

PaycheckPART 3ProtectionProgram

Advanced Loan Forgiveness Topics and Risk Management of Regulatory Investigations and/or Criminal Prosecution

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Presenters



LAURA CALDERA Bullivant Houser

Attorney, Business Law Practice Group Leader P 503.499.4602 E laura.caldera@bullivant.com



TOM HUTCHINSON Bullivant Houser

Attorney P 503.499.4582 E tom.hutchinson@bullivant.com



BILL HOLMES, CPA/ABV/CVA/CFE Holmes & Company

P 503.270.5400 E wnholmes@pdxcpas.com







PPP Background



- PPP loan amounts are based on Payroll Costs (defined in the Act) incurred during 2019 or the 12-month period prior to application. (FAQ 14)
- Program was designed to provide for 100% loan forgiveness if the proceeds are spent on "covered" and "forgivable" expenses within an 8-week Covered Period, which starts the day the lender makes a PPP loan disbursement to the borrower. (IFRN 13) (FAQ 20)
- Proceeds may be spent through 6/30/20 on allowable expenses; however, certain expenses paid after the 8-week Covered Period are eligible for forgiveness. (ACT §1102(36)(a)(3)) (IFRN2 9)

PAYCHECK PROTECTION PROGRAM General Overview – Alternate Covered Period

- Covered Period: 8-weeks (56-day) period beginning the day of 1st loan disbursement
- Alternative Payroll Covered Period (APCP)
 - An election to replace the Covered Period for loan forgiveness calculation purposes
 - Available only to Borrowers with a biweekly (or more frequent) payroll schedule
 - 8-week (56-day) period beginning on the 1st day of the 1st pay period following loan disbursement date

Example: If Borrower receives loan proceeds on Monday, April 20, and if the 1st day of the 1st pay period following loan disbursement is Sunday, April 26, then the 56-day (Alternative Payroll Covered Period) begins on April 26 and ends on Saturday, June 20.

- If election made, must use APCP for all loan forgiveness calculation purposes
- We use "Covered Period" herein to mean either Covered Period or APCP



PAYCHECK PROTECTION PROGRAM Allowable vs. Forgivable

- Allowable expenses include Payroll Costs, any mortgage interest, rent (including rent under a lease agreement), and utilities (no requirement stated for "in place" date or existence prior to 2/15/20). Also, interest on any other debt obligation that was incurred before 2/15/20 is allowable. (ACT §1102(a)(2)(F)) / (IFRN 15)
- Forgivable expenses include Payroll Costs, as well as "covered" expenses, such as mortgage interest on real or personal property, rent obligation under a leasing agreement, and utilities for electricity, gas, water, transportation, telephone, or internet access (all "covered" expenses must be in place or in existence prior to 2/15/20). (ACT §1106(a)) / (IFRN 14) (IFRN 2 12)

VERY IMPORTANT BUILDING BLOCK CONCEPT!



- To be a "covered" and "forgivable" cost, it must be **incurred or paid** during the Covered Period and qualify as "forgivable." (ACT §1106(b)) (IFRN2 9)
- Rules require at least 75% of the PPP loan proceeds to be spent on Payroll Costs or forgiveness may be reduced. (IFRN 16)
- Rules state no more than 25% of the "loan forgiveness" can be spent on other permitted non-payroll expenses, such as rent, utilities, and mortgage interest or forgiveness may be reduced. (IFRN 14)



PAYCHECK PROTECTION PROGRAM General Forgiveness Rules

- Forgiveness will not occur for PPP funds used for unauthorized purposes (only allowable expenses may lead to forgiveness). (IFRN 17)
- Forgiveness can be reduced if there are reductions in # FTE employees, and / or if any individual employee's salary / wages are cut by more than 25%. (IFRN2 13)
- Effective management over the nature of payments, \$ amount of payments, # of FTE employees, reductions in employee salaries, and timing of payments can maximize PPP loan forgiveness.



PAYCHECK PROTECTION PROGRAM Loan Repayment Terms

For amounts that must be paid back, PPP loan terms are favorable (IFRN 11):

- 6-month payment deferral
- 2-year repayment
- 1% interest per annum
- Non-recourse / No personal guarantees
- No collateral (unsecured)

LOAN CALCULATION What Counts as Payroll Costs for Loan Forgiveness Purposes for EMPLOYEES?

- Salary, wages, commissions, or tips (\$100,000 max on an annualized Covered Period basis per employee (\$15,385 is max for the 8-week period); PLUS,
- Employee benefits, including expenses for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits, including insurance premiums; and payment of any retirement benefit;
- State/local taxes assessed on compensation (i.e. unemployment insurance tax) (ACT §102(a)(2)(A)(VIII))/(FAQ 7) (IFRN2 13)

LOAN CALCULATION What Counts as Payroll Costs for Loan Forgiveness Purposes for EMPLOYEES?

- Salaries, wages, or commissions paid to furloughed employees; bonuses; or hazard pay during the Covered Period are considered forgivable (subject to the prorated \$100,000 limitations). (IFRN2 11)
- Forgiveness is allowed for Borrowers who pay their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations. (ACT §102(a)(2)(A)(viii))/(FAQ 7) (IFRN2 11)

LOAN CALCULATION What Counts as Payroll Costs for Loan Forgiveness Purposes for OWNERS?

For owner-employees, self-employed, sole proprietor, general partners, Payroll Costs are wages, commissions, income, or net earnings from self-employment, capped at the lesser of \$100,000 on an annualized Covered Period basis (\$15,385 is max) or the 8-week equivalent (8/52) of their applicable compensation in 2019. (ACT §102(a)(2)(A)(viii))/(FAQ 7) (IFRN2 11)

LOAN CALCULATOR Limits on Forgiveness for Owners

- Owner employees Capped by the amount of their 2019 employee cash compensation and employer retirement in health care contributions made on their behalf. (IFRN2 12)
- Schedule C filers Capped by the amount of their owner compensation replacement, calculated based on 2019 net profit. (IFRN2 12)
- General partners Capped by the amount of their 2019 net earnings from self employment (reduced by claimed section 179 accelerated depreciation expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. (IFRN2 12)
- No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers in general partners, as such expenses are paid out of their net self employment income (no stacking benefits for owners). (IFRN2 12)



LOAN FORGIVENESS Forgivable Costs – Incurred OR Paid

- As stated, 75% of the PPP loan proceeds must be spent on Payroll Costs incurred or paid during the Covered Period. (IFRN 14 and 16) (ACT §1106(b)) (IFRN2 9)
- Payroll costs are considered paid on the day that paychecks are distributed or when the borrower originates an ACH credit transaction. (IFRN2 9)
- Payroll costs are incurred on the day the employee's pay is earned (i.e. on the day the employee worked or the day the employee would have worked if they are not performing work but are still on the borrower's payroll). (IFRN2 9)



- Payroll costs incurred during the borrower's last pay period of the covered and eligible forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period to be eligible for forgiveness. (IFRN2 9)
- Payroll costs paid during the Covered Period but for the pay period ending before the Covered Period begins appear to count toward forgiveness. (PPLEA7)

S LOAN FORGIVENESS **Forgivable – Incurred OR Paid**

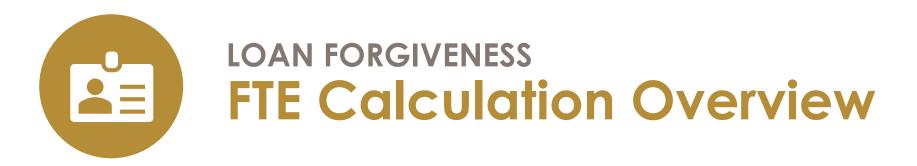
- Non-payroll Covered (forgivable) costs are eligible for forgiveness if they are:
 - Paid during the Covered Period; or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period.

Example: Assume Covered Period from June 1 – July 26. Borrower pays its May utility bill in June (during Covered Period) and pays its July utility bill on August 10 (next regular billing date). The borrower may seek loan forgiveness for its **May and June** utility bills, because they were **paid** during the Covered Period. In addition, the borrower may seek loan forgiveness for the portion of its utility bill **for July through July 26** (the end of the Covered Period) because it was **incurred** during the Covered Period and paid on the next regular billing date

• Proration is currently required only for payments made after the Covered Period. (IFRN2 12)



- Full-time employee (FTE) means an employee who works 40 hours or more, on average, each week.
- Employees who work less than 40 hours are calculated as proportions of a single FTE.
- For each employee, calculate the average number of hours <u>paid</u> per week, divided by 40, and round the total to the nearest tenth (.1)



- Election to use simplified method of calculating FTE is allowed
 - 1.0 for employees working 40 hours or more per week
 - .5 for employees working less than 40 hours per week
- Maximum FTE is 1.0 per employee
- # FTE used to reduce forgiveness (compares FTE to baseline period) unless
 - FTE Reduction Exception applies
 - FTE Reduction Safe Harbor applies

LOAN FORGIVENESS Salary and Wage Reductions May Reduce Forgiveness

- A reduction in an employee's salary or wages in excess of 25% will generally result in a reduction in the loan forgiveness amount, unless an exception applies.
- This reduction calculation is performed on a per employee basis, not in the aggregate.
- For each new employee in 2020 and each existing employee who was not paid more than the annualized equivalent of \$100k in any pay period in 2019 (excludes independent contractors, owner-employees, self-employed, or partners).
- Compare wage rates of all such employees during the Covered Period to the period from 1/1/20 – 3/31/20 (reference period). If wage rates or salaries decreased by more than 25%, that amount may be subject to a reduction in forgiveness (see exception).

LOAN FORGIVENESS Salary and Wage Reductions May Reduce Forgiveness

- Salary / Wage Reduction Safe Harbor (employee by employee basis)
 - Applies to employees experiencing more than a 25% wage rate decrease during the Covered Period compared to the period from 1/1/20 – 3/31/20 (reference period).
 - Compare annual wage or hourly rate for each employee as of 2/15/20 to the average annual salary or hourly rate between 2/15/20 and 4/26/20 (the Safe Harbor period).
 - If wage rates during the Safe Harbor period are less than rates at 2/15/20, borrower can restore the wage rates by 6/30/20 to amounts equal to the wage rates existing on 2/15/20.
 - If restorations to 2/15/20 wage rates are made for these eligible employees (employees experiencing wage rate declines during the Safe Harbor period compared to 2/15/20), then the wage reductions to these employees (during the Covered Period compared to the reference period) do not decrease loan forgiveness.

LOAN FORGIVENESS FTE Reduction Exception

FTE Reduction Exception is available for following employee situations:

- (1) Any position for which borrower made a good-faith, written offer to rehire an employee or restore the reduction in hours during the Covered Period which was rejected by the employee, if
 - Offer was for the same salary or wages earned by such employee in the last pay period prior to separation or reduction in hours;
 - Employer maintained records documenting the offer and rejection;
 - Borrower informed the state unemployment insurance office of the rejection within 30 days of the offer rejection.

LOAN FORGIVENESS FTE Reduction Exception cont'd

FTE Reduction Exception is available for following employee situations:

- (2) Any employee who during the Covered Period was
 - Fired for cause
 - Voluntarily resigned
 - Voluntarily requested and received a reduction of their hours
- In all of these cases, include these FTEs in the FTE calculation **only** if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the borrower's loan forgiveness.

LOAN FORGIVENESS FTE Reduction Safe Harbor

- FTE Reduction Safe Harbor is a complete exemption to reductions in forgiveness for FTE reasons. It is available if **both** of the following apply:
 - The borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and
 - The borrower then restored its FTE employee levels by not later than June 30, 2020 to its FTE employee levels in the borrower's pay period that included February 15, 2020.
- Compare FTE in February 15, 2020 payroll period to FTE as of June 30, 2020 if FTE is restored by June 30, complete exemption to FTE reduction.

PAYCHECK PROTECTION PROGRAM Unauthorized Use Concerns

- Rules state that if PPP funds are used for unauthorized purposes (we believe authorized means "allowable" and / or "forgivable" expenses), SBA will direct borrowers to repay those amounts. These amounts may not be subject to the general loan terms of the program stated below. (IFRN 17)
- Rules state that if borrowers knowingly use PPP funds for unauthorized purposes, they will be subject to additional liability such as charges for fraud. (IFRN 17)
- Rules state if one of the borrower's shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use. (IFRN 17)



PAYCHECK PROTECTION PROGRAM Loan Forgiveness Certification

- Must certify that the amount sought to be forgiven:
 - Was used to pay eligible forgivable costs (payroll to retain employees, business mortgage interest payments; business rent or lease payments; or utility payments);
 - Includes all applicable reductions (FTE/Wage);
 - 75% / 25% rule
 - Does not exceed 8 weeks of 2019 owner-employed/self-employed individual, capped at \$15,385 per individual.



Business Loan Program Temporary Changes; Paycheck Protection Program – SBA Loan Review Procedures and Related Borrower and Lender Responsibilities (Interim Final Rule dated 5/22/2020)

- SBA PPP Loan Review (5/22/202 IFR III (1))
 - Any loan, any time, SBA's discretion
 - Borrower Representations
 - Eligibility
 - Loan amount and use of proceeds
 - Loan forgiveness amounts

LOAN FORGIVENESS Four Steps of Forgiveness – Reviewed

- Calculate total forgivable ("covered") Payroll Costs and Nonpayroll Costs during the Covered Period (lines 1 – 4 of the Application).
 (SBA Form 3508 dated 5/20/20)
- 2. Adjust for salary /hourly wage reductions (SBA changed ordering to be favorable to borrowers (lines 5 6 of the Application). (SBA Form 3508 dated 5/20/20)
- 3. Adjust for decreases in FTE employees (line 7 of the Application). (SBA Form 3508 dated 5/20/20)
- 4. Determine forgiveness based on the lesser of (lines 8 11) (SBA Form 3508 dated 5/20/20)
 - Calculated amount determined in Steps 1 3
 - PPP loan amount

• Payroll Cost (as defined) divided by 75%

PAYCHECK PROTECTION PROGRAM PPP Loan Forgiveness Application

- Loan Forgiveness Application package is 11 pages total (SBA Form 3508 dated 5/20)
 - Page 1 2: Instructions for Loan Forgiveness Calculation Form
 - Page 3: Loan Forgiveness Calculation Form (submitted to Lender)
 - Page 4: Borrower Representations/Certification Form (submitted to Lender)
 - Page 5: Instructions for completing Schedule A
 - Page 6: Schedule A (submitted to Lender)
 - Pages 7 8: Instructions for completing Schedule A worksheets
 - Page 9: Schedule A worksheet (template)
 - Page 10: Disclosure of documents to be submitted and documents to be maintained
 - Page 11: Borrower demographic information form (optional)



PAYCHECK PROTECTION PROGRAM Loan Forgiveness Calculation Form – Page 3

- Informational Section (1st half of page)
 - Borrower information
 - SBA Loan # and Lender Loan # (Lender can provide both)
 - # employees at application and forgiveness dates (not FTE)
 - EIDL information
 - Payroll frequency schedule (weekly, bi-weekly, twice a month, monthly, etc.)
 - Covered Period dates (or Alternative Payroll Covered Period dates)
 - Indicate if loan is over \$2 million



PAYCHECK PROTECTION PROGRAM Loan Forgiveness Calculation Form – Page 3

- Forgiveness Amount Calculation (2nd half of page)
 - Schedule A and related Schedule A worksheets are required
 - 4 sections comprise this calculation
- Section 1 Payroll and Non-payroll Costs
 - Line 1 Payroll Costs (from Schedule A)
 - Line 2 Business mortgage interest payments
 - Line 3 Business rent or lease payments
 - Line 4 Business utility payments
- Section 2 Adjustments for Salary / Hourly Wage Reductions
 - Line 5 Total salary / hourly wage reduction (from Schedule A, line 3)
 - Line 6 Line 5 is subtracted from sum of lines 1 4 (ordering changed results in higher forgiveness)



PAYCHECK PROTECTION PROGRAM Loan Forgiveness Calculation Form – Page 3

- Section 3 Adjustments for FTE Reductions
 - Line 7 FTE reduction quotient (from Schedule A, line 13)
- Section 4 Forgiveness Amount
 - Line 8 Line 6 multiplied by line 7
 - Line 9 Loan amount
 - Line 10 Payroll Cost in line 1 divided by .75 (line 10)
 - Line 11 Forgiveness amount (lesser of lines 8, 9 or 10)

LOAN FORGIVENESS Calculating Forgiveness

- Everything starts with Schedule A (page 6)
- Sole purpose of Schedule A is to calculate Payroll Costs used on the Loan Forgiveness Calculation Form (page 3)
- Relies on Schedule A worksheets to be maintained (page 9)

A LOAN FORGIVENESS Schedule A – Calculates Payroll Costs (5 Sections)

- Section 1 (lines 1 3): Deals with employees making \$100,000 / yr. or less
- Section 2 (lines 4 5): Deals with employees making more than \$100,000 / yr.
- Section 3 (lines 6 8): Deals with other Payroll Costs (health, retirement, state/local taxes)
- Section 4 (line 9): Deals with owner-employees/self employed/general partners
- Section 5 (lines 11 13): Deals with FTE reductions
- Salary and wage reductions are addressed in Section 1 since they only apply to employees making \$100,000 / yr. or less



LOAN FORGIVENESS Schedule A: \$100k or less (line 1)

- Line 1 Cash compensation paid to employees making \$100k or less (exclude independent contractors, owner-employees, self-employed, or partners)
- Amounts from Schedule A Worksheet Table 1 (page 9 must maintain not submit)
- Schedule A Worksheet Table 1 requires information and amounts
 - Employee name and identifier (last 4 of SS #)
 - Cash compensation paid during the Covered or Alternative Payroll Covered Period (box 1)
 - ✓ Gross salaries, gross wages, gross tips, gross commissions
 - ✓ Paid leave (vacation, family, medical or sick leave, but not leave covered by FFCRA)
 - $\checkmark\,$ Allowances for dismissal or separation paid or incurred
 - ✓ Not to exceed \$15,385 per employee (\$100k / 52 weeks * 8 weeks)
 - $\checkmark\,$ Annualization more lenient



LOAN FORGIVENESS Schedule A: \$100k or less (line 1)

- "Annualization" of wages is calculated for the Covered Period and not by pay period (instructions for Schedule A Worksheet page 7).
 - "For each individual employee, the total amount of cash compensation eligible for forgiveness may not exceed an annual salary of \$100,000, as prorated for the Covered Period; therefore, do not enter more than \$15,385 in Table 1 or Table 2 for any individual employee."
- Box 1 of Table 1 in Schedule A Worksheet is the amount that is reported on Line 1 of Schedule A



LOAN FORGIVENESS Schedule A: \$100k or less (line 2)

- Line 2 Average weekly # FTE for employees making \$100k or less (exclude independent contractors, owner-employees, self-employed, or partners)
- # FTE used to reduce forgiveness (compares FTE to baseline period) unless
 - FTE Reduction Exception applies (exception for specific employees only)
 - FTE Reduction Safe Harbor applies (exception for all employees)
- From Schedule A Worksheet Table 1 (page 9 must maintain but not submit)
- Reminder, for each employee, enter the average number of hours paid per week, divided by 40, and round the total to the nearest tenth (.1)
- Again, the maximum FTE is 1.0 per employee



LOAN FORGIVENESS Schedule A: \$100k or less (line 2)

- Election to use simplified method of calculating FTE is allowed
 - 1.0 for employees working 40 hours or more per week
 - .5 for employees working less than 40 hours per week
- Average number of hours per week
 - Total hours worked for each employee during the Covered Period divided by 8 weeks
 - 1.0 is the maximum FTE per employee



LOAN FORGIVENESS Schedule A: \$100k or less (line 2)

- Line 3 Salary / Hourly wage reductions for employees making \$100k or less (exclude independent contractors, owner-employees, self-employed, or partners)
- From Box 3 in Schedule A Worksheet Table 1 (page 9 must maintain but not submit)
- Compares wage rates during Covered Period to period from 1/1/20 3/31/20
- For each employee listed in Table 1, complete the following (page 7)
 - Step 1 determine if pay was reduced more than 25% (compare average wages during Covered Period to average wages from 1/1/20 – 3/31/20 (reference period).
 - Step 2 For all employees in Step 1 that had wages reduced by more than 25%, determine if the Salary / Wage Reduction Safe Harbor is met
- Salary / Wage Reduction Safe Harbor calculation discussed above but reviewed again.

LOAN FORGIVENESS Salary and Wage Reduction Safe Harbor -Review (line 3)

• Salary / Wage Reduction Safe Harbor (employee by employee basis)

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- Applies to employees experiencing more than a 25% wage rate decrease during the Covered Period compared to the period from 1/1/20 – 3/31/20 (reference period).
- Compare annual wage or hourly rate for each employee as of 2/15/20 to the average annual salary or hourly rate between 2/15/20 and 4/26/20 (the Safe Harbor period).
- If wage rates during the Safe Harbor period are less than rates at 2/15/20, borrower can restore the wage rates by 6/30/20 to amounts equal to the wage rates existing on 2/15/20.
- If restorations to 2/15/20 wage rates are made for these eligible employees (employees experiencing wage rate declines during the Safe Harbor period compared to 2/15/20), then the wage reductions to these employees (during the Covered Period compared to the reference period) do not decrease loan forgiveness.

LOAN FORGIVENESS Schedule A: Employees Over \$100k (line 4)

- Line 4 Cash compensation paid to employees making over \$100k on an annualized basis for any pay period in 2019 (exclude independent contractors, owner-employees, self-employed, or partners)
- Amounts from Schedule A Worksheet Table 2 (page 9 must maintain not submit). Identical to Table 1 with no salary / hourly wage reduction amounts
- Schedule A Worksheet Table 2 requires information and amounts
 - Employee name and identifier (last 4 of SS #)
 - Cash compensation paid during the Covered or Alternative Payroll Covered Period (box 1)
 - ✓ Gross salaries, gross wages, gross tips, gross commissions
 - ✓ Paid leave (vacation, family, medical or sick leave, but not leave covered by FFCRA)
 - ✓ Allowances for dismissal or separation paid or incurred
 - ✓ Not to exceed \$15,385 per employee (\$100k / 52 weeks * 8 weeks)
 - ✓ Annualization more lenient

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LOAN FORGIVENESS Schedule A: Employees Over \$100k (line 5)

- Line 5 Average weekly # FTE for employees making over \$100k (exclude independent contractors, owner-employees, self-employed, or partners)
- # FTE used to reduce forgiveness (compares FTE to baseline period) unless
 - FTE Reduction Exception applies (exception for specific employees only)
 - FTE Reduction Safe Harbor applies (exception for all employees)
- From Schedule A Worksheet Table 2 (page 9 must maintain but not submit)
- Reminder, for each employee, enter the average number of hours paid per week, divided by 40, and round the total to the nearest tenth (.1)
- Again, the maximum FTE is 1.0 per employee

LOAN FORGIVENESS Schedule A: Other Payroll Costs – Health Insurance (line 6)

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- Line 6 Total amount paid for employer contributions for employee health insurance (all employees, except independent contractors, owner-employees, self-employed, or partners).
- No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers in general partners, as such expenses are paid out of their net self employment income (no stacking benefits for owners). (IFRN2 12)

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LOAN FORGIVENESS Schedule A: Other Payroll Costs – Retirement Contributions (line 7)

- Line 7 Total amount paid for employer contributions to employee retirement plans (all employees, except independent contractors, owner-employees, self-employed, or partners).
- No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers in general partners, as such expenses are paid out of their net self employment income (no stacking benefits for owners). (IFRN2 12)



LOAN FORGIVENESS Schedule A: Other Payroll Costs – State / Local Taxes On Employee Compensation (line 8)

- Line 8 Total amount paid for employer state and local taxes assessed on employee compensation (appears to be all employees).
- Amounts paid on behalf of owners does not appear to be prohibited; however, subject to overall limitations.
- No additional forgiveness is provided for **retirement** or **health insurance contributions** for self-employed individuals, including Schedule C filers in general partners, as such expenses are paid out of their net self employment income (no stacking benefits for owners). (IFRN2 12)

LOAN FORGIVENESS Schedule A: Owner Compensation (line 9)

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- Line 9 Total amount paid to owners (owner-employees, a self-employed individual, or general partners). This amount is capped at \$15,385 (the 8week equivalent of \$100,000 per year) for each individual or the 8-week equivalent of their applicable compensation in 2019, whichever is lower.
- No additional forgiveness is provided for **retirement** or **health insurance contributions** for self-employed individuals, including Schedule C filers in general partners, as such expenses are paid out of their net self employment income (no stacking benefits for owners). (IFRN2 12)

LOAN FORGIVENESS Schedule A: Total Payroll Costs (line 10)

- Line 10 Add the following to calculate total Payroll Costs
 - Line 1 Cash compensation for employees making \$100,000 / yr. or less
 - Line 4 Cash compensation for employees making more than \$100,000 / yr.
 - Line 6 Total amount paid for employer contributions for employee health insurance
 - Line 7 Total amount paid for employer contributions to employee retirement plans
 - Line 8 Total amount paid for employer state and local taxes assessed on employee compensation
 - Line 9 Total amount paid to owners

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LOAN FORGIVENESS Schedule A: FTE Reduction Calculation (line11)

- Check box if no reduction in FTE between 1/1/20 and the end of the Covered Period and skip lines 11 – 12 and enter 1.0 on line 13.
- Line 11 Average weekly FTE during borrower's chose reference period (likely the lesser of)
 - 2/15/19 6/30/19

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- 1/1/20 2/29/20
- A consecutive 12-week period between 5/1/19 9/15/19 (seasonal employers only)
- Use same method to calculate FTE as used in Schedule A Worksheet.
- Sum all employees during the reference period and enter total on line 11.
- Do not include independent contractors, owner-employees, self-employed, or partners – they appear excluded from all FTE calculations.

LOAN FORGIVENESS Schedule A: FTE Reduction Calculation (line12)

• Line 12 – Average weekly FTE during the Covered Period

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- Add line 2 Average weekly FTE for employees making \$100k or less
- Add line 5 Average weekly FTE for employees making more than \$100k

LOAN FORGIVENESS Schedule A: FTE Reduction Calculation (line13)

- Line 13 FTE Reduction Quotient
 - Divide line 12 by line 11, or

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- Enter 1.0 if Safe Harbor is met

App 1-4 LOAN FORGIVENESS PPP Loan Application Form: Surviving Schedule A

- Line 1 Payroll Costs from Schedule A, line 10
- Line 2 Business mortgage interest payments during the Covered Period for any business mortgage obligation on real or personal property incurred before 2/15/20 (no pre-payments)
- Line 3 Business rent or lease payments for real or personal property during the Covered Period, pursuant to lease agreements in force before 2/15/20.
- Line 4 Business utility payments during the Covered Period, for business utilities for which service began before 2/15/20 (no guidance for "transportation")
- NOTE: For lines 2 4, you are not required to report payments that you do not want to include in the forgiveness amount.

LOAN FORGIVENESS PPP Loan Application Form: Potential Forgiveness Amounts

- Line 8 Multiply line 6 by line 7 (Modified Total)
- Line 9 PPP Loan Amount

App

8-11

- Line 10 Payroll Cost 75% requirement (divide line 1 by .75)
- Line 11 Forgiveness is the smaller of lines 8 10
- NOTE: SBA will deduct EIDL Advance Amount from the forgiveness amount remitted to Lender.

- Complete and submit the Loan Forgiveness Application (SBA Form 3508 or Lender equivalent) to Lender
- Lender will review application and makes decision
- Lender has 60 days from receipt of a complete application to issue decision to SBA
- Lender requests payment from SBA for amounts forgiven
- SBA will, subject to any SBA review for the loan or loan application, remit forgiveness amount to Lender, plus any interest accrued through the date of payment
- SBA will deduct EIDL Advance Amounts remitted to the Lender
- Lender notifies borrower of the forgiveness amount
- SBA may determine entire loan not eligible for forgiveness (if not an adequate basis for application certification)
- SBA will issue separate interim final rules for SBA Loan Review Procedures and Related Borrower and Lender Responsibilities

Documents that each borrower must submit with its PPP Loan Forgiveness Application

- Payroll: Documentation verifying the eligible cash compensation and non-cash benefits from the Covered Period or the APCP consisting of the following:
 - Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
 - Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the Covered Period or APCP, including Payroll tax filings reported, or that will be reported to the IRS (typically Form 941), state quarterly business and individual employee wage reporting and unemployment insurance tax filings reported or that will be reported to the relevant state.
 - Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the borrower included in the forgiveness amount (Schedule A, lines 6 and 7).

Documents that each borrower must submit with its PPP Loan Forgiveness Application

- FTE: Documentation showing
 - Average number of FTE employees on payroll per month employed by the borrower between 2/15/19 and 6/30/19
 - Average number of FTE employees on payroll per month employed by the borrower between 1/1/20 and 2/29/20
 - In the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the borrower between 2/15/19 and 6/30/19; between 1/1/20 and 2/29/20; or any consecutive 12-week period between 5/1/19 and 9/15/19.

- The selected time period must be the same time period selected for purposes of completing Schedule A, line 11. Documents may include payroll tax filings reported, or that will be reported, to the IRS (typically form 941) and state quarterly business and individual wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.
- Documents submitted may cover periods longer than the specific time period.

Documents that each borrower must submit with its PPP Loan Forgiveness Application

- Nonpayroll: Documentation verifying existence of the obligations / services prior to 2/15/20 and eligible payments from the Covered Period.
 - Business mortgage interest payments: Copy of lender amortization schedule in receipts or canceled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
 - Business rent or lease payments: Copy of current lease agreement and receipts or canceled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
 - Business utility payments: copy of invoices from February 2020 and those paid during the Covered Period and receipts, canceled checks, or account statements verifying those eligible payments.

Documents that each borrower must maintain but not required to submit

- Schedule A Worksheet or its equivalent and the following:
 - Documentation supporting the listing of each individual employee in Schedule A worksheet Table 1, including the "Salary/Hourly Wage Reduction", if necessary.
 - Documentation supporting the listing of each individual employee in Schedule A worksheet Table 2; specifically, that each listed employee received during any single pay period in 2019 compensation at an annualized rate of more than \$100,000.
 - Documentation regarding any employee job offers in refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule.
 - Documentation supporting the schedule a worksheet "FTE reduction Safe Harbor".
- All records relating to the borrower's PPP loan, including documentation submitted with its PPP loan application, documentation supporting the borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan, documentation necessary to support the borrower's loan forgiveness application, and documentation demonstrating the borrower's material compliance with PPP requirements. The borrower must retain all such documentation in its files for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.

Potential Changes to the PPP Program



- S. 3833
 - A Bill to Extend the Loan Forgiveness Period for the Paycheck Protection Program and for Other Purposes
 - Introduced 5/21/2020



- H.R. 6886
 - Paycheck Protection Flexibility Act of 2020
 - Introduced 5/15/2020; sent to Committee on Small Business and Committee on Ways and Means on 5/15/2020
 - Sets minimum maturity date of 5 years (§ 2)
 - Extends forgiveness period from 8 weeks from date of disbursement to the earlier of 24 weeks after loan origination or December 31, 2020 (§ 3)
 - Extends rehire exemption period from June 30, 2020 to December 31, 2020 (§ 3)
 - Adds exemption based on employee availability (§ 3)
 - Prohibits SBA from limiting non-payroll portion of a forgivable covered loan amount, eliminating the 75%/ 25% rule (§ 3)



- Hero's Act
 - Introduced 5/12/2020; Passed House 5/15/2020
 - Change "covered period" from "the period beginning on February 15, 2020 and ending on June 30, 2020" to ending on December 31, 2020 (§ 9001)
 - Expand eligibility for certain organizations (§ 9001)
 - Sets minimum maturity date of 5 years (§ 9001)
 - Extends 8-week forgiveness period to 24 weeks (§ 9004)
 - Prohibits SBA from limiting non-payroll portion of a forgivable covered loan amount, eliminating 75% / 25% rule (§ 9004)

Litigation Issues

PAYCHECK PROTECTION PROGRAM Litigation Issues







Claims against banks/lenders

- Favoring certain clients
- Failing to process applications timely (failure to communicate)
- Failure to advise to apply timely

Claims against professionals

- Failure to advise as to allowable uses and risks of violation
- Failure to advise how to manage forgiveness

Claims against borrowers

- For return of proceeds
- For false claims (certifications)



- May 5, 2020 DOJ Announcement
- Charges: Conspiracy to make false statement to influence the SBA and conspiracy to commit bank fraud
 - Two businessmen in the District of Rhode Island allegedly filed fraudulent bank loan applications seeking more than a half-million dollars of PPP funds.
 - Allegedly had no employees but applied for a PPP based on dozens of employees earning wages at four different business entities.



- May 13, 2020 DOJ Announcement
- Charges: Federal bank fraud charges
- Reality TV star, Maurice Fayne, of Love & Hip Hop: Atlanta allegedly applied for a \$3.7 million PPP under a business name, Flame Trucking which he alleged had 107 employees and an average monthly payroll of \$1,490,200.
- The bank ultimately funded the loan for \$2,045,800. Shortly thereafter, Fayne allegedly used more than \$1.5 million of the PPP loan proceeds on jewelry, a Rolls Royce car lease, loan payments, and child support.



- May 22, 2020 DOJ Announcement
- Charges: Wire fraud, bank fraud, false statements to a financial institution, and false statements to the SBA
 - California film producer allegedly made a series of misrepresentations to a bank and the SBA to obtain a PPP, then used the proceeds to pay off personal credit card debts and other personal expenses.



PAYCHECK PROTECTION PROGRAM Lawsuits Filed Regarding PPP

- Class actions against banks:
 - Improper gates (existing deposit or credit relationship)
 - ✓ Favoring marquee customers
 - ✓ Favoring borrowers with large loans for bigger fees
- One case in Maryland dismissed finding the CARES Act provides no private cause of action; on appeal
- May have more claims on the horizon for failing to process applications timely or giving incorrect instructions on amount of loan



PAYCHECK PROTECTION PROGRAM Lawsuits Filed Regarding PPP

INJUNCTION AGAINST SBA BY DEBTOR IN BANKRUPTCY:

- Texas County EMS transportation provider filed Chapter 11 reorganization in October 2019 so it could continue providing services to low income rural area of state
- Sought PPP dollars to keep paying its 250 employees despite virus caused slowdown of 30%
- Court issued an injunction against SBA holding SBA could not prohibit debtor from applying for PPP loan
 - Debtor argued SBA rule prohibiting application from debtors exceeded authority as CARES Act did contain prohibition
- SBA appealed to US 5th Circuit pending



PAYCHECK PROTECTION PROGRAM Lawsuits to Come After PPP

Professionals (Lawyers/CPAs):

- ✓ Failing to communicate eligibility to clients
- ✓ Failing to correctly calculate loan amount
- ✓ Failing to give timely and correct advice on forgiveness
- ✓ Failing to advise as to possible tax impact of loan



LAURA CALDERA Bullivant Houser

Attorney, Business Law Practice Group Leader P 503.499.4602 E laura.caldera@bullivant.com



TOM HUTCHINSON Bullivant Houser

Attorney P 503.499.4582 E tom.hutchinson@bullivant.com

Thank you. **QUESTIONS**?



BILL HOLMES, CPA/ABV/CVA/CFE Holmes & Company

P 503.270.5400 E wnholmes@pdxcpas.com



