

# PPP Loan Forgiveness: The Final Act?

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DEANDORTON

# Meet the speakers



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A group of business professionals in a meeting, with text overlaid.

**The matters discussed in these materials  
provide general information only.**

**You should consult with an advisor about your  
specific situation before undertaking any  
action.**

# Agenda

1. In the beginning...
2. And then, there was forgiveness
3. Loan forgiveness application
  - Schedule A Worksheet
  - Schedule A
  - Calculation form
  - Documentation
4. SBA loan review



# In the beginning...

# Paycheck Protection Program (PPP)

- The PPP is a part of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act)
- The Program is established in Section 1102
- It is an SBA Section 7(a) loan
- Loan forgiveness is provided for in Section 1106
- U.S. Department of the Treasury and the Small Business Administration

# Sources of *authoritative* guidance

- CARES Act, Sections 1102 and 1106
- “Interim Final Rules”
  - First IFR – general information and examples
  - Third IFR – self-employed individuals that file a 2019 Form 1040 Schedule C
  - Fourteenth IFR – loan forgiveness
  - Fifteenth IFR – loan review procedures and borrower/lender responsibilities
- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

# Sources of *non-authoritative* guidance

- Frequently Asked Questions
- Loan Forgiveness Application
- How to calculate loan amounts
- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>





# And then, there was forgiveness IFR # 14 and Application

# Friday nights in PPP land

5/15

Loan  
Forgiveness  
Application

5/22

IFR #14  
Loan  
Forgiveness

5/22

IFR #15  
SBA Loan Review  
Procedures and  
Related Borrower  
and Lender  
Responsibilities

# Loan Forgiveness Application

- Components include:
  1. Loan forgiveness calculation form
  2. Schedule A
  3. Schedule A Worksheet
  4. Documentation requirements
  5. Borrower demographic information form (optional)
- Items 1. and 2. above must be submitted to lender when applying for forgiveness

# Application – key terms

- Payroll costs
  - Salary/wages
    - Paid - day that paychecks are distributed or borrower originates ACH credit transaction
    - Incurred – days salary/wages are earned
- Nonpayroll costs
- Paid and/or incurred – incurred during Covered Period or Alternative Payroll Covered Period (APCP) and paid on or before the next regular payroll or payment date

# Application – key terms

- Covered period – the 8 week period beginning on the date of disbursement
- APCP – the 8 week period starting on the beginning date of the first payroll subsequent to disbursement
- Example
  - Loan proceeds disbursed by a lender on Apr. 20, 2020
  - First day of the first pay period following loan disbursement is Apr. 26

	Start Date	End Date
Covered Period	Apr. 20, 2020	June 14, 2020
APCP	Apr. 26, 2020	June 20, 2020

# Application – key dates – FTEs

- FTE reduction quotient =  $\frac{\text{Covered Period or APCP}}{\text{Historical reference period}}$
- FTE historical reference periods, borrowers choice of
  - Feb. 15 – June 30, 2019; or
  - Jan. 1 – Feb. 29, 2020; or
  - *Seasonal employers*, 12 consecutive weeks between May 1 – Sept. 15, 2019
- **Safe harbor** relevant dates
  - Pay period inclusive of Feb. 15, 2020
  - Feb. 15 – Apr. 26, 2020
  - June 30, 2020

# Application – key dates – salary/wages

- Salary/wages reduction
  - Covered Period or APCP
  - Jan. 1 – Mar. 31, 2020
- Safe harbor relevant dates
  - Feb. 15, 2020
  - Feb. 15 – Apr. 26, 2020
  - June 30, 2020



# Schedule A Worksheet



# Schedule A Worksheet – Uses

- Identify
  - Compensation
  - Average FTE per employee for Covered Period or APCP
  - Salary and wage reductions
- Calculate
  - Average FTE for CP or APCP
  - Salary/wage reduction
- Determine qualification for safe harbors



# FTEs

# FTEs – Three Procedures

1. Calculate FTEs
2. Determine safe harbor qualification
3. If safe harbor not met, calculate FTE reduction quotient

# Calculate FTEs

- **FTE:** An employee who works 40 hours or more, on average, each week
- **Detailed** or **Simplified** method
  - Detailed: Average number of hours paid per week and divide by 40 (round to nearest tenth)
  - Simplified: Part-time employees are counted as 0.5 FTE and employees working 40 hours or more are counted as 1.0 FTE
- No individual employee can exceed 1.0 FTE
- Exclude employees who refused to return, were fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction

# Do you qualify for the FTE safe harbor?

- Qualifying criteria
  1. Reduction in FTEs between Feb. 15 – Apr. 26, 2020,  
**AND**
  2. Reduction eliminated by June 30, 2020
- If 1. and 2. are met, **STOP**. Calculation of potential reduction in loan forgiveness is unnecessary
- If safe harbor is not met, proceed to calculate FTE Reduction Quotient

# Calculate FTE Reduction Quotient

- You will need to calculate FTEs for:
  - PPP loan covered period or APCP (**A**)
  - Your elected historical reference period (**B**)
    - Option 1: Feb. 15 – June 30, 2019
    - Option 2: Jan. 1 – Feb. 29, 2020
    - Option 3: For seasonal employers, any consecutive 12-week period between May 1 - Sept. 15, 2019
- Divide (**A**) by (**B**) and carry to Schedule A, Line 13

A group of five business professionals (three men and two women) are gathered around a table in a modern office setting, engaged in a meeting. They are looking at documents and laptops. The image is overlaid with a semi-transparent white filter. The text "Salary/Wage Reduction" is centered in a large, bold, dark blue font.

# Salary/Wage Reduction

# Salary/Wage Reduction – three procedures

1. Determine if pay was reduced >25%
2. Determine if salary/wage safe harbor is met
3. If safe harbor **not** met, determine the salary/wage reduction



# General information

- Only include employees who were new in 2020, and 2019 employees that did not receive an annualized equivalent of \$100,000 during any single pay period
- Information needed
  - Average annual salary/hourly wage during Covered Period or APCP
  - Calculate average annual salary/hourly wage Jan. 1 – Mar. 31, 2020
- No salary/wage reduction related to a decline in hours

# Salary/Wage reduction – example #1

- Forgivable costs during 8 week covered period: \$180,000
  - Employee #1
    - 1<sup>st</sup> Quarter salary: \$52,000 or \$1,000/week
    - 8 week covered period: \$26,000 or \$500/week
- **Question:** What is the reduction to forgivable costs as a result of declines in employee salary during the covered period?
- **Answer:** \$2,000
  - Employee #1 salary reduction = 50%
  - Forgivable cost reduction = **\$2,000**  $((\$1,000 \times 75\%) - \$500) \times 8 \text{ weeks}$

# Salary/Wage reduction – example #2

- Forgivable costs during 8-week covered period: \$180,000
  - Employee #2
    - 1<sup>st</sup> Quarter salary: \$52,000 or \$1,000/week
    - 8 week covered period: \$44,200 or \$800/week
- **Question:** What is the reduction to forgivable costs as a result of decline in employee salary during the covered period?
- **Answer:** \$0
  - Employee #2 salary reduction = 20% (less than a 25% reduction)

# Salary/Wage reduction – example #3

- Forgivable costs during 8-week covered period: \$180,000
  - Employee #3
    - 1<sup>st</sup> Quarter hourly rate: \$25/hour or \$1,000/week (40 hours worked per week)
    - 8 week covered period: \$17.50/hour or \$700/week (40 hours worked per week)
- **Question:** What is the reduction to forgivable costs as a result of decline in employee hourly wages during the covered period?
- **Answer:** \$400
  - Employee #3 hourly wage reduction = 30%
  - Forgivable cost reduction = **\$400**  $((\$1,000 \times 75\%) - \$700) \times 8 \text{ weeks}$

# Salary/Wage reduction – example #4

- Forgivable costs during 8-week covered period: \$180,000
  - Employee #4
    - 1<sup>st</sup> Quarter hourly rate: \$25/hour or \$1,000/week (40 hours worked per week)
    - 8 week covered period: \$25/hour or \$500/week (only 20 hours worked per week)
- **Question:** What is the reduction to forgivable costs as a result of decline in employee hourly wages during the covered period?
- **Answer:** \$0

Employee #4 reduction = None. Hourly rate remained the same; reduction in hours (from 40 to 20) is accounted for within the FTE reduction calculation.



# Schedule A

# Schedule A, Part 1 – Worksheet, Table 1 Totals

- Line 1. Cash Compensation (Box 1)
- Line 2. Average FTE (Box 2)
- Line 3. Salary/Hourly Wage Reduction (Box 3)
  - If the average annual salary or hourly wage for each employee listed on the PPP Schedule A Worksheet, Table 1 during the Covered Period or the Alternative Payroll Covered Period was at least 75% of such employee's average annual salary or hourly wage between Jan. 1, 2020 and Mar. 31, 2020, check here  and enter 0 on line 3.

# Schedule A, Part 2 – Worksheet, Table 2 Totals

- Line 4. Cash Compensation (Box 4)
- Line 5. Average FTE (Box 5)
- Line 6. Employer contributions employee health insurance
- Line 7. Employer contributions employee retirement plans
- Line 8. Employer state (and local) unemployment taxes



# Schedule A, Part 3 – Compensation to owners

- Line 9. Total amount paid to owner employees/self-employed individual/general partners
  - This amount may not be included in PPP Schedule A Worksheet, Table 1 or 2. If there is more than one individual included, attach a separate table that lists the names of and payments to each.

# Line 9 – Compensation to owners

- Owner-employees
  - Lesser of 8/52 of 2019 compensation or \$15,385
  - \$15,385 per individual in **total across all businesses**
  - Capped at 2019 cash compensation and employer retirement and health care
    - No word yet on who is an owner-employee
      - S corp. shareholder?
      - ESOP?

# Line 9 – Compensation to owners, cont.

- **Schedule C filers** capped at owner compensation replacement based on 2019 net profit
- **General partners** capped at 2019 SE earnings\* multiplied by 0.9235
- **No additional forgiveness is provided for retirement or health insurance for self-employed persons and general partners, as such expenses are paid out of their net self-employment income**

*\* SE earnings are reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties.*

# Schedule A, Part 4 – Total payroll costs

- Line 10. Payroll Costs (add lines 1, 4, 6, 7, 8, and 9)
- Full-Time Equivalency (FTE) Reduction Calculation
  - If you have not reduced the number of employees or the average paid hours of your employees between Jan. 1, 2020 and the end of the Covered Period, check here , skip lines 11 and 12 and enter 1.0 on line 13.

# Schedule A, Part 4 – Total payroll costs

- Line 11. Average FTE during the Borrower's chosen reference period:
- Line 12. Total Average FTE
  - Add lines 2 and 5
- Line 13. FTE Reduction Quotient
  - Divide line 12 by line 11, or
  - Enter 1.0 if FTE Safe Harbor is met



# Calculation Form

# Calculation Form

## 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:


Lines 1 – 4 = **Payments made and costs incurred** related to eligible payroll and non-payroll costs within the “**covered period(s)**”

# Calculation Form

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):




Lines 5 – 7 = Cost adjustments for reductions in **FTEs** and certain employee **Salary/Wages**



# Calculation Form

<u>Potential Forgiveness Amounts</u>	
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):	
<u>Forgiveness Amount</u>	
Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10):	



Lines 8 – 10 = Calculated potential forgiveness amounts

Line 11 = Actual forgiveness amount (lesser of lines 8-10)

A group of four business professionals (three men and one woman) are gathered around a table in a meeting room. They are looking at documents and laptops. The scene is brightly lit, possibly from a window on the left. The word "Documentation" is overlaid in a large, bold, dark blue font in the center of the image.

# Documentation

# No documentation, no forgiveness

- Borrower must **submit** the following:
  - **Payroll costs**: third-party payroll documents, bank statements, Form 941, state unemployment tax filings, health insurance, and retirement benefit statements
  - **Non-payroll costs**: loan and/or lease agreements, lessor statements, invoices, cancelled checks, account statements (dating back to Feb. 2020)
  - **FTE support**: payroll tax filings (Form 941) and/or state unemployment insurance tax filings

# No documentation, no forgiveness

- Borrower must *retain* the following for **6 years after** loan is forgiven or repaid in full:
  - Support for calculating the individual employee salary/wage reduction, including support for why employees were excluded
  - Documentation related to any employee job offers and refusals, terminations for cause, voluntary resignations and written employee requests for a voluntary reduction in hours
  - FTE Reduction Safe Harbor calculation



# Loan Review Procedures IFR # 15

# Loan review by SBA

- A loan of *any size* may be reviewed
- At any time (within six years?)
- Loan amount correctly calculated
- Proceeds used for allowable purposes
- Forgiveness amount based on application

# Loan review by SBA

- If borrower was ineligible, forgiveness will be denied and loan must be repaid
- SBA may also pursue “other remedies”
- Borrower will be judged based on rules and guidance ***available at the time of loan application***

# Lender review of forgiveness application

- Existence of borrower certifications
- Documents necessary to review payroll and nonpayroll costs
- Confirm calculations for
  - Compensation – Schedule A, lines 1, 4, 5, 6, 7, 8, and 9
  - Interest on mortgage indebtedness, lease/rent payments, utility payments
- Confirm correct calculation of 75/25% limitation



# Lender obligations

- Issue decision about forgiveness
  - Approve, in whole or part
  - Deny
  - Deny without prejudice pending SBA review
- Submit to SBA
  - Forgiveness calculation form
  - Schedule A
  - Demographic information, if provided

# Timeline for lender review

- Submit forgiveness application to SBA
  - Within 60 days after
  - Receipt of *completed* application
    - Lender may work with borrower to obtain completed application
- SBA will, subject to any SBA review, remit forgiveness amount to lender no later than 90 days after lender submits forgiveness application



***Etcetera, etcetera, etcetera***

# Now we know

- Paid and/or incurred
- Definition of full-time equivalent (FTE) employee
- 75/25% limitation
- Bonuses and hazard pay are forgivable payroll costs

# Congressional activity

- Paycheck Protection Program Flexibility Act of 2020
  - Expanding the 8 week forgiveness covered period to 24 weeks and extending the safe harbor exemption deadline to December 31, 2020
  - Changes the 75/25% rule for loan forgiveness to 60/40% (payroll/nonpayroll costs)
  - Extending the program from June 30 to December 31, 2020
  - Extending loan terms from two to five years and extending loan deferral and principal payment periods
- House passed 417-1 on May 28, 2020
- Negotiations with Senate ongoing

# Maximize your forgiveness

- Use proceeds for **forgivable** costs
- Choose your **covered period** wisely
- 75% of forgiveness amount should be spent on *payroll costs*
- **Restore** reductions in FTEs and/or employee salaries/wages on or before *June 30, 2020*
- Retain and submit *documentation*



# Questions?

Information as of May 28, 2020

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# Thank you

Need help or more information? Contact us at [info@deandorton.com](mailto:info@deandorton.com)

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