PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS:
What We Know, What We Don’t Know, and What We’re Watching

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Today’s Speakers

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Agenda

- Overview of the Paycheck Protection Program (PPP)
- Updates Since Inception
- Potential Revisions to Current Program - **BILL PASSED 6/3/20**
- Timeline and Key Dates
- Eligible Expenses and Timing (Paid vs. Incurred)
- Potential Reductions to Forgiveness Amount
- Additional Guidance Needed
- Forgiveness Application Review Process
- Additional Programs Available Under the CARES Act
Overview of the Paycheck Protection Program (PPP)

INTENT OF THE PAYCHECK PROTECTION PROGRAM

THEIMPORTANCE OF CERTIFICATIONS AND ATTESTATIONS

PPP’S DIFFICULT START (FROM A BANKER’S PERSPECTIVE)
Updates Since Inception

- **March 27, 2020:** CARES Act signed into law
- **April 2, 2020:** PPP loan application released
- **May 15, 2020:** PPP loan forgiveness application released
  - The Audit Threshold of Two Million will be applied to the Borrower and its Affiliates
  - Certain Payrolls can use an Alternative Payroll Covered Period
  - Generally, Qualifying Non-payroll Costs can be Paid or Incurred
  - Maximum Compensation for the 8-week period is $15,385 ($100,000/52*8)
  - Salary/Hourly Wage Reduction Uses Rate of Pay not Actual Payments
  - Apply Salary/Hourly Wage Reduction before FTE Reduction
  - 40 Hours is Used to Calculate Average Full-Time Equivalents by Person
  - FTE Exceptions
  - FTE and Salary/Hourly Wage Safe Harbors
- **May 22, 2020:** Interim Final Rule released
  - Generally, Qualifying Payroll Costs can be Paid or Incurred
What could be coming? What just happened!

► House passes Paycheck Protection Program Flexibility Act of 2020 on May 28th
  • Expansion of covered loan period from 8 weeks to the earlier of 24 weeks or December 31, 2020 - Borrowers can still elect the 8 week covered period
  • Exemption for rehires extended from 6/30/2020 to 12/31/2020
  • Reduce the 75% payroll cost requirement to 60%
  • Extend minimum time recipients have to repay the loan to 5 years
  • Extends deferment of payments from 6 months to when forgiveness is granted (not more than 1 year)
  • Introduces new exemption based on employee availability when computing the FTE headcount reduction
  • Let companies that get loan forgiveness defer payroll taxes

► Senate expected to vote on the bill this week which is said to have bipartisan support  Senate passed the bill on June 3rd!
Timeline and Key Dates

- **8 week period (or 24 week period)**
  - Covered Period vs. Alternative Covered Period (Payroll)

- **June 30, 2020 - December 31, 2020**
  - Date to rehire employees and restore salary and wage levels

- **October 31, 2020 - Clearly this will need to change!**
  - Expiration date of the loan forgiveness application

- **60 days for lender review**
  - Lender has 60 days from receipt of a complete application to issue a decision to SBA
  - Lender must request payment from SBA at the time the lender issues its decision

- **90 days for SBA review**
  - SBA has 90 days after the lender issues its decision to, subject to any review, remit the appropriate forgiveness amount to the lender, plus any interest accrued through the date of payment.
  - Lender is responsible for notifying borrower of the forgiveness amount.
Covered Period and Alternative for Some Payrolls

Covered Period General Rule
• 8 week (or 24 week) period begins on the PPP Loan Disbursement Date.
  - For example, based on an 8-week covered period, if the Borrower received its PPP loan proceeds on Monday, April 20, the first day of the Covered Period is April 20 and the last day of the Covered Period is Sunday, June 14
• This would require payroll periods that cross the first or last day of the Covered Period to be prorated to exact days in the period

Alternative Payroll Covered Period for weekly or bi-weekly payroll periods
• 8 week (or 24 week) period begins on the first day of first pay period following the PPP Loan Disbursement Date.
  - For example, based on an 8-week covered period, if the Borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the Alternative Payroll Covered Period is April 26 and the last day of the Alternative Payroll Covered Period is Saturday, June 20
• This avoids the allocation of payrolls to the exact days in the Covered Period under the general rule
• Does not change the Covered Period for non-payroll costs
Payroll Costs for Forgiveness - Timing

- Payroll costs are considered **paid** on the day that paychecks are distributed or the Borrower originates an ACH credit transaction.

- Payroll costs are considered **incurred** on the day that the employee’s pay is earned.

- Interim guidance states payroll costs are eligible if either paid or incurred. If both paid and incurred, you only count once.

- 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 paid on or before the next regular payroll date. Otherwise, payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period).

- For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of $100,000, as prorated for the covered period ($100,000 * 8/52 = $15,385) - (or $100,000*24/52=$46,154).
Payroll Costs for Forgiveness

Cash compensation

- Gross salary, gross wages, gross tips, gross commissions, bonuses, hazard pay, paid leave (vacation, family, medical or sick leave, other than including leave covered by the Families First Coronavirus Response Act), and allowances for dismissal or separation paid or incurred. Differs from Form W-2, box 1
- No more than $15,385 (or $46,154) should be counted for an employee during the covered period or alternative payroll covered period
Payroll Costs for Forgiveness

- Other Compensation - Total Amount Paid by Borrower for
  - Employer contributions for employee health insurance, including employer contributions to a self-insured, employer-sponsored group health plan,
  - Employer contributions to employee retirement plans,
  - Employer state and local taxes assessed on employee compensation (e.g., state unemployment insurance tax), and
  - Do not include employee contributions when calculating payroll costs because employee amounts are included in the gross wages used for cash compensation
  - Please note, we need further guidance on the retirement and health benefits (e.g., is any amount paid okay?)

- Owner-employees, a self-employed individual, or general partners
  - For each individual, capped at the lower of the 8 week (or 24 week) equivalent of their applicable compensation in 2019 or $100,000 which is $15,385 (or $46,154)
Non-Payroll Costs for Forgiveness

- Eligible nonpayroll cost must be 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.

- **Covered mortgage obligations**: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payments”)

- **Covered rent obligations**: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020

- **Covered utility payments**: business 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 nonpayroll costs cannot exceed 25%–40% of the total forgiveness amount.
Non-Payroll Costs for Forgiveness

BEGINNING OF PERIOD EXAMPLE (based on 8-week covered period)

- Covered Period Begins May 6, 2020 and Ends June 30, 2020

- Telephone Service period is April 1 - April 30, 2020 which is invoiced on May 1, 2020 and due on May 7, 2020
  - Payment is timely on May 1 - 5, 2020 - Not counted because expense was incurred and paid prior to the covered period
  - Payment is timely on May 6 - 7 2020 - Entire amount counts because it was paid during the covered period
  - Payment is late on May 8 - June 30, 2020 - Entire amount counts because it was paid during the covered period
  - Payment is very late after June 30, 2020 - Nothing can be included because it was not incurred nor paid during the covered period
Non-Payroll Costs for Forgiveness

END OF PERIOD EXAMPLE (based on 8-week covered period)

- Covered Period Begins May 6, 2020 and Ends June 30, 2020
- Telephone Service period is June 1 - June 30, 2020 which is invoiced on July 1, 2020 and due on July 7, 2020
  - Payment is timely on July 1 - 7, 2020 - Entire amount counts because expense was incurred in the Covered Period and paid before the next billing date of August 1, 2020
  - Payment is late on July 8 - July 31, 2020 - Entire amount counts because it was incurred during the Covered Period and paid before the next billing date
  - Payment is very late after July 31, 2020 - Nothing can be included because it was not paid before the next billing date notwithstanding the fact that the expense was incurred during the Covered Period
Salary/Hourly Employees Wage Reductions During Covered Period

- Applies before application of the FTE reduction analysis
- Designed to protect wages for employees whose annualized cash compensation for all pay periods in 2019 are less than $100,000

For each protected employee:
1. Determine if pay was reduced more than 25%
   - Compare the annual salary or the hourly wage during the covered or alternative payroll covered period with that of Q1
2. For those with a greater than 25% reduction, determine if the Salary/Hourly Wage Reduction Safe Harbor is met not later than June 30, 2020
   - Comparison is to “Average” salary/wage rate as of December 31, 2020 so back wages may be required
3. For those not meeting the safe harbor, determine the Salary/Hourly Wage Reduction
4. The salary/wage reduction applies only to the portion of the decline in employee salary and wages that is NOT attributable to the FTE reduction
FULL-TIME EQUIVALENCY (FTE) REDUCTION CALCULATION

What is a FTE?

• For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0
• A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower

Observation:

• Implies a weekly calculation instead of a per payroll calculation per the statute
• Simplified method eliminates most hourly needs; just need to know who is hired as full time
• An employer that has fewer part time employees working more hours then pre-Feb. 15, 2020 will have better results with regular method
  - Previously 3 employees working 10 hours equals .8 FTE regular method or 1.5 FTE simplified method
  - Covered period 1 employee working 30 hours equals .8 FTE regular method or .5 FTE simplified method

Adjustments That Can Reduce Loan Forgiveness
Adjustments That Can Reduce Loan Forgiveness (Cont’d)

FULL-TIME EQUIVALENCY (FTE) REDUCTION CALCULATION

▶ If Borrower has not reduced the number of employees or the average paid hours of employees between January 1, 2020 and the end of the Covered Period there is no FTE reduction

▶ Otherwise determine the quotient by dividing the Total Average FTEs during the covered period by the Average FTE during the Borrower’s chosen reference period but not to exceed 1.0

FTE REDUCTION SAFE HARBOR FOR REHIRES

▶ Borrower is exempt from the reduction in loan forgiveness based on FTE employees described above 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

2. Borrower then restores its FTE employee levels by not later than June 30, 2020 (December 31, 2020 to its FTE employee levels in the Borrower’s pay period that included February 15, 2020

▶ If salary/wages are not restored there may still be a reduction to loan forgiveness under the Salary/Wage reduction rule
Adjustments That Can Reduce Loan Forgiveness (Cont’d)

FTE REDUCTION EXCEPTIONS THAT DO NOT REDUCE LOAN FORGIVENESS:

- Any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee.

- Any employees who during the Covered Period or the Alternative Payroll Covered Period but only if the position was not filled by a new employee:
  - were fired for cause
  - voluntarily resigned
  - voluntarily requested and received a reduction of their hours

These exceptions are critical to prevent reduction of loan forgiveness when employees cannot be brought back through no fault of the Borrower.
Adjustments That Can Reduce Loan Forgiveness (Cont’d)

NEW EXEMPTION BASED ON EMPLOYEE AVAILABILITY:

- During the period 02/15-12/31/20, the amount of loan forgiveness shall be determined without regard to a proportional reduction in the number of FTEs if the borrower, IN GOOD FAITH:
  - Is able to document an inability to rehire individuals who were employees on 2/15 and an inability to rehire similarly qualified employees for unfilled positions on or before 12/31 OR
  - Is able to document an inability to return to the same level of business activity as such business was operating at before 02/15, due to compliance with requirements established or guidance issued by HHS, CDC, or OSHA during the period 03/01-12/31/20 related to maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

These exceptions are critical to prevent reduction of loan forgiveness when employees cannot be brought back through no fault of the Borrower.
How do all of the reductions work together?

The loan forgiveness amount is the lesser of the following:

- Wage and FTE reductions to total costs (including nonpayroll costs)
- PPP loan amount
- Payroll cost 75% - 60% requirement - Please note, the borrower MUST use at least 60% of the loan proceeds for payroll costs. If they do not meet this requirement, there will be no forgiveness.
  - The Senate has eluded to a need for a technical correction on this point, but there is no correction currently in place.

Based on the passing of the Paycheck Protection Flexibility Act, the loan forgiveness application will need to be modified.
What We Still Don’t Know

- Will back-pay be necessary to meet the salary/wage restoration as of 6/30/20 or 12/31/20?
- Will borrowers be able to elect the alternative payroll covered period for biweekly or weekly payrolls if they also have semi-monthly or monthly payrolls? If so, how are the “other” payroll costs to be treated?
- Will the expenses paid for with forgiven PPP loan proceeds be deductible for federal income tax purposes?
- Will there be any guidance regarding disallowing self-rents as eligible rent expenses? Currently, there has been no mention of self-rents in any guidance, so as long as the rents are being paid in accordance with an executed lease in effect before 02/15/20, the payments should be eligible.
- How do we account for the loan proceeds our on books? AICPA Special Report discusses conditional contributions (NFP)/revenue vs extinguishment of debt.
PPP Loan Forgiveness

THE PROCESS

Application
- Form/Portal

Initial review at the lender level
- PLP’s

SBA’s threshold of +/- $2MM
- All PPP loans are subject to review!
CARES Act - Other Relevant Programs

- EIDL
- Mainstreet Lending
- SBA Payment Deferral
- Tax Credits
Questions?