



# Payroll Protection Program Loan Forgiveness

Updates from PPP Flexibility  
Act of 2020

June 12, 2020

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# Speaker Introduction



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# Agenda

- Updates to PPP program from Paycheck Protection Program Flexibility Act passed June 3, 2020
- Updates to deferral of employer payroll taxes
- Revisiting FFCRA: Federal paid leave credit
- Common questions
- Interactive Q&A

# Paycheck Protection Program Flexibility Act

## Executive Summary

- **24 weeks** forgiveness period (instead of 8 weeks), but if already funded, can choose either 8 weeks or 24 weeks
- **5 years** minimum maturity period (instead of 2 years)
- **December 31, 2020** is the end of covered period (was June 30, 2020)
- **60%** minimum to use on payroll cost (was 75%)
- **40%** maximum to use on nonpayroll cost (was 25%)
- Defer 6.2% employer social security payroll taxes **through December 31, 2020**

# PPP Loan Forgiveness Eligible Expenses

Loan forgiveness – cost during 24 week period beginning on loan disbursement date **through the 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 75% must be this category **(Reduced to 60% but if this percentage is not met, then there will be no forgiveness according to the bill. The SBA and Treasury announced on Monday that they will interpret the bill as allowing partial forgiveness.**
  - 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 24 week (168 day) period Payroll costs are considered incurred on day employee’s pay is earned
      - Payroll costs paid in the first regular payroll period after the 24-week period are allowed
    - Owner-employees, self-employed individuals and self-employed partners
      - Maximum compensation was originally 8/52 of 2019 compensation. **The new legislation is unclear if the change will now be 24/52, we should get more clarification from the SBA.**
    - Interim Final Rule (5.22.2020) indicates bonuses, hazard pay, etc. are eligible for forgiveness, but max comp for forgiveness per EE is \$15,385 **We expect this maximum pay to be increase to \$46,154 (\$100,000/52X24)**

# PPP Loan Forgiveness Eligible Expenses

- Payroll Costs (continued)
  - Health Insurance
    - Paid or incurred during covered period (8-weeks or 24 weeks)
    - 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) (8<sup>th</sup> week or now the 24<sup>th</sup> week)
  - Retirement
    - Paid or incurred during the covered period (8-weeks or 24 weeks)
    - No limitation outlined in forgiveness application
    - It appears accrued costs paid during the covered period will count toward forgiveness (additional guidance may be forthcoming) (8-weeks or 24 weeks)
  - Employer-level state taxes
    - Amounts paid by the borrower assessed on employee compensation
    - State withholding taxes are not included

# PPP Loan Forgiveness Eligible Expenses

- 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 (now the 8 or 24 week period and an accrual for the last period paid after the 8<sup>th</sup>/24<sup>th</sup> week)
  - 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



# Front-end Documentation and Calculations

- Need proper documentation for loan forgiveness
- Document the expense's existence as of 2/15/2020
  - Utilities, health insurance
    - Copy of the bills from February through end of covered period (8<sup>th</sup> or 24<sup>th</sup> week)
  - Rent – copy of the lease or lessor statement of payments
  - Mortgage Interest – statements Feb thru covered period (8 or 24 week period)
  - Retirement / Health – bank statements, checks, acct statements
  - Do your look-back calculations:
    - Full-time equivalents (2 different periods)
    - Last full quarter average wages per employee

# Reductions in Loan Forgiveness (FTEs)

- Decrease in FTE headcount during covered period **Now 8 or 24 weeks**
  - 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 part-time 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 (**8 or 24 weeks**) 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 June 30<sup>th</sup> **Now 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 (now 8 or 24 weeks)
  - 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, 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

- For each qualified expense – show it is *incurred*
  - Enter it into your tracking spreadsheet
  - Retain the supporting document (wage report, utility bill)
    - Ensure the document ties or reconciles to the payment made
  - Build your file as you go along
    - You can always remove expenses / documents if they are no longer relevant after guidance is issued
- For each qualified expense – show it is *paid*
  - Bank / credit card statement, ACH or wire receipt, cancelled checks, bank transcripts, etc. showing the payment
    - May need to reconcile gross wages to cash disbursements
      - Payroll is disbursed as net wages and taxes (include both employee vs employer)

# Accumulating Documentation Incurred and Paid (continued)

- 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%
- The IRS Notice 2020-32 conclusion that expenditures producing loan forgiveness are non-deductible which effectively renders Section 1106(i) meaningless; 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**

# CARES Act

## Deferral of Employer's Share of SS Tax

Effective Date March 27, 2020 – December 31, 2020

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Enforcement IRS

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Resources See Links Below

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- [IRS FAQ's on Deferral of Employment Taxes](#)

# CARES Act

## Deferral of Employer's Share of SS Tax

- The deferral option applies to the employer-portion of Social Security tax (6.2% of wages up to \$137,700 for 2020) under IRC Section 3111(a) and for employers covered by the Railroad Retirement Tax Act (RRTA), the taxes imposed under IRC Section 3221(a) as are attributable to the rate in effect under IRC Section 3111(a) (collectively referred to as the “employer’s share of Social Security tax”)
- To be treated as timely paid, and to avoid the failure to deposit penalty, the employer’s share of Social Security tax must be repaid and deposited by the following dates:
  - By December 31, 2021, 50% of the deferred amount
  - By December 31, 2022, the remaining amount

# CARES Act

## Deferral of Employer's Share of SS Tax

- Although this deferral option applies to payments of the employer's share of Social Security tax that would otherwise be required to be made during the period beginning on March 27, 2020, and ending December 31, 2020, the Form 941, *Employer's QUARTERLY Federal Tax Return*, will not be revised to reflect the deferral option (or the FFCRA paid leave and CARES Act employee retention credits) until the second quarter covering the period April 1 to June 30, 2020
- <https://www.irs.gov/pub/irs-dft/f941--dft.pdf>



# CARES Act

## Deferral of Employer's Share of SS Tax

950220

Name (not your trade name)	Employer identification number (EIN)
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**Part 1:** Answer these questions for this quarter. (continued)

11d	Total nonrefundable credits. Add lines 11a, 11b, and 11c . . . . .	11d	<input type="text"/>
12	Total taxes after adjustments and nonrefundable credits. Subtract line 11d from line 10 . . . . .	12	<input type="text"/>
13a	Total deposits for this quarter, including overpayment applied from a prior quarter and overpayments applied from Form 941-X, 941-X (PR), 944-X, or 944-X (SP) filed in the current quarter . . . . .	13a	<input type="text"/>
13b	Deferred amount of the employer share of social security tax . . . . .	13b	<input type="text"/>
13c	Refundable portion of credit for qualified sick and family leave wages from Worksheet 1 . . . . .	13c	<input type="text"/>
13d	Refundable portion of employee retention credit from Worksheet 1 . . . . .	13d	<input type="text"/>
13e	Total deposits, deferrals, and refundable credits. Add lines 13a, 13b, 13c, and 13d . . . . .	13e	<input type="text"/>
13f	Total advances received from filing Form(s) 7200 for the quarter . . . . .	13f	<input type="text"/>
13g	Total deposits, deferrals, and refundable credits less advances. Subtract line 13f from line 13e . . . . .	13g	<input type="text"/>
14	Balance due. If line 12 is more than line 13g, enter the difference and see instructions . . . . .	14	<input type="text"/>
15	Overpayment. If line 13g is more than line 12, enter the difference <input type="text"/>	Check one:	<input type="checkbox"/> Apply to next return. <input type="checkbox"/> Send a refund.

DRAFT AS OF  
April 29, 2020  
DO NOT FILE

# Decision Tree:

## Did your business take the PPP loan?



YES

- You are **not** eligible for the CARES Act employee retention credit, but you could be eligible for the FFCRA paid leave credits if you have fewer than 500 employees
- You can opt to defer payment of the employer portion of Social Security tax through December 31, 2020



NO

- You may claim both the FFCRA paid leave credits and the CARES Act employee retention credit, but not on the same wages
- You can opt to defer payment of the employer portion of Social Security tax through December 31, 2020

# FFCR Act

## Federal Paid Leave

**Effective Date** April 1, 2020 – December 31, 2020

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- Eligible quarters

**Enforcement** U.S. Department of Labor

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- Wage & Hour Division (WHD)

**Resources** See Links Below

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- [Fact Sheet for Employees](#)
- [Fact Sheet for Employers](#)
- [FAQ's](#)

# FFCRA & CARES Act Credits

Read the separate instructions before you complete Form 941. Type or print within the boxes.

**Part 1:** Answer these questions for this quarter.

<b>1</b>	Number of employees who received wages, tips, or other compensation for the pay period including: <i>June 12</i> (Quarter 2), <i>Sept. 12</i> (Quarter 3), or <i>Dec. 12</i> (Quarter 4)	<b>1</b>	<input type="text"/>
<b>2</b>	Wages, tips, and other compensation	<b>2</b>	<input type="text"/>
<b>3</b>	Federal income tax withheld from wages, tips, and other compensation	<b>3</b>	<input type="text"/>
<b>4</b>	If no wages, tips, and other compensation are subject to social security or Medicare tax	<input type="checkbox"/> Check and go to line 6.	
		<b>Column 1</b>	<b>Column 2</b>
<b>5a</b>	Taxable social security wages	<input type="text"/>	<input type="text"/>
<b>5a (i)</b>	Qualified sick leave wages	<input type="text"/>	<input type="text"/>
<b>5a (ii)</b>	Qualified family leave wages	<input type="text"/>	<input type="text"/>
<b>5b</b>	Taxable social security tips	<input type="text"/>	<input type="text"/>
<b>5c</b>	Taxable Medicare wages & tips	<input type="text"/>	<input type="text"/>
<b>5d</b>	Taxable wages & tips subject to Additional Medicare Tax withholding	<input type="text"/>	<input type="text"/>
<b>5e</b>	Total social security and Medicare taxes. Add Column 2 from lines 5a, 5a(i), 5a(ii), 5b, 5c, and 5d	<b>5e</b>	<input type="text"/>
<b>5f</b>	Section 3121(q) Notice and Demand—Tax due on unreported tips (see instructions)	<b>5f</b>	<input type="text"/>
<b>6</b>	Total taxes before adjustments. Add lines 3, 5e, and 5f	<b>6</b>	<input type="text"/>
<b>7</b>	Current quarter's adjustment for fractions of cents	<b>7</b>	<input type="text"/>
<b>8</b>	Current quarter's adjustment for sick pay	<b>8</b>	<input type="text"/>
<b>9</b>	Current quarter's adjustments for tips and group-term life insurance	<b>9</b>	<input type="text"/>
<b>10</b>	Total taxes after adjustments. Combine lines 6 through 9	<b>10</b>	<input type="text"/>
<b>11a</b>	Qualified small business payroll tax credit for increasing research activities. Attach Form 8974	<b>11a</b>	<input type="text"/>
<b>11b</b>	Nonrefundable portion of credit for qualified sick and family leave wages from Worksheet 1	<b>11b</b>	<input type="text"/>
<b>11c</b>	Nonrefundable portion of employee retention credit from Worksheet 1	<b>11c</b>	<input type="text"/>

▶ You MUST complete all three pages of Form 941 and SIGN it.

Next ▶

For Privacy Act and Paperwork Reduction Act Notice, see the back of the Payment Voucher.

Cat. No. 17001Z

Form **941** (Rev. 4-2020)

# FFCR Act

## Federal Paid Leave: Covered Employers

- Employers with fewer than 500 employees and certain government employers, tax exempt organizations, and private employers
- Small businesses with fewer than 50 employees may qualify for an exemption if the leave requirements would jeopardize the viability of the business as a going concern
- Required to post a notice of FFCRA paid leave requirements in conspicuous place on its premises

# FFCR Act

## Federal Paid Leave: Description

- **Emergency Paid Sick Leave** – employers with fewer than 500 employees and government employers to provide covered employees with **2 weeks** of paid leave where the employee who:
  1. Is subject to a Federal, State or local quarantine or isolation order related to COVID 19;
  2. Has been advised by a health care provider to self-quarantine;
  3. Is experiencing COVID-19 symptoms and seeks medical diagnosis
  4. Is caring for an individual subject to an order described in (1) and (2)
  5. (see next slide)
  6. Is experiencing any other substantially similar condition specified by Secretary of HHS, along with Secretaries of Labor and Treasury
- Full-time employees are entitled to 2 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period.
- For #1, 2, & 3 – regular rates (up to \$511/day)
- For #4 & 6 – 2/3 rates (up to \$200/day)

# FFCR Act

## Federal Paid Leave: Description

- ***Paid Expanded Family Leave***— employers with fewer than 500 employees and government employers to provide covered employees with **2 weeks + 10 weeks** of paid leave where the employee who:
  1. (previous slide)
  2. (previous slide)
  3. (previous slide)
  4. (previous slide)
  5. Is caring for a child whose school is closed (or child care provider is unavailable) for reasons related to COVID-19; or
  6. (previous slide)
- Full-time employees are entitled to an additional 10 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical ten-week period.
- For #5 – 2/3 rates (up to \$200/day)

# FFCR Act

## Federal Paid Leave: Employee Protections

- Employers are prohibited from discharging, disciplining or otherwise discriminating against any employee who takes paid sick leave under the FFCRA and/or who files a complaint or institutes a proceeding under or related to the FFCRA's paid leave requirements
- The DOL will observe a temporary period of nonenforcement for the first 30 days after the Act takes effect, so long as the employer has acted reasonably and in good faith to comply with the law



# FFCR Act

## Paid Federal Leave: Documentation

- Employer must get some documentation in support of the reason for leave: including employee name, qualifying reason for requesting leave, statement that employee is unable to work (including telework), dates for which leave is requested
  - If the leave is the result of a medical provider advice, the name of the medical provider.
  - Employer may need to support the right to the credit on audit.

# FFCR Act

## Federal Paid Leave: Requirements

	Reason for Leave	Length of Leave	Leave Pay
1	Subject to federal, state or local quarantine or isolation related to COVID-19	<ul style="list-style-type: none"> <li>FT employee eligible for 80 hours of leave</li> <li>PT employee eligible for number of hours of leave that the employee works on average in two week period</li> </ul>	<ul style="list-style-type: none"> <li>Paid at regular rate or minimum wage, whichever is higher</li> <li>Up to \$511/day or \$5,110 over a <b>2 week</b> period</li> </ul>
2	Advised by health care provider to self-quarantine related to COVID-19	<ul style="list-style-type: none"> <li>FT employee eligible for 80 hours of leave</li> <li>PT employee eligible for number of hours of leave that the employee works on average in two week period</li> </ul>	<ul style="list-style-type: none"> <li>Paid at regular rate or minimum wage, whichever is higher</li> <li>Up to \$511/day or \$5,110 over a <b>2 week</b> period</li> </ul>
3	Is experiencing COVID-19 symptoms and is seeking a medical diagnosis	<ul style="list-style-type: none"> <li>FT employee eligible for 80 hours of leave</li> <li>PT employee eligible for number of hours of leave that the employee works on average in two week period</li> </ul>	<ul style="list-style-type: none"> <li>Paid at regular rate or minimum wage, whichever is higher</li> <li>Up to \$511/day or \$5,110 over a <b>2 week</b> period</li> </ul>
4	Is caring for an individual subject to an order described in (1) above or self-quarantine	<ul style="list-style-type: none"> <li>FT employee eligible for 80 hours of leave</li> <li>PT employee eligible for number of hours of leave that the employee works on average in two week period</li> </ul>	<ul style="list-style-type: none"> <li>2/3 regular rate or 2/3 minimum wage, whichever is higher</li> <li>Up to \$200/day or \$2,000 over a <b>2 week</b> period</li> </ul>

# FFCR Act

## Federal Paid Leave: Requirements

	Reason for Leave	Length of Leave	Leave Pay
5	Is caring for a child whose school or place of work is closed (or child care provider is unavailable) related to COVID-19	<ul style="list-style-type: none"> <li>• FT employee eligible for up to 12 weeks of leave at the number of hours that employee is normally scheduled to work over that period (even if over 40 hours)</li> <li>• PT employee eligible for up to 12 weeks of leave at the number of hours that employee is normally scheduled to work over that period</li> </ul>	<ul style="list-style-type: none"> <li>• 2/3 regular rate or 2/3 minimum wage, whichever is higher</li> <li>• Up to \$200/day or \$12,000 over a <b>12 week</b> period (\$2,000 + \$10,000)</li> </ul>
6	Is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury	<ul style="list-style-type: none"> <li>• FT employee eligible for 80 hours of leave</li> <li>• PT employee eligible for number of hours of leave that the employee works on average in two week period</li> </ul>	<ul style="list-style-type: none"> <li>• 2/3 regular rate or 2/3 minimum wage, whichever is higher</li> <li>• Up to \$200/day or \$2,000 over a <b>2 week</b> period</li> </ul>

# FFCR Act

## Paid Federal Leave: Credits

### Amounts Qualified for Credit

- Add:
  - Wages required to be paid under FFCRA
  - Employer portion of Medicare (1.45%)
  - Cost of employee's health insurance for leave period

### Limits

- Employer may not claim the credits on the wages used to compute the credit under the CARES Act employee retention tax credit
- Employers claiming this credit still qualify for a loan under the Paycheck Protection Program and can defer payment of the employer portion of Social Security tax

### Calculation of the Credit

- Claim 100% of qualified amounts against:
  - Employer portion of SS taxes (6.2%)

# FFCR Act & CARES

## Taking the Paid Leave & Employee Retention Credits

- **Option 1:** Claim on Form 941
  - In Notice 2020-22 the IRS provides penalty relief under IRC Section 6656 for employers that opt to reduce their federal employment tax deposits
  - Employer can reduce the amount of federal payroll taxes and employee income tax withholding in anticipation of the credit due for the quarter
  - The deposit reduction should not exceed the amount of the anticipated employee retention credit
  - If the reduction does not cover the amount paid, a refund will be paid for the balance
  - The employer must have paid qualified retention wages to its employees in the quarter prior to the time of the required deposit
  - The employer should not have sought advance payment on Form 7200

# FFCR Act & CARES

## Taking the Paid Leave & Employee Retention Credits

- **Option 2: Advance Payment Request, Form 7200**
  - The employer can file the form for advance credits anticipated for a quarter at any time before the end of the month following the quarter in which it paid the qualified wages. If necessary, the employer can file Form 7200 several times during each quarter
  - Employers are instructed that they should not file Form 7200 after they file Form 941 for the fourth quarter of 2020, or the annual Forms 943, 944, or CT-1 for 2020. Additionally, employers should not file Form 7200 to request advance credits for any anticipated credit for which they already reduced their federal employment tax deposits
- **Self-employed taxpayers are eligible for an equivalent payment as a credit against income taxes.**

# Common Questions

A complete list of questions, the slides and the recording of this webinar will be available on the [Marcum Coronavirus Resource Center](#).

## Common Questions

Q: Are paystubs/records from our payroll provider sufficient for PPP documentation? Are payroll processing fees deductible as well under PPP?

A: Yes.



## Common Questions

Q: Are there any issues with deducting lease payments made to related party entities?

A: No. There is nothing in the guidance that prevents a borrower from renting and deducting lease payments made to a related party.

## Common Questions

Q: Besides extending the length of time to incur allowable expenses, are there any new categories of expenses that could be considered for loan forgiveness?

A: There are not.

## Common Questions

Q: Can an owner of a "C" corporation deduct their pay within limits of PPP? What about as an S-Corp owner that is the only employee?

A: Yes. PPP payroll limits for C & S corps are determined by the wages paid through payroll.

## Common Questions

Q: Can you submit the forgiveness application anytime between 8 and 24 weeks? Or is it only the 8 week or 24 week option?

A: You cannot submit the forgiveness application prior to the end of the covered period (8 or 24 weeks)

## Common Questions

Q: Does prior year 401(k) profit sharing contributions disbursed within the 24 week period qualify for forgiveness?

A: The current forgiveness application seems to allow for this.

## Common Questions

Q: How are independent contractor payments calculated in the forgiveness?

A: Payments to independent contractors are not payments that are permitted or forgivable under the PPP program

## Common Questions

Q: How long do you have to decide after you received your loan to file a forgiveness application?

A: You have 10 months from the end of the covered period to apply for forgiveness.

## Common Questions

Q: If a company elects the 24 week covered period instead of the 8 week covered period, are they required to maintain their employee headcount for the entire 24 week period or is it still based on the 8 week period?

A: Your headcount requirement follows the covered period you participate within.



## Common Questions

Q: Is it okay to raise wages for existing employees during 24 weeks?

A: Yes. You may raise employee salaries and you may increase your employee counts.

# Questions and Answers



# Speakers



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**IMPORTANT**