

Webinar #10 June 4, 2020

(non-authoritative notes...these things change)

House Bill: H.R.7010 - Paycheck Protection Program Flexibility Act of 2020

Senate Bill passed the House version June 3rd 2020

- PPP borrowers can choose to **extend the eight-week period to 24 weeks** (to December 31), or they can keep the original eight-week period.
- This flexibility is designed to make it easier for more borrowers to reach full, or almost full, forgiveness. **New PPP borrowers will have a 24-week covered period, but the covered period can't extend beyond Dec. 31, 2020.**
- Under the language in the House bill, the **payroll expenditure requirement drops to 60% from 75%** but is now a cliff, meaning that borrowers must spend at least 60% on payroll **or none of the loan will be forgiven.** Since the House version intended the sliding scale to remain in effect, technical tweaks could be made to the bill to restore the sliding scale.
- Borrowers can use the **24-week period to restore their workforce levels and wages** to the pre-pandemic levels required for full forgiveness. This must be done by Dec. 31, instead of June 30.
- The legislation allows borrowers to **achieve full PPP loan forgiveness even if they don't fully restore their workforce** if you cannot find qualified employees **or** were unable to restore business operations to Feb. 15, 2020, levels due to COVID-19 related operating restrictions.

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“(7) EXEMPTION BASED ON EMPLOYEE AVAILABILITY.—During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith—

“(A) is able to document—

“(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

“(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

“(B) is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements...related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

- Borrowers now have **five years to repay the loan** instead of two. Existing PPP loans can be extended up to 5 years **if the lender and borrower agree**. The interest rate remains at 1%.
- The bill allows businesses that took a PPP loan to also **delay payment of their payroll taxes**.
- If you do not file for forgiveness within 10 months of the end of the covered period, you must start making payments.

26 pages of New Final Interim Rules:

<https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>

PPP Forgiveness Form:

<https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>

Or type **sba forgiveness form** into your browser

Four parts but only the first two required for submission to lenders:

1. The PPP Loan Forgiveness Calculation Form
2. PPP Schedule A
3. Schedule A Worksheet, and
4. Demographic Information Form.

House Bill H.R. 6886:

- Extends loan forgiveness 'covered period' from eight weeks to 24 weeks
- Gives employers until the end of the year to hire workers back and relax rehiring requirements
- ends the requirement that 75% be spent on payroll and "not limit the non-payroll portion of a forgivable covered loan amount"
- Makes clear that employers in the PPP program can also benefit from the CARES Act payroll tax delay.

The Senate Bill failed to pass, but they are expected to approve a 24 week limit....but not change the 75/25 requirement.

Entering 6th Week!!

New Rules and Clarifications

1. Lender repayment schedule.
2. Furloughed employee payments are forgiven
3. Bonuses paid are eligible if annualized comp does not exceed \$100,000
4. Owner/employees may be limited to the lower of \$100,000 (annualized) or their payroll in 2019
5. Narcing on employees refusing work is now required
6. Appeals process is being established

Payroll Costs:

Still a definitional issue:

From Part 1, Application:

Summary of Costs Eligible for Forgiveness:

Borrowers are eligible for loan forgiveness for the following costs:

1. **Eligible payroll costs.** Borrowers are generally eligible for forgiveness for the payroll costs paid and payroll costs incurred

However....From Part 3, Worksheet:

Cash Compensation: Enter 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. 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; therefore, do not enter more than \$15,385 in Table 1 or Table 2 for any individual employee.

So....paid and incurred or paid or incurred?

Payroll Covered Period:

Payroll costs are considered paid on the day paychecks are distributed, or ACH transaction date

Payroll costs are considered incurred on the day 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, the SBA's guidance requires that payroll costs must be paid during the Covered Period (or Alternative Payroll Covered Period) to qualify.

Alternative Payroll Covered Period

The Alternative Payroll Covered Period allows biweekly payroll employers 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.

As with the Covered period, payroll costs incurred but not paid during the borrower's last pay period of the Alternative Payroll Covered Period are eligible for forgiveness if the borrower pays them by its next regular payroll date.

Next. Regular. Payroll. Date

Compensation limits:

The \$100,000 prorated annual salary still stands (less than \$15,385 for the 8 weeks) and includes:

- gross salary, gross wages, gross tips, gross commissions,
- paid leave (vacation, family, medical or sick leave,
- allowances for dismissal or separation paid or incurred during the Covered Period or the Alternative Payroll Covered Period.

Even though tips come from customers, and not the employer, you can include tips into the payroll calculation. Either keep a record of tips, or use “a reasonable, good-faith, employee estimate of such tips.”

Not included in the \$100k limitation (add to the above):

- employer contributions for employee health insurance
- employer contributions to employee retirement plans
- employer amounts paid for employee state and local taxes

New Rule!! The Rule now limits payroll expense for “owner/employees and self-employed individuals” that will count towards forgiveness to the lesser of (1) \$15,385 (the \$100,000 annualized limit), or (2) *8/52^{nds} of 2019 compensation.*

Confusion - Many commentators read this to now apply to C and S corporation owners, as well as schedule C filers and general partners (as was the case previously).

However...others look at this as not a change and it was just poor drafting that is confusing. Don't panic, but look for clarification next week!

Self-employed or general partner:

The lower of:

- \$100k limit (\$15,384), or
- The 8-week equivalent of compensation in 2019. (Divide schedule C net profit by 12, multiply by 2.5)

You can also have another 25% of costs forgiven (utilities, rent, mortgage interest). You cannot use health insurance or retirement plan costs.

Maximum amount for self-employed eligible for forgiveness is \$20,833

Example:

\$20,833 total PPP loan
\$15,384 owner compensation
\$5,448 costs (25% of total)

Forgiveness for Self-employed:

You get 8 weeks worth of the 2019 net profit forgiven, whether you spend it or not. No other requirements. 'Owner Compensation Replacement'. Multiply your 2019 Schedule C net income by 8/52 (or 0.154)

The remainder needs to be spent on utilities, rent and mortgage interest to be forgiven.

Example:

\$27,300 in net income on 2019 Schedule C
Divide by 12 (\$2,275)
Multiply by 2.5 (\$5,687.50)

Maximum 'Owner Compensation Replacement'
Multiply \$27,300 by 8/52 (\$4,200) This is fully forgivable.
\$1,487 needs to be spent on utilities, rent and mortgage interest to be forgiven

Non-payroll Costs

- Existing Mortgage Interest (Feb 15, 2020) for real and personal property
- No prepayments allowed for mortgage interest (specifically stated)
- Rent or lease payments (Feb 15 again) - no prepayment exclusion for rents
- Utilities - gas, water telephone, internet, electricity, transportation - no prepayment issue as long as the payments are made during the 8 wk period

Must be paid **or** incurred during Covered Period and paid on or before next billing date, **even if outside the 8 weeks.**

25/75% rule still applies

Example: If you have:

\$100,000 loan
\$70,000 payroll expenses, and
\$25,000 interest, rent, utility expenses, then
\$23,333 of the \$25,000 will be forgiven

1. Divide $\$70,000/3 = \$23,333$
2. Add together = $\$93,333$
3. Divide $\$23,333/\$93,333 = \$70,000$

It seems for now that you can count back pay, unpaid utilities, mortgage interest which was subject to forbearance, and accrued rents.

It also begs the question as to whether certain eligible expenses may be paid *in advance* of contractual terms or past practices.

Remember - The application does, however, expressly prohibit prepayments of mortgage interest. But...what is a mortgage?

Limitations

FTE Employees

1. Enter number of hours/week/employee for Covered or Alternative Period

2. Divide by 40
3. Round the total to the nearest tenth (maximum of 1.0)

Alternative Calculation:

1. Multiply each employee over 40 hrs/wk by 1.0
2. Multiply each employee less than 40 hrs/wk by .5

Exceptions!

1. Employees who reject written offer of employment (same hours, wages)
 1. Written!!!! Documented if response is verbal or no response
 2. New obligation to notify the State unemployment department within 30 days of employee's rejection of the offer.
 3. 'Further guidance' on how to report to the State coming soon to the SBA website
2. Fired for cause
3. Resigned
4. Requested and received a reduction of hours

“borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests.” P. 22

New Safe Harbor Provision

No reduction in forgiveness due to FTE numbers *if*:

1. the borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; **AND**
2. The 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

Forgiveness is reduced by a percentage of any reduction in FTE

Further Reductions:

Salary/Hourly Wage Reduction

Forgiveness decreases if salary and wages decreased.

- Calculate wages and salaries from 1.1.20 - 3.31.20
- Calculate wages during Covered Period or Alternative Covered Period
- Continue if there was a reduction in wages over 25% (total or per employee?)
- Forgiveness will be reduced by this amount (not percentage)

No double deduction if you have both reduction in FTE and salary

A reduction in compensation attributable to a reduction in the number of employee's hours will not be counted as a reduction in compensation for the 75% or more test. Borrowers will not be double penalized for both a headcount and wage reduction.

Examples:

If an employee making \$10 an hour and working 40 hours a week is reduced to 20 hours a week, this reduction to \$200 a week does not cause this to be considered a more than a 25% reduction in compensation.

Also, if the employee wage was reduced from \$10 an hour (40 hours a week) to \$7.50 an hour and 20 hours a week, it would still not be a "more than 25% reduction in pay," as relative to hours worked (the borrower would still have a reduction in loan forgiveness because the employee headcount would be reduced by at least 0.5).

Lenders are required to:

1. Confirm receipt of borrower's certifications contained in the Loan Forgiveness Application Form.
2. Confirm receipt of the documentation verifying payroll and non-payroll costs.
3. Confirm that the borrower's calculations on the Application are accurate.
4. Confirm that the 75% of payroll test was met.
5. Bank has 60 days after submission to approve request and send to SBA.
6. SBA has 90 days after receiving request from bank to review and pay lender.

Retain all records for at least 6 years from the date of loan forgiveness or repayment in full!

The lender is not required to independently verify the borrower's reported information, if the borrower attests to the fact that it has provided the appropriate documentation supporting its request.

Wait until June 30th to calculate forgiveness.

Get copy of application from lender now.

There will be an appeals process.

Don't forget home office rent

Issues *not* addressed in last rules:

- 8-week period too restrictive for many businesses. 24 week proposed
Many will have to let hired employees go if business does not return to normal
- 75% rule not applicable for many businesses (e.g. food for restaurants)
IG stated that Congress did not specify the 75%; it was SBA. Legal challenge?

When is an employee an employee? At home employee still receiving commission checks?

Are bonuses considered payroll?

When is the deadline for application? When does the form have to be turned in?

Final rules on auto costs allowed

What happens if June 30 is inside the Covered Period?

Mnuchin considering a 'technical fix'

Remember the 'refusal to work' rule

Loan could be sold. Get copy of application from lender now. Keep in touch with lender to see if loan was sold and there is a new contact.

The forgiveness amount is not taxable income (Federal). Will the IRS change its position that forgiven expenses are not deductible?