

FAQ from the PPP Loan Forgiveness Webinar on 5.21.20.

Forgivable calculations

- A previous webinar on this topic indicated interest is not forgivable even if the entire loan amount is forgiven. Is that incorrect?
 - The SBA's May 22 Interim Final Rule provides that "SBA will, subject to any SBA review of the loan or loan application, remit the appropriate forgiveness amount to the lender, **plus any interest accrued through the date of payment [emphasis added]**, not later than 90 days after the lender issues its decision to the SBA".
 - So, the SBA will fund the accrued interest on the forgiven portion of the loan.

Fraud

- What would you suggest to lenders who have recently found that a member who received an SBA PPP loan and is now receiving unemployment as well? They filed for an SBA loan as a sole proprietor.
 - We recommend that the lender review its responsibilities under applicable laws regarding knowledge of potentially fraudulent activity and review the matter with legal counsel for direction.

FTE Calculation

- Can you give guidance on best practice for determining FTE vs. literal employee count?
 - To determine the average full-time equivalent employees (FTEs) for the eight-week covered period (or alternative covered period) for each employee, determine the average number of hours paid per week and divide by 40 before rounding to the nearest 10th, not to exceed 1.0. Alternatively, the borrower can elect to use 1.0 for employees working 40+ hours per week and 0.5 for all others. We recommend that borrowers capture the data to calculate both alternatives so that the most beneficial calculation election can be made.
- The application requests the number of employees. If the business did not change the number of employees, but the majority were part time employees, will this constitute a reduction? Or since the FTE equivalent is the same from the application to the forgiveness, would there be no need to reduce?
 - The loan application disclosure of the number of employees was required to confirm PPP eligibility as a small business (generally < 500 employees) with each full and part-time employee each counting as 1 employee. The FTE calculation for purposes of potential reduction in loan forgiveness counts each employee based on their fraction of 40 hours per week during the covered period, or the simplified alternative presumption of 0.5 FTE for all part-time employees. The potential for forgiveness reduction is based on this result compared to average FTEs (using the same convention) during the chosen reference period of Feb 15 -June 30, 2019

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.

or Jan 1 – Feb 29, 2020 (before consideration of 2 available safe harbors). The FTEs disclosed on the loan application is not used in this forgiveness reduction calculation.

Lender responsibilities

- By banks accepting the documentation, are we to verify the loan forgiveness calculations?
 - Lenders are expected to provide a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents. It must confirm 1) receipt of the borrower's certification on the forgiveness application form, 2) the borrower's math calculations, including the dollar amounts of cash, non-cash and owner(s) compensation, and non-payroll costs, by reviewing the documentation submitted with the application. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.
- We are a thrift and therefore must comply with HOLA. Do these loans count towards the 20% commercial loan limit? Or do they not since they're government-guaranteed?
 - We believe they would not because the PPP loans are 100% guaranteed and carry a (0) Risk Rating. The OCC states; "Generally a covered savings association may engage in any lending or investments permitted for a national bank and is not limited by the specific lending or investment restrictions in HOLA. 12 CFR 101.4(a) provides that a covered savings association may engage in any activity that is permissible for a similarly located national bank to engage in, subject to the same authorization, terms, and conditions that would apply to a similarly located national bank. We recommend you reach out to your regulator in charge for further guidance and clarification.

Non-Payroll

- It was mentioned that a borrower could pay payroll as of the day of loan disbursement and it would qualify for forgiveness, but how about rent or utilities that may be due or past due?
 - Subject to the 25% overall limit, nonpayroll costs are eligible for forgiveness if:
 - 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.

Covered Interest may not be prepaid. The guidance to date is silent about other accrued non-payroll costs as of the beginning of the covered period.

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.

Payroll

- Are there any restrictions to paying employees more than their typical salary and present for forgiveness?
 - The SBA's May 22 Interim Final Rule makes it clear that bonuses, commissions and hazard pay are eligible payroll costs, to the extent paid to those who earned \$100,000 or less as prorated for the covered period, are eligible payroll costs.
- How are you interpreting owner compensation? Can we include health & retirement costs above the \$15,385 threshold?
 - No, in its May 22 Interim Final Rule, the SBA determined that no additional forgiveness beyond the \$15,385 covered period cap is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners. This guidance seems to also apply to "owner-employees" such as S corporation shareholders. This contradicts guidance in IFR #1 published April 2nd which said health and retirement costs could be added to capped cash compensation. It remains to be seen which guidance will prevail.
- If more than 75% of the loan is spent on Payroll is it all still forgivable or is payroll forgiveness capped at 75% of the loan?
 - All amounts spent on eligible payroll costs, up to the total loan amount after application of any FTE or wage reduction forgiveness reductions, is eligible for forgiveness.
- If the borrower does not meet the requirement that payroll expenses be 75% of the loan proceeds use, is the additional 25% still forgiven?
 - The loan forgiveness amount is the lesser of – PPP principal, the amount calculated on the loan forgiveness calculation or covered period/APCP payroll divided by 75%
 - Example: \$100,000 loan, expended \$70,000 on payroll costs and \$30,000 on non-payroll costs. Maximum amount forgiven is \$93,333 (\$70,000/75%), resulting in \$23,333 of the \$30,000 of non-payroll cost loan expenditures being forgiven.

Procedural

- How long after the eight-week period will it be allowed to submit the application?
 - There does not appear to be specific guidance however the loan forgiveness application form has an October 31 expiration date. Borrowers should confirm with their lender whether the note or other documents executed with the lender contain any lender requirements on when forgiveness can or must be applied for.
- Do you have any information on when an extension to 16 weeks could occur?

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.

- On May 28th, the House passed HR 7010 which extends the covered period to 24 weeks. The Senate is back in session starting June 1st and will pick up their debate of their version which extends the covered period to 16 weeks. Both parties have said they are committed to making timely changes to the PPP.
- I've heard that there is a 21 day for the borrower to submit the forgiveness after eight weeks. Is this true?
 - To date, there has been no SBA guidance on a time limit to submit a forgiveness application.
- Has the SBA discussed how they will be auditing loans over \$2 million?
 - The SBA's May 22 Interim Final Rule provides that the SBA may begin a review of any PPP loan of any size at any time in the SBA's discretion. The Interim Final Rule outlines these loan review procedures. They do not specify a separate set of procedures for loans over \$2 million.
- When is the forgiveness application due?
 - It can be submitted after the eight-week covered period.
- How can we comply with the 1502 reporting no later than 5/29 if the guidance/form is not available yet?
 - In the SBA's FAQ #48, the deadline for submission was extended to the later of 1) May 29, 2020 or 2) 10 calendar days after disbursement or cancellation of the PPP loans. The SBA's procedural notice covering 1502 reporting requirements was issued on May 21, 2020. Subsequently, Colson Services has opened the portal for reporting the institutions 1502. Direct guidance from Colson can be found at <https://colsonservices.bnymellon.com/>.
- Will the EIDL advance amount automatically be deducted from forgiveness or only if used for same expense category as PPP?
 - The SBA will reduce the amount forgiven by an EIDL advance that was received.
- *Could you give specific guidance on self-employed forgiveness documentation? For instance, if they take the amount of the loan, they received divide it by the eight weeks showing a distribution to themselves on a weekly basis is this going to be adequate documentation?
 - The answer depends on whether the self-employed borrower has other employees, the compensation of which was a component of the PPP loan application. For those having such employees, then documentation of covered period or alternative covered period employee payroll costs must also be submitted. For self-employed borrowers with no employees you must submit evidence of amounts spent for non-payroll costs and a copy of the 2019 Schedule C.
- Could you review the forgiveness for independent contractors and documentation needed?

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.

- See * question above.
- When does the eight-week period begin?
 - The eight weeks begins at the date of the first loan disbursement.
- Does a Schedule F applicant have to give any documentation?
 - There is no specific guidance to date, but we believe that Schedule F borrowers will need to document their forgiveness-eligible expenses in the same manner as Schedule C filers.
- The financial institution has made numerous loans <\$10k. If \$9.5k is forgiven, do we really have to reamortize the payments that we pre-calculated at the beginning, or can we just let the 1st payment (now due on the 7th month) pay the loan off in full?
 - The only guidance we have seen is that the non-forgiven amount will have a two-year maturity at a 1% interest rate, with payments deferred for the first six months. A note modification would not be required. Reference the original note to ensure that the amortization was properly addressed at origination.
- **If we are allowed to restore full employment levels by June 30th, but our eight week expense reporting ends June 15th how can we still get full forgiveness?
 - The “FTE restoration “safe harbor provides that FTE reductions between February 15, 2020 and April 26, 2020 that are restored on **or before** June 30, 2020 will be ignored for purposes of the FTE reduction calculation. Step 4 of the forgiveness form Schedule A worksheet requires entering the borrower’s total FTE as of June 30, 2020, with no reference to any earlier date, such as the last day of the covered period. Barring further clarification, it appears reasonable to measure FTEs as of June 30 for this safe harbor calculation.
- On the original application, customers listed # of employees, not # of FTE. Given the forgiveness calculation is now based on FTE, will customers be able to match up their FTE to the original application if there was no decrease of employees?
 - See ** previous question above regarding the loan application FTE disclosure. Schedule A of the forgiveness form includes a new safe harbor from the FTE reduction rule for employers that have not reduced the number of employees or the average paid hours of employees between January 1, 2020 and the end of the covered period. It’s unclear if this calculation is based on each of the noted dates, or some average over this period.
- Is it still possible that there may be a threshold amount for auto forgiving loans? Meaning if less than a certain dollar amount - they are automatically forgiven?
 - SBA forgiveness in any amount is not automatic. Every borrower is required to submit a loan forgiveness application.

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.

- We are concerned about receiving the forgiveness funds from the SBA. Will it be necessary for the bank to forgive the PPP loan prior to receiving forgiveness from the SBA? For example, will we have to write off the loan and then recoup the funds from the SBA? My understanding is we have up to 60 days to process the forgiveness, but the SBA has 90 days to process to us?
 - We don't think they will need to write off the loan. If there is a lag between when they forgive the loan and when the SBA forgives it and reimburses the bank, they might reclassify the loan to an "other asset", such as receivable from SBA. To date there is no specific guidance on this set of circumstances. The lender has 60 days to review the application and submit a forgiveness decision to the SBA. The SBA then has 90 days to review and reimburse the lender for any forgiven principal amount and related accrued interest.
- On the original PPP Borrower application, they had owners with an ownership of 20% or more to be listed under the ownership. When it comes to the forgiveness worksheet, if there is an owner with say 15% ownership do they fall under the employee only section or owner/employee section of the application?
 - Presumably, the compensation of any employee with any amount of ownership interest in the borrower must be separately reported on Line 9 of Schedule A. No ownership reporting thresholds in the forgiveness application have been provided by the SBA.
- Are PPP loans to be considered as "debt obligations" with new loan requests?
 - Yes, until the debt is completely satisfied either by forgiveness or repayment, the outstanding balance is considered a "debt obligation".
- We already submitted our application based on deadlines stated in prior guidance. What do we do now? Have we caused an issue for ourselves going forward?
 - The lender should be immediately contacted to discuss any amendments or supplements to the forgiveness request that might be needed to fully reflect all the issued guidance prior to any forgiveness decision being made.
- How are the documents returned to the SBA so that they lender gets funded for the loan and interest? When and how does this happen?
 - The borrower will complete a loan forgiveness application SBA Form 3508 and after good faith review and substantiating documentation the lender must submit its forgiveness decision to the SBA within 60 days. The lender is also responsible for updating the 1502 reporting with the forgiveness information. The SBA has 90 days to reimburse the bank the forgiven principal and related accrued interest.
- What happens to the money when the borrower in "good faith" attempts to hire back the employee and the employee declines to come back. The way I read it the money is still forgiven since in "good faith" the employer tried to hire the employee back but where do the money go?

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.

- The loan forgiveness amount will not be reduced due to the FTE reduction attributable to an employee's refusal to accept a re-hire offer, so long as:
 - i. The borrower made a good faith written offer to rehire during the covered or alternative covered period;
 - ii. The offer was for the same salary or wages and same number of hours as earned by such employee in the past pay period prior to the separation from service;
 - iii. The offer was rejected by the employee;
 - iv. The borrower maintains records documenting the offer and its rejection; and
 - v. The borrower informs the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

SBA

- As we have not seen an SBA authorization for the PPP, will the standard 7(a) SOP expect us to the authorization within the SBA system now?
 - The SBA and Treasury clarified that lenders do not need a separate SBA authorization document prior to issuing a PPP. Instead, lenders must have executed SBA Form 2484 which is the lender application for the SBA guaranty on the loan.
- Will SBA be providing a new note for the portion that is not forgiven?
 - No, the SBA will not be providing a note for the PPP and will allow the lender to prepare their own modifications associated with PPP. The SBA made reference to the SBA Express note as a potential alternative for lenders to use.

Tax

- Is this forgiven loan taxable?
 - The CARES Act provides that any portion of a PPP loan that is forgiven will not be considered taxable income to the borrower. However, in its Notice 2020-32, the IRS ruled that otherwise deductible expenses funded with forgiven PPP loan proceeds are not deductible by the borrower. If enacted, pending Senate Bill 3612 would overturn the IRS' position and make such expenses explicitly deductible.

Legal Disclaimer

- The information included and discussed in these questions and answers is general in nature and should not be relied upon in providing regulatory tax or legal advice without independent research and analysis.
- Regulatory or legislative policies are ever evolving. Current updates to information and analysis included and discussed in this document should be considered.
- Future FAQs could have a material impact on the information presented.
- This material has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for regulatory, tax, legal or accounting advice. You should consult your own regulatory agency, tax and legal advisors before engaging in any transaction.
- More guidance is forthcoming from the SBA – This is what we interpret through today, May 29, 2020.