You Do Not ***Have* to** Spend 75% - or even 60% - of Your PPP Loan on Payroll

And Other Forgiveness FAQs

Q: What do I do if I don't have enough payroll to spend 75% of my PPP loan on payroll?

A: On a follow-up call to our May 19, 2020 FaceBook Live event covering the PPP Loan Forgiveness Application, an owner pressed me on her concerns that staff turnover was keeping her from meeting her required payroll spend of 75% of the loan.

For those concerned, two things have changed with the June 5, 2020 passage of the Paycheck Protection Plan Flexibility Act. First, the covered period for using the loan is extended from 8 weeks to 24 weeks (though if you will spend your total amount in eight weeks you can keep to that period and apply for forgiveness when it's done). Second, the amount you're required to spend on payroll expenses to be eligible for full forgiveness on your loan amount dropped from 75% to 60% of your total loan amount.

And partial forgiveness has always been available, even if you don't meet that threshold. From the updated Interim Final Rule:

> *o. Can my PPP loan be forgiven in whole or in part? Yes. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. An eligible borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes as described below and employee and compensation levels are maintained or, if not, an applicable safe harbor applies. The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments for service that began before February 15, 2020, over the loan forgiveness covered period. However, to receive full loan forgiveness, a borrower must use at least 60 percent of the PPP loan for payroll costs, and not more than 40 percent of the loan forgiveness amount may be attributable to nonpayroll costs. For example, if a borrower uses 59 percent of its PPP loan for payroll costs, it will not receive the full amount of loan forgiveness it might otherwise be eligible to receive. Instead, the borrower will receive partial loan forgiveness, based on the requirement that 60 percent of the forgiveness amount must be attributable to payroll costs. For example, if a borrower receives a $100,000 PPP loan, and during the covered period the borrower spends $54,000 (or 54 percent) of its loan on payroll costs, then because the borrower used less than 60 percent of its loan on payroll costs, 11 the maximum amount of loan forgiveness the borrower may receive is $90,000 (with $54,000 in payroll costs constituting 60 percent of the forgiveness amount and $36,000 in nonpayroll costs constituting 40 percent of the forgiveness amount)*

Q: What if the 8- or 24-week "covered period" after I receive my loan don't match up with my ordinary pay periods?

A: For payroll forgiveness, an alternate covered period was established in the application, which has not been updated since the PPP Flexibility Act was passed. From the standing PPP Loan Forgiveness Application:

> ***Covered Period:*** *Enter the eight-week (56-day) Covered Period of your PPP loan. The first day of the Covered Period must be the same as the PPP Loan Disbursement Date. For example, 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.*
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> ***Alternative Payroll Covered Period****: For administrative convenience, Borrowers with a biweekly (or more frequent) payroll schedule may elect to calculate eligible payroll costs using the eight-week (56-day) period that begins on the first day of their first pay period following their PPP Loan Disbursement Date (the "Alternative Payroll Covered Period"). For example, 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. Borrowers who elect to use the Alternative Payroll Covered Period must apply the Alternative Payroll Covered Period wherever there is a reference in this application to "the Covered Period or the Alternative Payroll Covered Period." However, Borrowers must apply the Covered Period (not the Alternative Payroll Covered Period) wherever there is a reference in this application to "the Covered Period" only.*

We don't yet have confirmation that this alternate covered period will apply to a 24-week covered period, but we expect it will.

Q: How will Full Time Equivalents (FTEs) be calculated?

A: From the PPP Forgiveness Application:

> ***Average FTE:*** *This calculates the average full-time equivalency (FTE) during the Covered Period or the Alternative Payroll Covered Period. 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.*

Choose whichever of those methods works best to your advantage.

Q: What can reduce my forgiveness on what I do spend, even if my payroll expenses are 60% or more of my expenditures?

A: Two things:

- A reduction in your average FTEs in the 8- or 24-week period you choose for payroll forgiveness, as compared to either the average FTEs from February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020 (the applicant can choose the baseline period). If you're a seasonal employer, you can choose any consecutive 12-week period May 1, 2019 and September 15, 2019.
  - In this case total forgiveness amount will be multiplied by the ratio of average FTEs in your covered period compared to your baseline period or choice. So if you average 90% of the FTEs from your baseline period in your covered period, forgiveness is reduced by 10%.
- A 25% or more reduction in wages (whether the employee is hourly or salaried) to ANY ONE employee during the 56 days covered period you choose for payroll as compared to January 1, 2020 through March 31, 2020. Your forgiveness will be reduced by the reduction percent above 25%.
- Either of these reductions are nullified so long as you build back up to the average FTEs or Wages by December 31, 2020.

Q: What if my staff is smaller because one or more employees a) refuse to accept my rehire offer, b) resigned during the pandemic, c) voluntarily asked for reduced hours, d) were fired for cause and/or e) I can't find a suitable replacement?

A: There is a safe harbor exemption to the FTE requirements for all of these cases. Be sure you have documented them, especially employees that voluntarily requested a reduction in hours.

One implication of this is that if your FTEs are lower than before because one of these situations applies to you, you DO NOT need to rush out and hire more people. Be prudent about your staffing needs for the short to intermediate term.

If you don't need to replace departed or diminished staff hours to support your current operations, it may be better to wait until your patient volume increases. No need to do it SOLELY for the sake of forgiveness; you're still eligible to have your total paid expenses forgiven even if it's not the same as your loan amount.

Q: Can I offer bonuses or hazard pay with PPP money?

A. The May 22 Interim Final Rule regarding forgiveness explicitly stated that bonuses and hazard pay are considered eligible payroll expenses for forgiveness. Now that practices have 24 weeks to pay out their loans, most are just going to pay an additional one or two payrolls, in lieu of paying out bonuses or hazard pay. This is consistent with Treasury consistently putting a preference on paying employees against other costs. Which comes with a tradeoff…

Q: How much of an owner's pay counts towards forgiveness?

A. Owners' cash compensation is now capped at the lesser of an annualized rate of $100,000 ($15,385) or 8/52 of any given owner-employees 2019 salary from the business. Owner-employee benefits are also still eligible for forgiveness. HOWEVER, if you had to apply separate from your practice as a self-employed individual, your benefits do not count for forgiveness on top of your cash compensation; they are assumed to be paid out of your income.

We do not yet have guidance on whether the extended period will allow owners and high compensation team members to have a larger wage forgiven.

Q: What counts as utilities?

A. Utilities include costs incurred or paid for electricity, gas, water, transportation, telephone or internet access.

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