions that result from the following circumstances:**
  - 1) Reductions related to positions where the borrower made a good-faith, written offer to rehire an employee during the Covered Period *(or the Alternative Payroll Covered Period)* that was rejected by the employee; and
  - 2) Reductions related to any employees who during the Covered Period *(or the Alternative Payroll Covered Period)*:
    - Were fired for cause,
    - Voluntarily resigned, or
    - Voluntarily requested and received a reduction of their hours
- The above only applies if the position was not filled by a new employee
- **MUST BE DOCUMENTED**



# FTE Reduction Safe Harbor

- **Borrower is exempt from the reduction in loan forgiveness based on FTE employees if both of the following conditions are met:**
  - 1) Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and
  - 2) Borrower, by no later than June 30, 2020, restored its FTE employee level to the FTE employee level that existed during the borrower's pay period that included February 15, 2020



# Salary/Hourly Wage Reduction

- Loan forgiveness may be reduced if the salary or hourly wages of certain employees were reduced by more than 25% during the Covered Period (*or the Alternative Payroll Covered Period*) as compared to the period of January 1, 2020 through March 31, 2020
- This reduction generally does not apply to employees with compensation in excess of \$100,000
- If by June 30, 2020, you have restored the salary/wage levels to at least the level existing on February 15, 2020, then this excuses any salary/wage level reductions which occurred between February 15, 2020 and April 26, 2020

# Certifications

- I understand that if the funds were knowingly used for unauthorized purposes, the federal government may pursue recovery of loan amounts and/or civil or criminal fraud charges
- I understand that knowingly making a false statement to obtain forgiveness of an SBA-guaranteed loan is punishable under the law, including 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000
- The tax documents I have submitted to the Lender are consistent with those the Borrower has submitted/will submit to the IRS and/or state tax or workforce agency

# Bipartisan PPP Bill

- **The PPP bill would implement the following changes:**
  - Allow forgiveness for expenses beyond the 8-week covered period;
  - Eliminate restrictions limiting non-payroll expenses to 25 percent of loan proceeds;
  - Eliminate restrictions that limit loan terms to two years;
  - Ensure full access to payroll tax deferment for businesses that take PPP loans; and
  - Extend the rehiring deadline to offset the effect of enhanced Unemployment Insurance
- The Trump administration has signaled its support for extending the forgiveness for expenses beyond the 8-week period. Additionally, Treasury Secretary Steven Mnuchin told lawmakers that the Trump administration wants to work with Congress to get it done



# Questions



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