

# PATH FORWARD

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## PPP: Ensuring Compliance and Maximizing Forgiveness

Tuesday, May 26

# PPP Compliance and Forgiveness

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# Overview of loan forgiveness application

- SBA Form 3508
- Released May 15
- Expiration Date October 31
- Will be submitted to the lender by the borrower

# Overview of loan forgiveness application

- Application Components:
  - Loan Forgiveness Calculation Form
  - Schedule A
  - Schedule A Worksheet
  - Borrower Demographic Information Form (optional)

## *Paid and/or incurred*

- Costs paid during the covered period (*even if entirely incurred prior to covered period*);

### **AND**

- Costs incurred during the covered period and paid after the covered period if the payment is made as regularly scheduled

## *Paid and/or incurred*

- Alternative Payroll Covered Period
  - Borrowers with a biweekly (or more frequent) payroll schedule may elect to use the 56 day period that begins on the first day of their next pay period following their PPP Loan Disbursement Date
  - Note: Does not apply for non-payroll costs, so borrowers electing the Alternative Payroll Covered Period will have a different 56 day period for non-payroll costs

# *FTEs*

- Definition of full-time equivalent as 40 hours
- Two methods for calculating FTEs:
  - Tenths or 0.5 increments
  - Needs to be consistent

## *FTEs - Restoration/Safe Harbor*

- **IF** you reduce FTEs between 2/15/20 and 4/26/20
- **THEN** can restore forgiveness if you rehire employees *on or before* June 30 (regardless of end of 8-week period)
- Loan forgiveness would not be reduced for both hours and wage reductions for the same employee.



# *Wage Reduction*

- **IF** any employee paid < \$100,000 in annualized wages in 2019 is paid an average annual salary/wage during the 2/15/20-4/26/20 Safe Harbor Period that is less than 75% of such employee's average annual salary (or hourly wage) paid prior to February 15, 2020 ....
- **THEN** the Salary/Hourly Wage Reduction is triggered and the amount of loan forgiveness could be reduced.
- The Salary/Hourly Wage Reduction is determined on an employee-by-employee basis (as opposed to an average of all borrower employees).
- **See Worksheet A for process to calculate wage reductions.**

# *Wage Reduction - Restoration/Safe Harbor*

- Salary/Hourly Wage Reduction Safe Harbor exempts a Borrower from forgiveness reduction:
- IF for each employee whose average annual salary/wage was reduced by more than 25 %, such employee's average salary /wage as of June 30, 2020, is equal to or greater than such employee's average annual salary/wage as of Feb. 15, 2020.
- **If any employee does not meet this test, then the Borrower does not qualify for the salary/hourly wage reduction safe harbor.**

# *Owner's Compensation*

- Capped at 8/52 of the owner's 2019 payroll, limited to 100k annualized (\$15,385) across all entities
  - Eliminates strategy of paying owner if not done in 2019
  - Note there is no similar provision for non-owners; pay increases and bonuses to non-owner employees are eligible payroll expenses
  - Unclear whether this applies to spouses, kids, etc., of the owner

# *Non-Payroll Costs*

Covered Mortgage Obligations: payments of interest (not including any prepayment or payment of principal) on any business mortgage obligation on **real or personal property** incurred before February 15, 2020

# *Non-Payroll Costs*

- Covered Rent Obligations: payments pursuant to lease agreements for **real or personal property** in force before February 15, 2020
  - Examples: office space, copiers, vehicles, heavy equipment
- Covered Utility Payments: payments for electricity, gas, water, transportation (vehicle fuel?), telephone, or internet access for which service began before February 15

## *75% Rule*

- Must spend at least 75% of the funds on payroll costs to qualify for full loan forgiveness
- Partial forgiveness if don't meet the test
- Stay tuned to pending legislation

# *Usage Ideas*

- Hazard Pay/Bonuses
- Hire more people to clean, perform maintenance
- Allowances up front:
  - Ex: Car allowance (to keep off the bus)
  - Expense reimbursements are not considered “payroll”
- Rent
  - Consider retracting deferral and pay during 8-week period
  - Clearly real or personal property
- Pay out accrued vacation during 8-week period
- Pay accrued Q2 bonuses/commissions in 8-week period

# *Borrower Certifications*

Borrower is required to certify to the following upon submitting the Application:

1. The dollar amount of the forgiveness requested
  - was only used to pay costs eligible for forgiveness,
  - includes all applicable FTE Reductions and Salary/Hourly Wage Reductions,
  - does not include eligible non-payroll costs in excess of 25% of the amount requested
  - does not exceed eight weeks' worth of 2019 compensation for any owner-employee or self-employed individual/general partner (\$15,385 per individual); and
  
2. Acknowledging penalties, including civil or criminal fraud charges if the PPP funds were knowingly used for unauthorized purposes.



# *Borrower Documentation*

Significant documentation submitted with the Forgiveness Application:

1. **Payroll records**: verifying eligible cash compensation and non-cash benefit payments from the Covered Period including bank statements or payroll service provider reports.
2. **FTE records**, including documentation of avg FTE employees on payroll during the Reference Period selected by the Borrower.
3. **Eligible Non-payroll Costs**: Documentation verifying existence of obligations/services prior to February 15, 2020 and eligible payments made during the Covered Period.

***Borrowers are to maintain all records related to the PPP loan in their files for a period of six (6) years after the date the loan is either forgiven or repaid in full, and to permit the SBA to access such files upon request.***

# *Documenting Rehires/Refusals*

- If a terminated employee rejects a good faith, written rehire offer from Borrower at same salary and for same # of hours, loan forgiveness shall not be reduced with respect to that employee, provided Borrower has documented the offer and employee's rejection.
- In addition, employees who, during the Covered Period, (a) were fired for cause, (b) voluntarily resigned or (c) voluntarily requested & received a reduction of their hours, will not reduce the borrower's loan forgiveness.

## *What If Loan Is Not Forgiven?*

- For any loan amounts not forgiven, the original loan terms – two-year maximum loan at 1% interest rate with payments deferred for the first six months – will apply.
- No prepayment penalties or fees.

# *Pending Legislation*

- Congress is currently considering a number of changes to the PPP program including:
  - i. eliminating the 75% rule; and
  - ii. extending the 8-week period up to 24 weeks.
- Until any changes are enacted into law or until the Treasury Department and SBA change any regulations and guidance, the current rules apply to all borrowers.

# QUESTIONS?

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Guidance for Reopening Your Restaurant or Bar  
SAFELY | TOMORROW | 3pm

Reopen our Community's Restaurants Petition to  
Governor Walz

Go to [www.rochestermnchamber.com](http://www.rochestermnchamber.com) to sign



City program to expedite expansion of outdoor  
dining More info:

<https://www.rochestermn.gov/Home/Components/News/News/7762/1121?backlist=%2f>