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Loan Forgiveness Under the Paycheck Protection Program & FAQ’s

Updated as of May 28th 2020

THANK YOU

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Agenda

Economic necessity

Qualifying expenses and spending during the eight-week window

FTE limitation

Restoring FTE's

Wage limitation

Loan forgiveness application process

Tax and other considerations

Legislative updates

Economic Necessity

"That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient." *CARES Act §1102(a)(2)(G)(i)(I)*

Treasury Department has listed factors including (1) current business activity, and (2) ability to access other sources of liquidity which would not be significantly detrimental to the business (*see question #31 from the Treasury Department PPP loan FAQ issued on May 6th, 2020*)

How to document economic necessity

Questions that are often raised

Qualifying Expenses

- Payroll (must spend at least 75% on payroll in order to maximize forgiveness)
  - Wages, salaries, tips, commissions, bonuses, etc. with an annualized maximum of $100k
  - Employer funding of health benefits
  - Employer retirement plan contributions
  - State and local employer payroll taxes
- Interest on mortgage indebtedness incurred prior to 2/15/2020, and connected to real or personal property in the business.
- Rent or lease obligations under contracts incurred prior to 2/15/2020
  - Self-rental best practices until further guidance is issued by the Treasury Department
- Utilities
  - Phone, internet, electricity, gas, water, transportation
  - Service must have begun prior to 2/15/2020
  - No distinction between cell and landline phone service in the guidance to-date

Owner Compensation

SBA published the loan forgiveness application and related instructions on May 15th.

Final regulations were issued on May 22nd by the Treasury Dept.

Wages for the owner-employees such as sole proprietors (i.e. schedule C business), or general partner are not to exceed 8-weeks' worth of their prorated 2019 compensation with a cap of $15,385.

The term 'general partners' is not well defined in the regs

Accounting for the Funds

Paid or incurred standards

Differences between ‘incurred’ as the SBA uses the term, and ‘accrued’ as a general accounting principle.

Alternative payroll covered period for businesses with bi-weekly or more frequent payroll.

> Allows organizations to align the 8-week payroll period beginning on the first payroll following receipt of the funds.

Can you prepay expenses?

Can I count paid leave under the FFCRA as part of payroll costs? What if I don’t claim the FFCRA tax credits?

Paid and Incurred Example

Loan origination date of June 1st

Covered period extends from June 1st through July 26th

Borrower pays their May and June utility during the covered period

Borrower pays their July utility bill on August 10th

The borrower may claim credit for the May and June bills paid during the covered period plus the prorated portion of the July bill during the covered period (i.2. 26/31)

Other Accounting Questions

What types of retirement plans are eligible?

Can I pay my 2019 retirement plan obligation during the measurement period?

Can I run a bonus?

Are there limitations for self-rentals where the business owner is also the landlord?

Small Business Considerations

Some small businesses may find it helpful placing the funds in a separate bank account to ensure easier tracking.

Using a new ‘PPP’ class in the QuickBooks can be a helpful way of tracking the expenses.

No double dipping between loan and grant programs. Requires separate accounting and reporting for each.

FTE Limitation on Loan Forgiveness

Average FTE's for each payroll falling in the eight-week measurement period are compared with the lesser of:

The average FTE's for each payroll falling in the period 1/1/2020 through 2/29/2020, or

The average FTE's for each payroll falling in the period 2/15/2019 through 6/30/2019

Seasonal businesses have additional flexibility in selecting the comparison period

A reduction in the FTE levels will result in a prorata reduction in the loan forgiveness

FTE Limitation FAQ’s

40 hour per week FTE standard measured at the employee level (not in aggregate).

Two methods:

1. Standard method: Hours for each in individual employee divided by 40 and rounded to the nearest tenth (not to exceed 1.0 for any employee)

2. Simplified method allows all partial FTE’s to be treated as 0.5 FTE’s each.

Example: an individual working 36 hours in a week would be 0.9 FTE’s under the standard method, and 0.5 FTE’s under the simplified method

SBA Loan Forgiveness Application

FTE Reduction Exceptions: Indicate the FTE of (1) 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; and (2) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours. In all of these cases, include these FTEs on this line only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness.

Common FTE Questions

Do temporary workers paid through payroll count?

Do temporary workers paid through a temp agency count?

What if someone doesn’t come back to work because they don’t feel safe?

Can family members be hired and count towards the FTE calculations?

Restoring FTE's

The CARES Act allows a company to not be penalized by the FTE limitation as long as they restore their (1) FTE **<u>and</u>** (2) pay levels by 6/30/2020.

Applies to businesses that saw their FTE's decline between 2/15/2020 and 4/26/2020.

Functional challenge of paying sufficient payroll costs during the eight week period if you wait until June 30th to bring employees back.

Wage Limitation

Forgiveness will be reduced when the wages of individual employees are reduced by more than 25%.

Only applies to non-highly-compensated employees.

Highly compensated employees received wages or salary at an annualized rate exceeding $100,000 **for any pay period in 2019**.

What if an employee made $120,000 in 2019 and their wages were reduced to $60,000 in 2020. How will that impact the calculation?

Application Process

The CARES Act requires the borrower to complete the application

Will need to send summary calculations accounting for how the money was spent, as well as all of the forgiveness limitations. It requires reporting information on each individual employee.

Will need to send supporting documentation: payroll reports, hour reports, invoices, cancelled checks, etc.

Bank makes an initial determination as to forgiveness (not an audit)

SBA reviews the bank's determination (not an audit)

Will be subject to further review / audit. Limited SBA resources right now.

Audit of PPP Loans

All loans over $2M combined across affiliated entities will be subject to audit as a matter of policy.

> The primary focus point of these audits announced to-date is the economic necessity of the loan.

Smaller loans are subject to review.

Whistleblower complaints may be a driver of audits for smaller loans.

Tax and Other Considerations

Loan forgiveness is tax-exempt federally, but is currently taxable to California.

Related expenses are non-deductible federally, but are currently deductible for California.

Ability to participate in the employer payroll tax deferral until notified of loan forgiveness.

Participation in the PPP loan means the employer may not participate in the employee retention tax credit.

May not be used for costs already covered by another program, loan, or grant.

The challenge of tracking multiple grants and how the funds are used.

Legislative Update

On May 28 the House passed a bill to ease requirements on loan forgiveness. The senate put out a similar bill, but has not passed.

Included in the House proposal:

- Reduces the amount of funds companies are required to spend on payroll from 75% to 60%.
- Extends the covered period from 8 weeks to 24 weeks.
- Extends the due date to rehire workers from June 30 to Dec 31.
- Extends the term of the loan from two years to five years.
- Allows businesses that receive loan forgiveness to also defer payroll taxes.

Questions?

We're here to help.

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Thank YOU for attending.

For additional information or questions:

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