



# Payroll Protection Program and Loan Forgiveness 2.0

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September 30, 2020 | Presented by:

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# Today's **Speakers**



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# Highlights

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- Paycheck Protection Flexibility Act
- New Interim Final Rules
- The program rules for loan forgiveness
- How to receive 100% forgiveness with FTE reduction
- Questions and Answers

# PPP Loan Forgiveness Eligible Expenses

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Loan forgiveness – costs during covered period beginning on loan disbursement date. Legislation extends period to earlier of 24 weeks or December 31, 2020

- Payroll Costs (gross wages <\$100,000, vacation/sick leave, employer paid group health care and retirement benefits, SUTA) – at least 60% must be this category
  - Wages
    - Alternative Payroll Covered Period – first day of next pay period (eligible if payroll schedule is bi-weekly or more frequent only)
    - Amounts paid or incurred during covered period
      - The first payroll you pay in covered period counts, even though it's for days worked before the covered period started
      - For the payroll paid after the covered period ends, count the days worked within the covered period (you get a portion of this payroll)
    - Interim Final Rule indicates bonuses, hazard pay, etc. are eligible for forgiveness

# PPP Loan Forgiveness Eligible Expenses

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- Payroll Costs (continued)
  - Health Insurance
    - Paid or incurred during covered week period
    - Includes self-insurance
    - Reduced by employee contributions
    - It appears accrued costs paid during the covered period will count toward forgiveness (additional guidance may be forthcoming)
  - Retirement
    - Paid or incurred during the covered period
    - No limitation outlined in forgiveness application
    - It appears accrued costs paid during the covered period will count toward forgiveness (additional guidance may be forthcoming)
  - Employer-level state taxes
    - Amounts paid by the borrower assessed on employee compensation
    - State withholding taxes are not included

# PPP Loan Forgiveness Eligible Expenses

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- Wages – Maximums for employees and owners
  - Maximum EE comp is \$46,154 ( $\$100,000 / 52 \times 24$ ) for 24 weeks
    - For less than 24 weeks, the max is  $\$100k / 52 \text{ weeks} \times \# \text{ weeks you choose}$
    - For example, 12 weeks would be  $\$100k / 52 \times 12 = \$23,077$
  - Owner-employees, self-employed individuals and self-employed partners
    - Max comp is 8/52 of 2019 compensation for 8 week period (\$15,385)
    - Max comp is 2.5 / 12 of 2019 compensation for 24 week period (\$20,833)
      - Use at least 11 weeks to maximize owner comp eligible for forgiveness
    - Owner-employee for C or S corp is someone who owns 5% or more of company

# PPP Loan Forgiveness Eligible Expenses

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- What to include for owners – it depends on entity type
  - Compensation
    - Use 2019 compensation to determine maximum eligible for forgiveness
    - For 8 week period – maximum is \$15,385
    - For 24 week period – maximum is \$20,833 (need 11+ weeks to hit this max)
    - C Corp / S Corp – use wages.
      - Must pay out via wages during covered period in 2020
    - 1065 (partnership) – use 92.35% of: 2019 SE income less Sec 179 exp
      - Also subtract unreimbursed partnership expenses and depletion
    - Sch C – use 2019 Sch C net income
  - Health Insurance
    - Only include for C Corp owners
    - Do not include for Sch C, 1065 (partnership), or S Corp owners
  - Retirement
    - Include for C Corp or S Corp owners
    - Do not include for Sch C or 1065 (partnership) owners



# PPP Loan Forgiveness Eligible Expenses

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- Non-Payroll Costs
  - Eligible expenses limited to the following:
    - Rent or lease payments in place prior to February 15, 2020
    - Interest on mortgage obligation in place prior to February 15, 2020
      - Rent and mortgage interest are for both real estate, and personal property
      - Leases for equipment, copiers, vehicles, etc. all count
    - Utilities (electricity, gas, water, telephone, internet and transportation)
  - Must be paid or incurred during covered period and paid on or before the next regular billing date
  - It does not appear that pre-payments are forgivable
  - Borrowers can elect to exclude any amount of non-payroll costs as part of their loan forgiveness application

# PPP Loan Forgiveness Eligible Expenses

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- **Related Party Rent**
  - New Interim Final Rule limits related party rent to the mortgage interest paid by the related party
    - Any common ownership is a related party situation for this purpose
    - If the mortgage is held by a related party, the mortgage interest is not an eligible cost
    - There is not specific guidance on family relationships for the related party rules
      - For example, if one spouse owns the business and the other spouse owns the real estate
      - We recommend taking a conservative approach and assume that in this instance, the related party rent rules will apply
- **Home office rules**
  - Expenses used for the home office that are included in eligible costs can be used for loan forgiveness
  - Mortgage interest, rent, and utilities

# Reductions in Loan Forgiveness (FTEs)

- Decrease in FTE headcount during covered period
  - Uses a 40-hour workweek as a base
  - Any employee working less than 40 hours is a fractional employee (rounded to nearest tenth) or borrowers can elect to count all PT employees as ½ FTE
  - Two look back periods for FTE threshold
    - Average monthly FTE for
      - 1/1/20 - 2/29/20 or
      - 2/15/19 - 6/30/19
      - Pick the lower one for your threshold
    - Meet / exceed that FTE during covered period or part of loan is not forgiven
    - FTE Safe Harbor - If lower FTE between 2/15 and 4/26, and re-hire to 2/15/20 FTE level by / before December 31, 2020, no reduction in forgiveness
- No penalty if offer to return to work is denied (in writing), terminated for cause, voluntarily resigned or requested reduction of hours – must report denials to unemployment bureaus
- There are two new alternatives for a borrower to restore a potential reduction in forgiveness:
  - An inability to find qualified employees to replace those let go, and
  - An inability to restore the business operations to February 15, 2020, levels due to COVID-19-related operating restrictions

# Reductions in Loan Forgiveness (Wages)

- Decrease in an individual employee's wages
  - Can't drop anyone's wages more than 25%
  - Exception for those who made > \$100k annualized for **any** 2019 pay period
    - Excluded from wage reduction calculation
  - Look at the employee's average wages during the period 1/1/20-3/31/20
    - Pay them at least 75% of that amount during the covered period
  - Wage Reduction Safe Harbor – If the employee's annualized wages from February 15 - April 26, 2020, are less than the annualized wages on February 15, 2020 (because wages were reduced during this period), and the employee's June 30 or December 31, 2020, annualized wages are greater than or equal to the employee's February 15, 2020, annualized wages, loan forgiveness does not need to be reduced for this calculation.



# Accumulating Documentation Incurred and Paid

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- The SBA Forgiveness Application lists specific documentation that must be included with the application, and additional documentation that must be retained for 6 years
- If the loan is not forgiven, the term has been extended to five years from the previous two years, interest rate is still at 1%.
  - Not automatic 5 year loan, have to contact bank to change terms
- The IRS Notice 2020-32 conclusion that expenditures producing loan forgiveness are non-deductible, thus the forgiveness is effectively taxable.
- Companies that participate in the Payroll Protection Program Loan program will be eligible to defer the company portion of payroll taxes throughout 2020. This is a change from being eligible for the payroll tax deferral only through the date a company receives loan forgiveness

# Questions and Answers

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# Contact Information

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# Thank You!

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