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***6/5/2020 Update: This document has been updated to reflect changes to the PPP loan program specified in HR 7010, passed by Congress on June 4, 2020 and signed into law on June 5 as The Paycheck Protection Program Flexibility Act. These changes are retroactive to the original law date. Updated information is in red.***

***This information is based on what is currently known. We are monitoring updates to these guidelines and will keep you informed.***

***You can find past newsletters on PPP loans on the Blog page of our website. If you still have questions, please contact your Payroll Specialist.***

***About the Paycheck Protection Program (PPP)***

The **Paycheck Protection Program (PPP)** is a program of government guaranteed loans and grants to provide funds to eligible small businesses so they can retain employees if *“*current economic uncertainty*”* of the COVID-19 pandemic makes such a loan for their business *“*necessary to support their ongoing operations,*”* and are willing to certify to the lender to that affect.

**What are the terms of the loan?**

The loan maturity date is ~~two~~ five years from the date the loan was received. Principal and interest payments are deferred six months from the time the forgiveness determination is made, ~~but interest accrues during those 6 months at an annual rate of 1%~~. It is unclear at this time if interest accrues during those 6 months. If borrowers meet certain criteria and apply for loan forgiveness, the loan will be forgiven, meaning the borrower does not need to pay back the loan or any interest.

**Are businesses with other adequate resources to support their ongoing operations eligible for a PPP loan?**

PPP loans are intended to provide relief to small businesses that might not have access to capital markets. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still should carefully review the required certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”

**How will the SBA review good-faith certification by borrowers regarding their need for the loan?**

The SBA, in consultation with the Department of the Treasury, has issued guidance that any borrower that received a PPP loan for less than $2 million will be deemed to have made the required certification because borrowers with loans below this threshold are generally less likely to have access to adequate sources of liquidity than borrowers that obtained larger loans.

All PPP loans over $2 million, and other PPP loans as deemed necessary, will be subject to review by the SBA for compliance with program requirements before they can be forgiven.

***Managing Your PPP Loan***

To qualify for loan forgiveness, you must spend the loan funds within ~~8~~ 24 weeks, and no later than ~~June 30~~ December 31. Loan forgiveness is not automatic; you must apply for it.

**When does the ~~eight-week~~ covered period of the PPP loan begin?**

The ~~8-week~~ loan period begins when you receive the funds.

**If we return 100% of our PPP loan now, will we have to pay interest?**

Yes. The deadline for returning the loan without penalty was May 14.

**~~If a business has not been able to open yet, does the 8-week window move?~~**

~~The 8-week period begins when you receive the funds, whether or not your business is open. Congress may make legislative changes to this requirement, but as of this writing, nothing has been approved.~~

**My business is closed. Do I still need to pay employees who aren’t working?**

Yes, the purpose of the PPP loan is to pay workers. You must use at least ~~75%~~ 60% of the funds to pay employees, whether or not they are working.

**What happens if some or all of a PPP Loan is not forgiven?**

Any portion of a PPP loan that is not forgiven must be repaid in ~~two~~ five years from the date of funding, at 1% interest. Payments would start after the initial 6-month deferment period. Payments would typically be in equal payments of principal and interest.

**What is the deadline for spending the PPP loan funds?**

The funds must be used by ~~6/30/20~~ 12/31/2020. Funds not used by this date for eligible expenses must be repaid.

**Will nonprofit organizations be audited if they receive a PPP loan?**

Guidance has not been provided at this time, though loans higher than $2 million are expected to be audited.

**If I can’t open my business. would I be better repaying the PPP loan and taking tax credits to use when we can reopen?**

Possibly. If you don’t incur any compensation, you won’t get any forgiveness. If not forgiven, the PPP is a low interest (1%) loan. Consult your CPA for guidance.

***PPP Loan Forgiveness***

**Can any portion of the PPP loan be forgiven in the form of a government grant?**

Yes. But only expenses for payroll and specified utilities can be forgiven.

**Are there limitations on loan forgiveness?**

~~Yes. The amount of loan forgiveness can be reduced if an employer:~~

* ~~Reduces the number of full-time equivalent (FTE) employees during the covered period more than it would have during a comparable period in past years.~~
* ~~Reduces compensation by 25% or more to employees who earn less than $100,000 per year. This is on a per employee basis, not the aggregate payroll.~~

You no longer have to document the number of employees based on FTE. You simply have to document an inability to return to the same level of business activity.

***How Do I Get My Loan Forgiven?***

Loans are not forgiven automatically. You must apply for loan forgiveness. Here is a link to the forgiveness application.

**Do I have to wait until December to apply for forgiveness?**

No, you can apply any time after you have used up the funds, including right after the initial 8-week period. The new forgiveness application has not yet been released. You should wait for the new application, as it is likely to be less complex than the original one.

**Does the interest on the loan qualify for forgiveness?**

Yes. If the loan is forgiven, the interest is also forgiven.

**If I have to pay back some or all of the loan, when do payments begin?**

The first payment will be deferred for six months after the SBA makes a determination on forgiveness. Since under current regulations your bank has 60 days to make a forgiveness determination and the SBA an additional 90 days, you could potentially have until May of 2021 to make the first payment on the loan. If this is your situation, confirm the date with your bank.

***What Expenses Are Eligible for Forgiveness and What Expenses Are Not***

**Payroll Expenses**

At least ~~75%~~ 60% of the funds must be used for permitted payroll expenses for the loan to be forgiven. You may use 100% of the funds on payroll if you want.

If your payroll is higher because you hired more staff or gave raises, you can use the higher payroll in the calculation for forgiveness, but you cannot be forgiven for more than the original loan amount.

|  |  |
| --- | --- |
| **Payroll Expense** | **Eligible for Forgiveness?** |
| Salaries | Yes, up to a maximum of $15,385 ~~per 8-week period~~ for an individual |
| Commissions | Yes |
| Bonuses | Yes |
| Raises | Yes |
| “Hazard pay” | Yes |
| Vacation pay | Yes |
| Sick pay or medical pay | Yes |
| Sick pay covered by COVID-19 | No |
| Compensation to pay salespeople who cannot earn commission due to “stay at home” mandates | Yes |
| Severance pay | Yes |
| Back pay for when business was closed in ~~March, April, and May~~ May-July | Yes, but the pay date would be the current pay date (not backdated) |
| Payroll processing fees | No |
| Salaries paid to business owners (including partners and members), including weekly distributions, K-1s, health insurance, and SEP IRA contributions | Yes. If the PPP distributions are treated as self-employment income from an LLC or Partnership (but not an S corps), the distributions and the related benefits would be treated similar to salary. |
| Pay for new hires | Yes |
| Parental or family leave | Yes |
| Sick leave or family leave under the FFCRA | No |
| Compensation to non-residents | No |
| Employer’s share of payroll tax | No |
| Cash compensation (including commissions and bonuses) for employees and self-employment income to partners/members in excess of an annual salary of $100,000. | No  Based on the most recent guidance, the maximum salary eligible for forgiveness for the ~~8~~-24-week period is $15,385 ($100,000 / 52 x 8). This maximum has not changed. |
| Non-cash benefits including employer contributions to benefit plans, group health costs including insurance premiums and state and local taxes assessed on compensation for employees and partners/members in excess of an annual salary of $100,00 | Yes |
| Employees who are not working because the business is closed and who are collecting unemployment insurance | Yes, but the employee would not be eligible for unemployment insurance for those weeks you are paying them. If the employee’s pay is reduced, they may be eligible for unemployment insurance, but that is a matter for the state’s unemployment office, not for your payroll. |
| Business owner’s draw | No |

**For PPP loan forgiveness, do payroll costs have to be incurred or paid?**

Our understanding is that the costs have to be paid. This means the payroll costs go by the pay date (check date) and not the pay period.

**Insurance and Benefits**

|  |  |
| --- | --- |
| **Benefit Expenses** | **Eligible for Forgiveness?** |
| Health insurance premiums paid by employer | Yes |
| Dental insurance paid by employer | Yes |
| Vision insurance paid by employer | Yes |
| Health, dental, vision, or other health insurance premiums paid by employee | No |
| Life insurance premiums | No |
| Disability insurance (short-term or long-term) | No |
| 401K management fees | No |
| Employer-paid retirement benefits (401K and SIMPLE matching contributions) | Yes. These are not subject to the $15,385 cap for employees making more than $100,00. |
| Prepayment of likely profit-sharing plan contributions that ordinarily would not be made until next year | Maybe, if already earned and you are just depositing them earlier. There has not been clarification on this yet, so proceed with caution. |
| Workers’ Compensation | No, this is not a benefit |
| Health costs for businesses that are self-insured | Yes |

**Taxes**

|  |  |
| --- | --- |
| **Tax Expenses** | **Eligible for Forgiveness?** |
| Federal income tax | No |
| State income tax | No |
| FICA | No |
| Medicare | No |
| State unemployment tax | Yes |
| Local income tax | No |
| Employer’s income tax | No |
| Workers’ compensation | No (this is insurance, not a tax) |

**Utilities**

|  |  |
| --- | --- |
| **Utility Expenses** | **Eligible for Forgiveness?** |
| Rent for leases on or before 2/15/2020 | Yes |
| Rent for leases after 2/15/2020 | No |
| Mortgage interest | Yes |
| Prepaid mortgage interest | No |
| Payments towards mortgage principal | No |
| Oil or gas heat | Yes |
| Water bills | Yes |
| Other debt (not mortgage interest) | No |
| Electricity | Yes |
| Internet | Yes |
| Telephone | Yes |
| Mobile phones | Yes |
| Postage | No, this is not a utility |
| Software subscriptions or licenses | No |
| A business owner’s office expenses | Yes, if the owner typically deducts home-office utilities on their income tax returns. |
| Home office or utility expenses of an employee that the employer pays | No |
| Transportation | Yes. There have not been specific guidelines as to what is considered “transportation,” but we assume this is paid travel time. |

**Timing of Payroll Expenses**

**If payroll is incurred during the ~~8-week~~ covered period but the actual pay date is a few days after the end of the covered period, can PPP loan funds be used for that payroll and be forgiven?**

~~Yes. While the guidance currently states that expenses must be incurred and paid, we believe you can use forgivable loan funds for the scenario you described but future SBA guidance may indicate otherwise. Be sure to document thoroughly. You can always prepay employees (double up payroll) to stay within the dates.~~ For most businesses, this timetable is irrelevant because you can spread out the payroll over 24 weeks.

**If the loan is funded on 5/1, and we have a pay day on the 5th covering 4/16 to 4/30, is this payroll going to be included in the analysis for forgiveness?**

The guidance is not clear, and we hope additional guidance will be provided. In the meantime, we take the position the payroll had been incurred, and since it was paid in the covered period it should be included. For most businesses, this timetable is irrelevant because you can spread out the payroll over 24 weeks.

**Can you pay the fiscal year 2020 retirement benefit if you usually pay it after the FY ends?**

You can pay that portion of the benefit that has been incurred so far that year. We don’t think you can pay it in advance, but you could pay based on the current amount of salary and matching amount earned so far. You may be able to justify paying the 2019 contribution, if not paid yet, but there is more uncertainty on that. Consult your CPA for guidance.

**If we are currently deferring the Social Security payroll tax, do we stop when the loan is received or when it is forgiven?**

Our understanding is that you must catch up the payroll taxes that were deferred when the loan is forgiven, but the guidance is not clear.

***Headcount, Who Is an Employee, and FTE***

**The PPP loan application did not ask for FTE.  It asked for number of employees. How will the FTE come into play?**

Lenders asked for the number of employees to determine eligibility for the PPP loan.  FTEs will be used in the process of determining the loan forgiveness calculation.

**Are there exceptions for a reduced head count?**

Yes. The new law adds exceptions for a reduced head count. A business can still receive forgiveness on payroll amounts if any of these conditions apply:

* The business is unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020.
* The business is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020.
* The business is able to demonstrate an inability to return to the same level of business activity as such business was operating at prior to February 15, 2020.

Guidelines have not yet been issued for how to “demonstrate the inability to rehire similarly qualified employees” or “demonstrate the inability to return to previous levels of business activity”

At the minimum, you should document in writing as thoroughly as possible all efforts to rehire employees through December 31, 2020.

**What Is “Full-Time” for Purposes of Calculating FTE?**

There have not been specific guidelines from the SBA as to what is considered full-time. It is generally believed to be 30 hours per week, though it may be 40. Part-time and full-time employees count towards your FTE headcount. To calculate FTEs, divide the total number of hours worked by 30 hours or 40 hours.

**Employee Headcount**

|  |  |
| --- | --- |
| **Type of “Employee”** | **Count towards FTE Headcount?** |
| Full-time workers earning less than $100K per year | Yes |
| Full-time workers earning $100K per year or more | No |
| Part-time employees | Yes |
| 1099 workers | No |
| Contract workers | No |
| Temporary workers | Only if paid by W-2, not 1099. |
| Family members | Yes, as long as they are working in the business |
| Business owners | Yes, if they are W-2 employees. |

**What dates are used to determine FTE for the ~~8-week~~ loan period?**

~~The two pay periods for determining FTE are 2/15-6/30/2019 or 1/1-2/29/2020. These are the pay periods the SBA will be looking at to compare number of employees. You have to choose which pay period to use.~~

The pay period starts 2/15/2020 and goes until 12/31/2020.

**Layoffs/Furloughs and Headcount**

**Can I rehire employees I terminated/laid off/furloughed before I received the loan?**

Yes. If you reinstate employees before ~~June 30, 2020~~ December 31, 2020 you can count them in your FTE headcount for purposes of loan forgiveness.

**What if a laid-off worker doesn’t return?**

You do not need to hire back the same employees who were laid off. The calculation is based on the number of full-time equivalent employees (FTEs) not on specific individuals in specific roles. If you laid off employees due to COVID-19 issues, you can rehire an equivalent number of FTEs by ~~June 30 (or, we believe, the end of the covered period)~~  December 31 and qualify for loan forgiveness.

**What happens if a worker is only contracted to work a portion of the eight-week covered period (i.e. schools which end in May or June)? Is there any guidance on whether or not to include them in the FTE calculation?**

There is no specific guidance. If you did not lower their wage rate, we believe you can ignore them in your calculation, but the guidance is not clear.

**If you lay someone off and hire another person in their place, can the new hire’s pay be included in the calculation for forgiveness?**

Yes.

**If during the PPP loan loan period an employee voluntarily resigns, will this affect the FTE calculation?**

Yes, if the employee is not replaced by someone else.

**Are there special considerations for temporary agencies or companies that use temp workers for seasonal work?**

For the PPP, “employees” refers to individuals employed by and receiving a W-2., Temporary employees hired through a contract with a temporary agency would not count toward a business’s employee count or payroll costs. This includes 1099 workers.

***The Compensation Cap***

**Is it true that employees with salaries >$100,000 would not be included in the calculation for the loan forgiveness amount?**

The $100,000 cap applies to cash compensation, not to non-cash benefits such as employer contributions to defined benefit plans, group healthcare coverage premiums, state and local tax payments on employee compensation. Also, it is unclear how an individual who was employed for only part of the year should be handled. The guidance from the SBA is not clear, and most banks are indicating you should just look at the total compensation for the period. Based on the most recent guidance, the maximum salary eligible for forgiveness for the 8-week covered period is $15,385 ($100,000 / 52 X 8).

**If an employee was earning more than $100,000 per year before the covered period, can you reduce their pay to the cap ($15,385) during the covered period and use forgivable PPP loan funds for their compensation, or are employees earning more than $100,000 excluded from payroll calculations?**

You can pay any employee up to $15,385 during the covered period, regardless of their pre-PPP loan compensation.

**Can you pay all your employees $15,385 for the ~~8-week~~ 24-week loan period even if their average earnings are less?**

Yes.

**For wages at the $100K limit, do payroll taxes and other benefits that are incurred by the amount of pay have to be prorated downward accordingly?**

The other benefits don’t have to be prorated down. Payroll taxes are ignored, other than state and local payroll taxes paid by the company.

***The PPP and Other Relief Programs***

**Can I have a PPP loan and also take the employee retention credits (Section 2301 of the CARES Act)?**

No, you cannot double dip. Consult your CPA for which program is better for you.

**What should I consider if I applied for multiple sources of emergency relief (EIDL, PPP or other Covid-19 loans)?**

You cannot have both an EIDL and PPP loan, but you can roll an existing EIDL loan into a PPP loan. You cannot maintain an existing EIDL if the funds are for the same purposes as the PPP. A business with an EIDL advance is eligible to receive a PPP loan, but the loan is reduced by the amount of the EIDL advance. We are unsure at this time if the EIDL advance is forgivable. Consult your CPA for guidance on this matter.

**Can a business receive a PPP loan and still participate in tax relief program of the CARES Act?**

~~No. We believe that businesses participating in the tax deferral program that later receive a PPP loan would probably stop deferring taxes and pay taxes going forward, but we don’t have specific guidance on this. You would probably need to pay taxes to catch up to be eligible for the forgiveness program. You need to consult your CPA for guidance on this matter.~~

Yes. The only tax eligible for deferment is the Social Security tax. If you elect to defer the taxes, you, not PayPlus, will be responsible for paying those taxes when they are do, and you will be responsible for keeping track of the amounts and due dates. Because most of our clients do not have the resources to carry out this requirement, we recommend that you not defer taxes.

***Tax Considerations***

**Is the amount of forgiveness included in taxable income to borrowers?**

No. IRS Notice 2020-32 issued April 30th states that expenses paid with PPP funds which are forgiven under the program are not deductible. Consult your CPA for guidance.

**Can I deduct expenses covered by the PPP loan on my taxes?**

If the expenses were not forgiven, yes. If the expenses were forgiven, no. Consult your CPA for guidance. But Congress might overturn the IRS ruling that expenses paid with loan proceeds cannot be deducted if the loan is forgiven.