



CARES Act: Paycheck Protection Program Loan Forgiveness Update

May 29, 2020

In partnership with: **GRA** 
GEORGIA RESTAURANT ASSOCIATION

Goals For This Webinar

We will discuss:

- PPP Loan current issues, events and statistics (SBA website)
- Certification update – Over and Under \$2 million
- New SBA PPP Forgiveness Application – Form 3508 and instructions
- Forgiveness calculation latest developments:
 - Forgiveness period defined
 - Incurred and Paid definitions
 - Ordering rules for various calculations
 - Salary and Hourly Wage reduction calculation
 - Full time equivalent (FTE) reduction calculation
 - Application of the 75% payroll cost rule
- Documentation necessary to maximize and verify your qualified expenses during the 8-week forgiveness period.
- Qualifying strategies

Paycheck Protection Program (PPP) Update (through May 23rd, 2020)

- \$511 billion in PPP loans
- 4,426,118 PPP loans were approved
- Average PPP loan size – \$116,000
- 30,085 loans over \$2 million (additional SBA scrutiny)

PPP Loans

Updates

- The SBA has released the PPP loan forgiveness application (Form 3508).
- The SBA forgiveness application does not change the basic fundamentals of the PPP, as written:
 - The PPP loan is primarily intended to be used for employee retention.
 - Up to 100% of the PPP loan principal and accrued interest may be forgiven.
 - The loan proceeds are to be used for payroll costs, rent/lease payments, interest payments and utility payments.
 - The 8-week forgiveness period has not changed.
 - The statutory 25% wage and FTE reduction calculations have not changed.
 - The SBA 75% payroll cost rule has not changed.
- The amount of the PPP loan forgiveness is not taxable at the federal level, but the IRS has ruled that related expenses are not deductible.
- Proposed legislation that could significantly impact the PPP.

PPP Loan Initial Good Faith Certification Treatment by the SBA

- Upon submission of your PPP application, all borrowers were required to certify in good faith that “*current economic uncertainty makes this loan request necessary to support the ongoing operations of the business.*”
- Due to concern surrounding the potential government treatment of these good faith certifications, some companies were considering repayment of their PPP loan by the May 18th, 2020 repayment safe harbor date.
- On May 13th, 2020, the Treasury issued the following guidance:
 - PPP loans under \$2 million good faith certification **safe harbor** – the SBA will deem any company with under \$2 million of PPP loan funding to have made the required certification concerning the necessity of the loan request in good faith.
 - PPP loans greater than \$2 million – the SBA will review those loans and consider individual circumstances to determine if the company had an adequate basis for making the good-faith certification related to the necessity of the PPP loan. If your good faith certification is deemed unacceptable, you will need to repay the loan (presumably immediately).
- This was good news for all PPP loan recipients, as there will be no administrative enforcement action taken.
- Make your case through a written narrative, cash flow projections, key performance indicators and any specific examples of business issues now and in the future.

How do I receive CARES PPP Loan Forgiveness?

- Complete SBA Form 3508.
- Complete SBA Form 3508 PPP Schedule A (payroll cost total).
- Complete SBA Form 3508 PPP Schedule A Worksheet (detailed payroll cost calculations).
- Optional – Complete the Demographic schedule.
- Verifying documents and FTE/25% reduction calculations are required.
- You must submit your completed SBA Form 3508 along with Schedule A to the lender that is servicing your PPP loan. Although not required, we recommend submitting the Schedule A worksheet as well.
- The lender has a 60-day period to render a decision on the forgiveness application from the date it is submitted, and the SBA has an additional 90-day period to review.

When should I apply for PPP Loan Forgiveness?

- Your 8-week Covered Period begins on the day you receive your PPP funding and ends 56 days later.
- The forgiveness application should be filed:
 - As soon as possible after your 8-week (56 day) Covered Period ends,
 - After all payments of forgivable expenses have been made (including next payroll and next billing cycle payments), and
 - All required documentation has been gathered (your application will be rejected without including proper supporting documentation).
 - If you are taking advantage of the safe harbors for either the 25% wage/hourly rate reduction, or the FTE reduction, you will need to wait to apply for forgiveness until after June 30th, 2020.

Notable Items on the SBA Form 3508 and Completion Tips

- Additional certifications are required as part of the Form 3508 related to PPP loan usage, eligible cost verification, tax document certifications, and an acknowledgment that the SBA may ask for additional information.
- For PPP loans in excess of \$2 million, the lender will be evaluating your original “need” certification.
- For companies with biweekly or more frequent payroll periods, you may elect an Alternative Payroll Covered Period, if desired.
- You may elect a simplified Full Time Equivalent (FTE) calculation method for determining any reduction in your forgiveness amount associated with a decrease in FTEs.
- Complete the Schedule A Worksheet first; then complete Schedule A; and finally complete the actual Form 3508.
- Form 3508, Schedule A Worksheet separates employees you paid during your Covered Period into the following:
 - Table 1: employees making less than \$100,000 on an annualized basis and were employed all of 2019 by you, or employees not employed at any time by you in 2019.
 - Table 2: employees making more than \$100,000 on an annualized basis for any pay period in 2019.
 - Owner-employees, self employed individuals and/or partners should not be included in Table 1 or Table 2. They are to be separately included on Line 9 of Schedule A.

How is the forgiveness period defined?

- There are now two potential forgiveness periods – the Covered Period (“CP”) and the Alternative Payroll Covered Period (“APCP”).
- The forgiveness CP is now defined as 56 calendar days beginning ON the date you received the PPP loan disbursement (for example, if you received your loan on Wednesday, April 22nd, the last day of your covered period is Tuesday, June 16th – 56 calendar days later).
- For employers with bi-weekly or more frequent payroll periods, an APCP may be elected that begins on the first day of the first payroll period following your PPP loan disbursement date (for example, if you received your PPP loan disbursement on Wednesday, April 22nd and your next payroll period begins Saturday, May 2nd, then your APCP, if elected, will be the 56 days beginning Saturday, May 2nd and ending Friday, June 26th).
- You should consider making the APCP election if:
 - It is administratively convenient for your payroll period to coincide with your CP, or
 - A shift in CP for payroll costs will allow for inclusion of a higher amount in your total eligible payroll costs.
- The APCP only applies to payroll costs. You will need to use the CP (beginning with your funding date) as your forgiveness period for qualifying rent, utilities and interest.

How are “Incurred and Paid” Costs Defined?

- Significant clarification for eligible Payroll Costs:
 - Payroll costs incurred during your CP/APCP **and** payroll costs paid during your CP/APCP are both eligible for forgiveness.
 - Payroll Costs are considered “incurred” on the day that the employee’s pay is earned.
 - Payroll costs are considered “paid” on the day paychecks are distributed or an ACH credit transaction is originated.
 - Payroll costs incurred but not paid during the last pay period of the CP/APCP are eligible for forgiveness if paid on or before the next regular payroll date, even if that next payroll date is after the CP/APCP. Otherwise, payroll costs must be paid during the CP or the APCP.
- To qualify for forgiveness, all eligible non-payroll costs (rent, utilities and interest) must either be:
 - Paid during the CP, or
 - Incurred during the CP and paid on or before the next regular billing date, even if the billing date is after the CP.
- Non-payroll costs both paid **and** incurred during your CP will qualify for forgiveness.

Ordering of PPP Loan Forgiveness Calculation

- **Step 1:** Calculate the total amount of expenses eligible for forgiveness.
- **Step 2:** Calculate the salary/hourly wage reduction amount and subtract that from your total eligible forgiveness amount.
- **Step 3:** Calculate the FTE Reduction Quotient (it will be 1.0 or less) and multiply that quotient by the reduced forgiveness amount calculated in Step 2. This will be the “Modified Total.”
- **Step 4:** Calculate the 75% payroll cost requirement by dividing the total payroll costs in your eligible forgiveness amount by 0.75.
- **Step 5:** Compare your total PPP loan amount, your Modified Total and your 75% payroll cost requirement amount. The smallest amount of these three is your PPP loan forgiveness amount.

How to Calculate the 25% Salary and Hourly Wage Loan Forgiveness Reduction

- The result of the calculation is a dollar amount reduction to the total eligible forgiveness amount.
- It is now clear that, for the 25% salary/hourly wage reduction calculation, you only include employees that you paid during your CP/APCP.
 - All employees terminated for any reason prior to your CP/APCP will be accounted for in the FTE reduction calculation. Excluding them from the 25% salary/hourly wage reduction calculation avoids those employees being double-counted in both reduction calculations.
 - For employees terminated during your CP/APCP, you should only calculate any salary/hourly wage reduction for the time they were employed during your CP/APCP.
- The calculation is set forth in the instructions to the PPP Schedule A Worksheet.
 - **Step 1:** For each employee paid during your CP/APCP, divide:
 - The average annual salary or hourly wage during the CP/APCP, by
 - The average annual salary or hourly wage during from January 1, 2020 to March 31, 2020.
 - **Step 2:** If the result in Step 1 is 0.75 or more, there is no reduction for this employee.
 - **Step 3:** If the result in Step 1 is below 0.75, then you must:
 - Determine if the employee qualifies for the June 30th, 2020 salary/wage reinstatement safe harbor, or
 - Calculate the reduction amount.

Example: 25% Salary and Hourly Wage Reduction Calculation

- A salaried employee makes an annualized \$50,000 from January 1, 2020 through March 31, 2020, so salary on February 15th, 2020 was an annualized \$50,000.
- The salaried employee makes an annualized \$35,000 during the CP/APCP (salary was reduced to \$35,000 on April 1st, before PPP funding).
- During the period February 15th through April 26th, the employee makes an annualized salary of \$44,690 (45 days/71 days x \$50,000 plus 26 days/71 days x \$35,000).
- The employee is paid 70% of their February 15th salary (\$35,000/\$50,000), and has therefore had a salary reduction greater than 25%.
- Since the salary reduction occurred before April 26th, 2020, if the employee's salary is restored to \$50,000 by June 30, 2020, there is no statutory reduction.
- If the employee's salary is not restored, there is a reduction in loan forgiveness for this employee of **\$385**, calculated as follows:
 - \$2,500 (\$50,000 1st quarter salary x 75% less \$35,000 CP/APCP salary), which represents the annualized salary reduction
 - Scale down the \$2,500 annualized amount by dividing by 52 weeks and then multiplying by 8 weeks = \$385.
- For an hourly worker, the same calculation would apply, but using the hourly rate (i.e., \$12/hour) to determine any reduction, and then multiplying the hourly rate reduction by the 8 weeks of reduced hours. So, if you reduced a 40 hour per week hourly worker from \$12/hour to \$8/hour, unless the employee qualifies for the June 30th restoration safe harbor, your loan forgiveness is reduced by **\$320** (\$12 x 75% minus \$8 = \$1 x 40 hours/week x 8 weeks).

How to Calculate Your Average Full Time Equivalent (FTE)

- The SBA has defined an FTE as 40 hours per week for purposes of this calculation.
- For each employee, determine the average number of hours paid per week during the CP/APCP and divide by 40 hours. The result is capped at 1.0.
- For this calculation you must include employees terminated for any reason during your CP/APCP (but see exceptions below).
- Exceptions: Include as a 1.0 in the Average FTE column on the Schedule A Worksheet Tables 1 and 2 any employee that:
 - You made a good-faith, written offer to rehire during your CP/APCP which was rejected (documented) by the employee, or
 - Was fired for cause, resigned, or asked for an hours reduction.
 - If you replaced these employees, do not include them on the Schedule A Worksheet as your FTE calculation would be overstated since the new employee would be included.
 - If you did not replace these employees, they need to be included on the Schedule A Worksheet since the total FTE will be compared to your selected prior FTE reference period.
- Owner-employees, self-employed individuals and partners are not included in the FTE calculation (the FTE calculation is based on the Schedule A Worksheet which specifically excludes owner-employees, self-employed individuals and partners).

The Simplified Method for Calculating Average FTEs

- There is a simplified method that can be elected, assigning the following quotients:
 - 1.0 for employees who worked 40 hours or more per week, and
 - 0.5 for employees who worked less than 40 hours per week.
- Who should elect?
 - Our advice is to calculate your average FTEs using both the prescribed method and the simplified method, selecting the higher result of the two methods.
 - If the majority of your part-time employees work less than 20 hours per week, then the simplified method may be beneficial as those employees will be assigned a quotient of 0.5 rather than perhaps a lower quotient.

How to Calculate Your FTE Loan Forgiveness Reduction Quotient

- **Step 1:** You must select your FTE Reference Period to compare to your CP/APCP FTE calculation. You should follow the same 40 hour per week methodology, capped at 1.0, in calculating your FTEs for your elected Reference Period, which is either:
 - February 15, 2019 through June 30, 2019, or
 - January 1, 2020 through February 29th, 2020.
 - We recommend calculating both periods and choosing the period with the lowest result.
- **Step 2:** To determine your FTE Reduction Quotient, divide your FTEs calculated for your CP/APCP. (Schedule A Worksheet, Tables 1 and 2) by the FTEs calculated for your elected Reference Period. The result is your FTE Reduction Quotient, and if less than 1.0, will reduce your loan forgiveness. The FTE Reduction Quotient cannot be greater than 1.0.
- **Step 3:** You will multiply your FTE Reduction Quotient by total qualified expenditures (net of salary/hourly wage reduction) to derive the forgivable loan “Modified Total.”

How to Determine if the FTE Safe Harbor Rule Applies to You

- For the FTE safe harbor:
 - **Step 1:** Calculate your average FTE for the period February 15th, 2020 through April 26th, 2020 using the same 40 hour per week methodology.
 - **Step 2:** Calculate your average FTE for the pay period that includes February 15th, 2020 using the same 40 hour per week methodology.
 - If the resulting FTE in Step 1 is less than the FTE in Step 2, and by June 30th, 2020 your FTE is restored to the Step 2 level, then you qualify for the FTE safe harbor and there is no statutory FTE loan forgiveness reduction, and you enter 1.0 as your FTE Reduction Quotient.
- There seems to be a second safe harbor that is included on the PPP Schedule A that allows you to compare your FTEs for January 1st, 2020 to your FTEs on the last day of your CP. If the FTEs for the last day of your CP are equal to or greater than your FTEs on January 1st, 2020, then you qualify for this second safe harbor with no FTE reduction in your forgiveness amount.

Payroll Cost 75% Requirement

- Despite some speculation, this has not changed.
- Also despite some speculation, you do not lose all of your PPP loan forgiveness if you don't spend 75% on payroll costs. Your forgiveness just gets capped.
- Simply divide your total payroll costs as calculated by 0.75.
- The result will be the cap for your total PPP loan forgiveness.
- For example, your PPP funding is \$230,000. If your total payroll costs during your CP/APCP are \$150,000, then the maximum forgivable amount will be \$200,000 ($\$150,000 / .75$). The remaining \$30,000 will be repayable over 2 years at 1% interest.

Your Final PPP Loan Forgiveness Amount

- You now have calculated the following amounts:
 - Your original PPP loan amount,
 - The “Modified Total” forgiveness amount (calculated after all statutory reductions), and
 - The total forgivable amount capped by the 75% Payroll Cost Requirement.
- The lowest amount of these three amounts is your PPP loan forgiveness amount.

Specifically, what records will I need to SUBMIT with my PPP loan forgiveness application for payroll costs?

- Payroll documentation verifying the eligible cash compensation and non-cash benefits payments from the Covered Period or the Alternative Cover period, including the following:
 - Bank account statements or third-party payroll service provider reports.
 - Tax forms or equivalent third-party service provided reports:
 - Payroll tax filings (e.g. Form 941), and
 - State wage reporting and unemployment insurance tax filings.
 - Payment receipts, cancelled checks, or account statements documenting the amount of employer contributions to the following:
 - Employee health insurance, or
 - Retirement plans.
- FTE documentation showing the following (at your election):
 - The average monthly FTEs for the period February 15, 2019 through June 30, 2019, or
 - The average monthly FTEs for the period January 1, 2020 through February 29, 2020, or
 - In the case of a seasonal employee, the average monthly FTE at one of the above or any consecutive twelve week period between May 1, 2019 and September 15, 2019.
 - Documents may include the following:
 - Payroll tax filings (e.g. Form 941), and
 - State wage reporting and unemployment insurance tax filings.

Specifically, what records will I need to SUBMIT with my PPP loan forgiveness application for non-payroll costs?

- Non-payroll documentation verifying the existence of the obligations/services prior to February 15, 2020, including the following:
 - Business mortgage interest payments – copy of lender amortization schedule or lender account statements and receipts or cancelled checks verifying payments.
 - Business rent or lease payments – copy of current lease agreement or lessor account statements and receipts or cancelled checks verifying payments.
 - Business utility payments – copy of invoices from February 2020 and those paid during the covered period and receipts or cancelled checks verifying payments.

Specifically, what records will I need to MAINTAIN, but not submit with my PPP loan forgiveness application?

- Documentation supporting the listing of each individual employee included in your forgiveness application to support the following calculations during the covered period or Alternative Payroll Covered Period (at your election):
 - Cash compensation
 - Average FTE
 - Salary/Hourly Wage Reduction
- Documentation regarding any of the following exceptions to the FTE calculations:
 - Employee job offers and refusals,
 - Firings for cause,
 - Voluntary resignations, and
 - Written requests by any employee for reductions in work schedule
- Documents supporting FTE Safe Harbor calculations:
 - Payroll tax filings (e.g. Form 941), and
 - State wage reporting and unemployment insurance tax filings.

Qualifying “Payroll Cost” Strategies

- Ensure you are including ALL eligible costs in your total payroll costs.
 - Gross payroll, gross tips, gross commissions, paid leave, separation pay, etc.
 - Bonuses paid during the CP/APCP.
 - Include all contributions retirement contributions (excluding employee portion withheld from their gross payroll).
 - Include as health insurance all group health, dental, vision, etc. payments.
- Consider limitations:
 - Remember the \$100K annualized limitation
 - For owner-employees, self-employed individuals and partners, you are capped at the lower of \$15,385 or your 8-week equivalent 2019 compensation (so any CP/APCP owner compensation increase will not be eligible for forgiveness).
- For owner-employees, self-employed individuals and partners, include on Line 9 of PPP Schedule A your CP/APCP paid compensation as limited to \$15,385. While the original FAQ stated that retirement plan payments and health insurance premiums would be included as a forgivable expense, the new PPP Schedule A indicates those items are no longer considered forgivable and should not be included on Line 9.
- S corporation shareholders with 2% or less ownership interest should be considered employees for payroll cost purposes.
- Follow the payroll cost incurred and paid guidelines.
- Consider electing the APCP to maximize payroll costs.
- Remember, the higher your payroll costs, the higher the 75% payroll cost cap will be.

Qualifying Interest Expense on “Covered Mortgage Obligations” Strategies

- Only payments of interest paid during your CP will qualify, including interest paid after your CP on the next billing cycle.
- Qualifying debt is:
 - Any secured debt obligation,
 - On real or personal property,
 - Incurred before February 15th, 2020.
- Debt that is **secured** by assets, stock, intangibles, etc. should qualify.
- Prepayments of interest expense do not qualify for forgiveness.
- CP for this purpose cannot be the APCP.

Qualifying “Covered Rent” and Lease Payment Strategies

- Only rent or lease payments paid during the CP, or incurred during the CP and paid on or before the next regular billing date, even if the billing date is after the CP.
- Interestingly, the SBA definition does not exclude (or specifically include) prepayments of rent/lease. Keep an eye on this.
- Rent or lease payments can be for both real and personal property.
- Rent and lease agreements must have been in place before February 15, 2020.
- CP for this purpose cannot be the APCP.

Qualifying “Covered Utility” Payment Strategies

- Only qualifying utility payments paid during the CP, or incurred during the CP and paid on or before the next regular billing date, even if the billing date is after the CP.
- “Covered utility payments” are defined as payments for services for the distribution of electricity, gas, water, transportation (may include fuel costs), telephone, or internet access.
- Utility service contracts must have been in place before February 15th, 2020.
- CP for this purpose cannot be the APCP.

Other Forgiveness Strategies

- Maximize your payroll costs. Consider paying bonuses during your CP/APCP to avoid salary reduction provisions.
- Make sure you understand when your 56 day Covered Period begins and ends. Do not forget to pay as many expenses as possible during your CP/APCP, using the exceptions for forgivable expense payments made outside the CP/APCP only as necessary.
- Document your good faith need certification and your forgiveness calculation.
- Remember, if your loan amount exceeds your forgiveness amount, you repay the unforgiven loan amount at 1% over 2 years (actually 18 months when factoring in the 6 month deferral period).
- There are no restrictions on making staffing changes or restructuring employee pay after June 30, 2020.
- Assess need to make corporate income tax payments and/or distributions to owners for income taxes during the CP/APCP.

More to follow.....

- SBA will be issuing additional guidance on PPP loan forgiveness shortly.
- Be prepared for changes.

Questions? Contact us for help



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