Paycheck protection act: You’ve got the loan now get forgiveness

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Questions/Suggestions
Please email apma20@pacbell.net
Legal disclaimer:

- Seminar materials and this presentation are not intended as legal advice and are not legal advice. These materials cannot substitute for legal advice. You should consult an experienced employment attorney if you have questions about your business, policies or your particular circumstances.

- Presented information is current as of today, June 2, 2020. Please continue monitoring the emerging updates on the topic.
THE PAYCHECK PROTECTION PROGRAM ELIGIBILITY FACTORS

- Loan program available to businesses with fewer than 500 employees
- Also available to businesses with NAICS Code 72 with more than 500 employees if not more than 500 employees per “physical location.”
- I.e. restaurant franchisee with 3,000 employees eligible for loans if individual store locations have fewer than 500 employees.
- This is the average number of people employed for each pay period over the business’s latest 12 calendar months. Any person on the payroll must be included as one employee regardless of hours worked or temporary status.
- The number of employees of a concern in business less than 12 months is the average for each pay period that it has been in business.
- “Employee” any individual employed on a FT or PT (or other) basis.
- Interest rate no more than 1%
- Maturity date is 2 years from date on which apply for forgiveness
- Payments deferred for 6 months.
Loan Forgiveness

A Critical element to the PPP loan is the possibility of forgiveness if used for the intended purposes.

Guidance continues to evolve so it is very important you continue to work with your CPA, Lawyer, Advisor, and Accounting department to stay on top of the latest information.
Some basic facts

- 8 Week period starts the date the loan funds
- Need to use 75% for payroll
- Defined as gross wages, employer state taxes, 401K, health insurance. Gross wages is maxed at $15,385 per person.
- Up to 25% can be used for rent & utilities
- Application for forgiveness is due within 90 days of the expiration of the eight-week post funding period
- Approval process is expected to take 60 days
PAYCHECK PROTECTION PROGRAM LOAN FORGIVENESS

25% can be spent on eligible mortgage interest, rent and utility payments.

75% of loan proceeds must be spent on payroll costs:
- Salary, wages, commissions and tips—up to $100,000 annualized for each employee.
- Employee benefits, including paid leave, severance pay, insurance premiums and retirement benefits.
- State and local taxes assessed on pay.

The forgivable amount will be reduced if an employer:
PAYCHECK PROTECTION PROGRAM WHAT LOANS CANNOT BE USED FOR

- “Payroll Costs” do not include the compensation for any employee in excess of $100k
- The compensation for any employee whose principal place of residence is outside the US
- Qualified sick leave payments FFCRA
PAYCHECK PROTECTION PROGRAM CONTINUED

- Loans are 100% guaranteed
- Borrowers are not disqualified if available credit from other sources
- No application fees or closing costs
- No collateral or personal guarantees
Calculating payroll costs

- Payroll costs paid or incurred during the eight consecutive week (56 days) covered period are eligible for forgiveness.
- **Covered Period**: begins on date of funding, or
- **Alternative Payroll Covered Period**: first day of their first pay period following PPP loan disbursement.
  - But only if your payroll is biweekly or more frequent
  - So not bimonthly?
- Payroll costs incurred but not paid during the “covered period” are eligible for forgiveness if paid on or before the next regular payroll date.
- Payroll costs are incurred on the day that the employee’s pay is earned.
- Payroll costs incurred during the borrower’s last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date.
Forgiveness is computed by comparing your average FTE’S (Full time equivalents) for either of these two periods below:

- February 15, 2019 - June 30, 2019
- January 1, 2020 - February 29, 2020
- To your Current FTE’S.
- Seasonal Employers: Either of the above or a consecutive 12-week period between May 1, 2019 and September 15, 2019.
FTE Safe harbor

- 40-hour equivalent = 1.0
- Less than 40 hours = .5 or total part time hours divided by 40
- Must be met on June 30, 2020
EXAMPLE:

YOU HAVE 10 EMPLOYEES FOR LOOK BACK PERIOD 1 AND 8 FOR LOOK BACK PERIOD 2. YOU’LL TAKE THE LOWER OF THE TWO NUMBERS SO 8 WILL BE THE NUMBER OF EMPLOYEES YOU ARE COMPARING YOUR CURRENT COUNT AGAINST.
EXAMPLE

NOW LET’S SAY YOU CURRENTLY HAVE 7 EMPLOYEES

7 (CURRENT EMPLOYEE COUNT) / 8 (LOOK BACK PERIOD COUNT) = 87.5%

THIS IS THE PERCENTAGE OF YOUR LOAN YOU COULD POSSIBLY TO ELIGIBLE FOR FORGIVENESS ON.
What happens if you reduce your fte’s after June 30th?
The Loan forgiveness application

https://content.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf
<table>
<thead>
<tr>
<th>SBA PPP Loan Number:</th>
<th>Lender PPP Loan Number:</th>
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</thead>
<tbody>
<tr>
<td>PPP Loan Amount:</td>
<td>PPP Loan Disbursement Date:</td>
</tr>
<tr>
<td>Employees at Time of Loan Application:</td>
<td></td>
</tr>
<tr>
<td>Employees at Time of Forgiveness Application:</td>
<td></td>
</tr>
<tr>
<td>EIDL Advance Amount:</td>
<td>EIDL Application Number:</td>
</tr>
<tr>
<td>Payroll Schedule: The frequency with which payroll is paid to employees is:</td>
<td></td>
</tr>
<tr>
<td>□ Weekly</td>
<td>□ Biweekly (every other week)</td>
</tr>
<tr>
<td>Covered Period:</td>
<td>to</td>
</tr>
<tr>
<td>Alternative Payroll Covered Period, if applicable:</td>
<td>to</td>
</tr>
<tr>
<td>If Borrower (together with affiliates, if applicable) received PPP loans in excess of $2 million, check here:</td>
<td>□</td>
</tr>
</tbody>
</table>

**Forgiveness Amount Calculation:**

**Payroll and Nonpayroll Costs**

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10):

Line 2. Business Mortgage Interest Payments:

Line 3. Business Rent or Lease Payments:

Line 4. Business Utility Payments:

**Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions**

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3):

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5:

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13):

**Potential Forgiveness Amounts**

Line 8. Modified Total (multiply line 6 by line 7):

Line 9. PPP Loan Amount:

Line 10. Payroll Cost 75% Requirement (divide line 1 by 0.75):

**Forgiveness Amount**

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10):
Nonpayroll costs:

- Covered mortgage obligations – interest only
- Rent – must have an agreement
Utilities include:

- Business payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.
- Must be paid during the covered period or incurred during the covered period and paid on or before the next regular billing date.
What is included in transportation costs?
AVOIDANCE OF LOAN FORGIVENESS REDUCTIONS

- **BRINGING BACK EMPLOYEES OR RESTORING WAGES**

- Any reduction in the amount of loan forgiveness will be completely avoided if the employer rehires all employees laid off (going back to February 15, 2020), or increases their previously reduced wages, as of June 30, 2020.

- These provisions are designed to provide an incentive to employers to not lay off workers (or rehire them) and to not decrease wages and instead utilize the loan amounts to pay payroll and other expenses.
Important to note

- If you reduce your employee wages by more than 25% your forgiveness could be reduced
  - Does not apply to employees making more than $100,000 per year.
- If you re-hire employees laid off by June 30, 2020 you could receive the benefit of the pre-reduction FTE count on the loan calculation
PPP Loan Tracking Dates: 04/22/20 - 06/17/20
Loan Amount: $88,442.00
Current F/T EE Count: 4.00

<table>
<thead>
<tr>
<th>F/T Equivalent (See 2nd Tab):</th>
<th>5.00</th>
<th>Max Loan Forgiveness:</th>
</tr>
</thead>
<tbody>
<tr>
<td>F/T Equivalent %:</td>
<td>80%</td>
<td>$70,753.60</td>
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<table>
<thead>
<tr>
<th>Employee/Description</th>
<th>4/24 PR</th>
<th>5/8 PR</th>
<th>5/22 PR</th>
<th>6/5 PR</th>
<th>Est Comm</th>
<th>Total by Employee</th>
<th>With EE Max</th>
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<tbody>
<tr>
<td>Employee 1</td>
<td>$2,615.38</td>
<td>$2,615.38</td>
<td>$2,615.38</td>
<td>$2,615.38</td>
<td>$10,461.52</td>
<td>$10,461.52</td>
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<tr>
<td>Employee 2</td>
<td>$3,416.54</td>
<td>$3,416.54</td>
<td>$3,416.54</td>
<td>$3,416.54</td>
<td>$5,000.00</td>
<td>$18,666.16</td>
<td>$15,385.00</td>
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<tr>
<td>Employee 3</td>
<td>$3,653.85</td>
<td>$3,653.85</td>
<td>$3,653.85</td>
<td>$3,653.85</td>
<td>$5,000.00</td>
<td>$14,615.40</td>
<td>$14,615.40</td>
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<tr>
<td>Employee 4</td>
<td>$3,653.85</td>
<td>$3,653.85</td>
<td>$3,653.85</td>
<td>$3,653.85</td>
<td>$5,000.00</td>
<td>$19,615.40</td>
<td>$15,385.00</td>
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</tbody>
</table>

| Health Ins (Pymt 1)  | $2,359.82 |
| Health Ins (Pymt 2)  | $2,359.82 |
| State Taxes (Estimated) | $400.00 |

<table>
<thead>
<tr>
<th>Other Costs</th>
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<tbody>
<tr>
<td>Rent</td>
<td>$5,000.00</td>
</tr>
<tr>
<td>Utilities Incl Fuel for Company Vehicles (2 Months Estimated)</td>
<td>$3,000.00</td>
</tr>
</tbody>
</table>

**TOTAL PAYROLL:** $60,966.56

**TOTAL NON PAYROLL:** $8,000.00 (Under 25%)

**GRAND TOTAL:** $68,966.56

**ESTIMATE FORGIVENESS:** $55,173.25

**AMT RETURNED OR BORROWED:** $33,268.75
Fred’s Pizzeria received a PPP Loan on May 1, 2020 for $95,000. He had 10 people employed for the look back period, and he currently has 10 people employed.

- Loan Amount: $95,000
- Payroll Costs: $75,000 80%
- Utilities/Rent: $20,000 20%
- Forgiveness %: 100%
- Total Forgiven: $95,000
- Total Loan Amount: $0
Julie’s Vineyard Management received a PPP Loan on April 20, 2020 for $300,000. She had 25 people employed for the look back period, and she currently has 30 people employed.

- Loan Amount: $300,000
- Payroll Costs: $225,000
- Utilities/Rent: $50,000
- Forgiveness %: 100%
- Total Forgiven: $275,000
- Total Loan Amount: $25,000
Valentino Farm’s received a PPP Loan on April 25, 2020 for $200,000. He had 15 people employed for the look back period, and he currently has 12 people employed.

- **Loan Amount**: $200,000
- **Payroll Costs**: $120,000
- **Utilities/Rent**: $25,000
- **Forgiveness %**: 80%
- **Forgiven Amount**: $116,000 (total possible $160,000)
- **Total Loan Amount**: $84,000
TRACKING EXPENSE

- START A FOLDER WITH PDF COPIES OF THE FOLLOWING
  - All payroll back up. If you use a payroll service they might have a PPP report
  - All 401K funding documents
  - Health Care Bills
  - Lease for any rental agreements.
  - Utility bills
  - Bank statements, with expense that you are asking for forgiveness highlighted
# Tracking worksheet

<table>
<thead>
<tr>
<th>Date</th>
<th>Comment/Check #</th>
<th>Gross wages</th>
<th>State Taxes</th>
<th>H. Insurance</th>
<th>401k</th>
<th>Rent</th>
<th>Utilities</th>
<th>Total To date</th>
<th>Total Remaining</th>
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<tr>
<td>10-May</td>
<td>Payroll week of 5/1-5/7</td>
<td>$22,000.00</td>
<td>$1,200.00</td>
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<td></td>
<td></td>
<td></td>
<td>$23,200.00</td>
<td>$126,800.00</td>
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<tr>
<td>31-May</td>
<td>Rent/ # 560</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$2,500.00</td>
<td>$124,300.00</td>
</tr>
<tr>
<td>5-Jun</td>
<td>California Grower/ #564</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$2,200.00</td>
<td>$122,100.00</td>
</tr>
<tr>
<td>7-Jun</td>
<td>PG &amp; E</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$212.48</td>
<td>$121,887.52</td>
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Loan Amount: $150,000.00
Date Funded: 5/7/2020
It appears that the loan is cash basis, so you need to pay and incur all expenses within the 8 week period from the date your loan started.

Look carefully at your payroll dates and make sure payments align with your 8-week period. You might need to adjust your pay day to follow within this period.

Prepaid expenses for future months will not be allowed as part of your forgiveness equation.
IRS RULING STATES THAT ITEMS FORGIVEN ARE NOT DEDUCTIBLE. THIS IS BEING DEBATED IN THE SENATE AND COULD CHANGE, BUT AS OF NOW THIS IS THE IRS RULING. AS A RESULT OF THE NON-DEDUCTIBILITY OF THE EXPENSE, THE NET EFFECT IS TAXABLE INCOME.

STATES ARE EXPECTED TO TAX THE MONEY AND ALLOW THE DEDUCTION

ANYTHING OVER $2 MILLION WILL BE AUDITED

THE PURPOSE IS TO KEEP PEOPLE EMPLOYED SO IF THEY USE THE MONEY FOR OTHER THINGS, IT COULD NOT ONLY NOT BE FORGIVEN THEY COULD BE SUBJECT TO PENALTIES AND CRIMINAL INVESTIGATION
All borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, all borrowers certified when they signed their loan documents that current economic uncertainty makes this loan request necessary to support the ongoing operations of the business. Borrowers made this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. A company should be prepared to demonstrate to SBA, upon request, the basis for its certification.

The SBA provided a safe harbor deadline of May 18th, for companies to return their PPP Money if it was determined that the money wasn’t necessary to be considered as acting in good faith.

If you have any questions regarding this consult you CPA and/or Attorney Immediately.
Applying for forgiveness

- To receive forgiveness, borrower must file an application with lender.
- Lender must make a decision on the amount of forgiveness within 60 days of receiving the application.
- SBA must remit forgiveness amount to lender no later than 90 days after lender's decision.
Will I be audited?

PROMISED FOR ALL LOANS OVER $2M, BUT ALL OTHERS SUBJECT TO AUDIT.
What happens if I can’t spend 75% of my PPP on payroll?

- The most you will have forgiven is your payroll $’s divided by .75. This number might be less but that is the most you will have forgiven.
- Think about things you can have your employees do within your 8 week period. Overtime? Extra projects that keep being put off?
- Be prepared to have a loan at 1% of a portion of the amount received.
- Think about what your business needs. Don’t spend the money just to have it forgiven. It might make sense to have some money to give you some running room as the economy gets going.
Can I use bonuses to meet the 75% payroll requirement?

- Yes, as long as they do not exceed the salary cap of $100,000, i.e., or $15,385 per individual
- You can also include hazard pay, commissions or wage paid to furloughed employees.
A nonpayroll cost is eligible for forgiveness if it was: i. paid during the covered period; or ii. incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.
I’ve heard that if I don’t meet the spending requirements my loan forgiveness will just be reduced.
Can I pay things in advance to spend the money?
Will a borrower’s PPP loan forgiveness be reduced if the borrower laid off an employee, offered to rehire the same employee, but the employee declined the offer?

NO. BORROWER MUST HAVE MADE A GOOD FAITH, WRITTEN OFFER OF REHIRE, AND THE EMPLOYEE’S REJECTION OF THAT OFFER MUST BE DOCUMENTED BY THE BORROWER.

EMPLOYEES AND EMPLOYERS SHOULD BE AWARE THAT EMPLOYEES WHO REJECT OFFERS OF RE-EMPLOYMENT MAY FORFEIT ELIGIBILITY FOR CONTINUED UNEMPLOYMENT COMPENSATION.

ALSO, NO PENALTY IF EMPLOYEE WAS FIRED “FOR CAUSE,” VOLUNTARILY RESIGNED OR VOLUNTARILY REQUESTED AND RECEIVED A REDUCTION IN HOURS.
Will a borrower’s loan forgiveness amount be reduced if the borrower laid-off or reduced the hours of an employee, then offered to rehire the same employee for the same salary and same number of hours, or restore the reduction in hours, but the employee declined the offer?

i. the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period;

ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours;

iii. the offer was rejected by such employee;

iv. the borrower has maintained records documenting the offer and its rejection; and

v. (NEW) the borrower informed the EDD of employee’s rejected offer of reemployment within 30 days of the employee’s rejection of the offer.
What if I can’t spend all the money in 8 weeks?
Documentation

NEED TO RETAIN FOR 6 YEARS AFTER DATE OF FORGIVENESS OR REPAID IN FULL
PPP applicants and lenders may consider IRS regulations.

In addition to the taxpayer’s use of the property, relevant factors in determining a taxpayer’s principal residence, include, but are not limited to --

(i) The taxpayer’s place of employment;

(ii) The principal place of abode of the taxpayer’s family members;

(iii) The address listed on the taxpayer's federal and state tax returns, driver’s license, automobile registration, and voter registration card;

(iv) The taxpayer’s mailing address for bills and correspondence;

(v) The location of the taxpayer’s banks; and

(vi) The location of religious organizations and recreational clubs with which the taxpayer is affiliated.
Should I apply for this loan?

- All borrowers should review carefully the required certification that "\textit{current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.}"

- Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.
YOUR BOSS GETS HIS PPP FUNDING AND THE NEXT DAY DRIVES TO WORK IN HIS NEW G-WAGON. WHAT CAN HAPPEN?
What happens if PPP loan funds are misused?

- knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 U.S.C. 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 U.S.C. 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 U.S.C. 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.
Watch out for whistleblower claims

Recipients are exposed to whistleblower lawsuits because of the forgiveness structure of the loan.

Qui tam - allows the federal government to reward whistleblowers with a portion of the money the government recovers from the eventual settlement with the company.

Qui tam could pit workers against their employers if a worker believes the PPP loan was acquired through misrepresentation or the loan money is not being properly used to meet forgiveness guidelines.
I’ve seen lots of opinions and no one agrees. What sources should I rely on?

The Bill itself:

The Treasury Regulations:

FAQs from the SBA and Treasury:

The application for forgiveness
- Your Legal Counsel
- Your CPA/Tax Advisor
Joint employment and equitable distribution of PPP funds between FLCs and grower clients

WHO GETS THE MONEY AND WHEN?
WHAT IF AN FLCS OTHER CLIENTS DON’T PAY OR GO BANKRUPT?
WHAT IF AN FLC DOESN’T GET FORGIVENESS OR FULL FORGIVENESS?
I’ve heard the 8 week period of time is going to be extended?

What’s the status of pending legislation?
Questions for the panel?
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