

Paycheck Protection Program (PPP) Loan Forgiveness

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Items to Cover

- What do we know?
- What DON'T we know?
- The SBA is sending different messaging than the CARES Act.

Urgency – created in the CARES Act

- **Loan Forgiveness Section 1106. (k) REGULATIONS** — Not later than 30 days after the date of enactment of this Act, the Administrator shall issue guidance and regulations implementing this section.
 - 30 days from March 27, 2020 is Sunday April 26, 2020
 - Friday the April 24th or Monday the April 27th?
 - Need to know if the Administration will want “additional information” in the application for forgiveness, more than what is listed in Sec. 1106 (e) of the CARES Act
- **Loan Forgiveness Section 1106. (g) DECISION** — Not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the application.
 - Assume the first loan was funded on April 10th, the first application for forgiveness will be received on or around June 5th or June 8th

What we have been told about how we can use the PPP Loans?

- **The proceeds of a PPP loan are to be used for:**
 - i. payroll costs (as defined later in this presentation)
 - iii. mortgage interest payments (but not mortgage prepayments or principal payments);
 - iv. rent payments;
 - v. utility payments;
 - *vi. interest payments on any other debt obligations that were incurred before February 15, 2020; and/or*
 - vii. refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

BOTH VI and VII are missing from the SBA's guidance on forgiveness.

What we have been told about how we can use the PPP Loans?

- **Biggest unknown:**
 - What happens if you DON'T use 75% of the loan proceeds for eligible uses?
 - Local SBA offices are advising lenders that if borrowers do not meet this standard, NONE of the loan is forgivable.

CARES Act

- **Loan Forgiveness Section 1106. (a) Definitions**

- (7) “expected forgiveness amount” means the amount of principal that a lender reasonably expects a borrower to expend during the **covered period**...
 - Covered Period – February 15, 2020 through June 30, 2020
 - 8 Week Period
 - The period starting on the 1st date of receipt of loan proceeds
 - Loan proceeds must be disbursed by lender within 10 days of acceptance.
 - PPP Loan proceeds are to be spent on qualified costs during this period

Let's Start with the Definitions

- **Loan Forgiveness Section 1106. (a) Definitions**

- (7) “expected forgiveness amount” means the amount of principal that a lender reasonably expects a borrower to expend during the **covered period** on the sum of any
 - (A) payroll costs;
 - (B) payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);
 - (C) payments on any covered rent obligation; and
 - (D) covered utility payments; and
- (8) the term “payroll costs” has the meaning given that term in paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act.

Key Definitions – Con't

- **Loan Forgiveness Section 1106. (a) Definitions**

- *(viii) Payroll Costs* - “(I) means— “(aa) the sum of payments of any compensation with respect to employees that is a— “(AA) salary, wage, commission, or similar compensation; “(BB) payment of cash tip or equivalent; “(CC) payment for vacation, parental, family, medical, or sick leave; “(DD) allowance for dismissal or separation; “(EE) payment required for the provisions of group health care benefits, including insurance premiums; “(FF) payment of any retirement benefit; or “(GG) payment of State or local tax assessed on the compensation of employees

- **Clarification from IFR regarding forgiveness for employers:**

- Payroll costs including salary, wages, and tips, up to \$100,000 of annualized pay per employee (for eight weeks, a maximum of \$15,385 per individual), as well as covered benefits for employees (but not owners), including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer (such as unemployment insurance premiums);

Key Definitions – con't

- The term “covered mortgage obligation” means any indebtedness or debt instrument incurred in the ordinary course of business that—
 - (A) is a liability of the borrower;
 - (B) is a mortgage on real or personal property; and
 - (C) was incurred before February 15, 2020.
 - Includes auto loan interest for a self-employed taxpayer.
- The term “covered rent obligation” means rent obligated under a leasing agreement in force before February 15, 2020. How do we treat self-rentals? Rent on equipment?
- The term “covered utility payment” means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.
 - Includes gas you use on your auto if you're self-employed taxpayer.
- **Notice: while a borrower can USE funds to pay interest on a non-mortgage obligation, those amounts are not eligible for forgiveness.**

Limits on Loan Forgiveness (Section 1106 (d))

- (1) Amount cannot exceed principal
- (2) Reduction based on reduction in number of employees
 - quotient obtained by dividing— (i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by (ii)(I) at the election of the borrower— (aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or (bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or (II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

Limits on Loan Forgiveness (Section 1106 (d))

- (3) REDUCTION RELATING TO SALARY AND WAGES.—
 - (A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
 - (B) EMPLOYEES DESCRIBED.—An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.

Exemption for Re-Hire and Replacement of Salary (Section 1106 (d)(5))

- B) CIRCUMSTANCES.—A circumstance described in this subparagraph is a circumstance—
(i) in which— (I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and (II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees; (ii) in which—
(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and (II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or (iii) in which the events described in clause (i) and (ii) occur.