



# Maximizing forgiveness under the Paycheck Protection Program

TIPS, TECHNIQUES, AND A PLANNING TOOLKIT  
(avoid the traps!)

Presented on April 30, 2020

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# >> Paycheck Protection Program

Maximizing Loan Forgiveness



# PAYCHECK PROTECTION PROGRAM

## Who Qualifies?



- Small Business Concerns per 15 U.S.C. 632



- Self-Employed Individuals
- Independent Contractors



- Businesses
  - Non-Profit Organizations
  - Veterans Organizations
  - Tribal Business
- (Employs  $\leq$  500 Employees w/Exceptions)



## PAYCHECK PROTECTION PROGRAM

# Maximum Loan Amount

**LESSER OF:**

**2.5 times average monthly  
Payroll Costs**

**+**

**outstanding disaster loan  
according to specified  
calculations**

**OR**

**\$10,000,000**



## PAYCHECK PROTECTION PROGRAM

# General Overview

- 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)
- PPP loan proceeds that are forgiven are not subject to federal income tax – state income tax is unclear! (ACT §1106(i))
- Proceeds may be spent through 6/30/20 on allowable expenses, but expenses incurred and paid after the 8-week Covered Period do not appear to be eligible for forgiveness (no guidance yet). (ACT §1102(36)(a)(3))



## PAYCHECK PROTECTION PROGRAM

# Certification Requirement

1. That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
2. Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
3. That the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
4. During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.” (ACT §1102(36)(G))



## PAYCHECK PROTECTION PROGRAM

# Key Terms

- The Program also permits borrowers to spend a portion of the proceeds on other allowable expenses, which are not necessarily “forgivable.” (ACT §1102(a)(2)(F))
- The term “covered” is used throughout the Act and related guidance, as well as in this presentation. To clarify the meanings, we are using the term solely in the manner consistent with the meaning of “covered” expenses (which are “forgivable” expenses) and Covered Period (which is the 8-week period following loan disbursement). We are not using the term to make reference to “covered” loans or any other meanings.





## 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)

## VERY IMPORTANT BUILDING BLOCK CONCEPT!



## PAYCHECK PROTECTION PROGRAM

# General Forgiveness Rules

- To be a “covered” and “forgivable” cost, the language of the Act states it must be **incurred and paid** during the Covered Period and qualify as “forgivable.” (ACT §1106(b))
- Rules require at least 75% of the PPP loan proceeds to be spent on Payroll Costs; however, the Act is silent on this point (potential penalty considerations). (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. (IFRN 14)



## 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

# Managing Forgiveness

- As stated, forgiveness will not occur for PPP funds used for unauthorized purposes. (IFRN 17)
- Forgiveness can be reduced if: Expenditures are not “forgivable”, too little is spent on forgivable expenses, reductions in # FTE employees, and / or if any individual employee’s salary is cut by more than 25%.
- 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 FORGIVENESS

## Managing Nature of Payments

- There is a difference between **allowable** and **forgivable** expenses. Make efforts to spend proceeds on forgivable expenses – use other available money for allowable and unauthorized expenses.
- As a reminder, **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)



## LOAN CALCULATION

# What Counts as Payroll Costs for Loan Forgiveness Purposes?

- Salary, wages, commissions, or tips (\$100,000 max on an **annualized** basis per employee (\$4,167 is max for a bi-monthly pay 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 (ignore federal taxes); and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an **annualized** basis. (ACT §102(a)(2)(A)(viii))/(FAQ 7)



LOAN FORGIVENESS

## Managing Nature of Payments

- As a reminder, **forgivable expenses** include Payroll Costs, as well as “covered” expenses (subject to limits), 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)





## LOAN FORGIVENESS

# Managing \$ Amount of Payments

- As stated, rules require 75% of the PPP loan proceeds to be spent on Payroll Costs. Rules also state SBA will issue additional guidance on loan forgiveness which may address failure to follow this rule. (IFRN 14 and 16)
- Loan forgiveness may decrease if the entire loan amount is not spent on forgivable expenses that were **incurred and paid** during the Covered Period. (ACT §1106(b))
- Loan forgiveness may be decreased if too much spent on non-payroll items (limited to 25% of the forgiven amount). (IFRN 13 & 18)



LOAN FORGIVENESS

## Managing \$ Amount of Payments

- Loan forgiveness may be reduced if salaries or wages decrease by more than 25% (compared to the amount paid during the most recent full quarter during which the employee was employed before the covered period), for **any** employee making less than \$100,000 (annualized in 2019). (ACT §1106(d)(3))
- This appears to be an employee by employee test and not a gross \$ test for total payroll \$.



## LOAN FORGIVENESS

# Managing # of Employees

- Loan forgiveness may be reduced if full-time employee headcount (**FTE**) is decreased during the Covered Period compared to the FTE existing during 2/15/19 and 6/30/19 or 1/1/20 and 2/29/20 (borrower may choose). (ACT §1106(d)(2))
- Borrowers may be entitled to an exemption for forgiveness reductions if full-time employment and / or salary levels are restored by 6/30/20 (for any changes made between 2/15/20 and 4/26/20). (ACT §1106(d)(5))



## LOAN FORGIVENESS

# Managing Timing of Payments

### SEC. 1106. LOAN FORGIVENESS.

- (a) Definitions.—In this section
  - (3) the term “covered period” means the 8-week period beginning on the date of the origination of a covered loan;
- (b) Forgiveness.—An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to...costs **incurred and payments** made during the covered period.
- Clarifying guidance may not be issued; however, the statute appears to indicate that “covered” or “forgivable” expenses are “accrual” based (when incurred) and “cash” based (when paid) during the Covered Period (**allowable** expenses do not appear to have this requirement).

# 1

## LOAN FORGIVENESS

# Calculating Forgiveness – 4 Steps

First, loan proceeds not spent on forgivable (“covered”) expenses during the Covered Period may not be forgiven.

Example: if PPP loan was \$100,000 but only \$75,000 was spent on forgivable (“covered”) expenses during the Covered Period, \$25,000 may not be forgiven. (ACT §1106(b))

# 2

## LOAN FORGIVENESS

# Calculating Forgiveness – 4 Steps

Second, rules state that even if all loan amounts are spent on forgivable (“covered”) expenses, not more than 25% of the loan forgiveness amount may be attributed to non-payroll expenses. Amounts spent on “covered” non-payroll items that exceed 25% of total forgivable expenses may not be forgiven.

(IFRN 14)



## LOAN FORGIVENESS

# Calculating Forgiveness – 4 Steps

Third, forgiveness may be decreased if the FTE employees decreased during the Covered Period compared to FTE calculated for the baseline period (borrower can choose the lower of FTE during 2/15/19 – 6/30/19 or 1/1/20 – 2/29/20), although employers may have until 6/30/20 to reinstate employees to reach the baseline FTE amount. (ACT §1106(d))

## 3b

### LOAN FORGIVENESS

## Calculating Forgiveness – 4 Steps

Stated as a formula for step 3 in the following example, if the loan forgiveness calculated under steps 1) and 2) above is \$1,000,000, and if:

- FTE was 9.0 during the Covered Period
- (a) FTE was 10.5 during 2/15/19 – 6/30/19
- (b) FTE was 10.0 during 1/1/20 – 2/29/20 (borrower can choose the lower of (a) or (b) above;

Loan forgiveness may be reduced to:  $(\$1,000,000 \times (9/10)) = \$900,000$ . (ACT §1106(d))



## 4a

### LOAN FORGIVENESS

## Calculating Forgiveness – 4 Steps

Fourth, loan forgiveness may decrease by the amount of wage decreases larger than 25% of **any employee** during the Covered Period compared to wage amounts in the most recent full quarter before the Covered Period began in which the employee was employed (excludes employees over \$100k). (ACT

§1106(d)(3))

## 4b

### LOAN FORGIVENESS

## Calculating Forgiveness – 4 Steps

Stated as a formula for step 4 in the following example, if Employee A earned \$3,500 each 2-week pay period during the most recent full quarter before the Covered Period, then the largest pay cut allowed (without affecting forgiveness) would be \$875 per pay period ( $\$3,500 * .25 = \$875$ ). If Employee A's pay was reduced by \$1,500 in each 2-week pay period during the Covered Period, the amount not forgiven is \$625 per 2-week pay period ( $\$1,500 - \$875 = \$625$ ). With 4 payrolls during the Covered Period, loan forgiveness would decrease \$2,500 ( $\$625 * 4$ ). (ACT §1106(d)(3))

## LOAN FORGIVENESS

# Requesting Forgiveness

### How can I request loan forgiveness?

You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days. (ACT §1106(e))

## LOAN FORGIVENESS

# Forgiveness Audit

**Will my  
forgiveness  
calculation be  
audited?**

All loans over \$2 million will be audited (unclear by whom). Other audits are expected.



## LOAN FORGIVENESS

# Tips, Techniques & Risks

- Decide whether to spend the entire proceeds on forgivable or allowable expenses (business decision).
- Decide whether to spend the proceeds during the Covered Period (8-weeks) or after the Covered Period but before 6/30/20.
- Decide whether to spend more than 25% of expenditures on non-payroll items (repayment decision)
- Calculate 8-weeks (Ex. 4/16/20 – 6/10/20), budget, and use loan forgiveness calculator (be intentional)



## LOAN FORGIVENESS

# Tips, Techniques & Risks

- Be careful! Forgivable expenses must be “**incurred and paid**” during the 8-week Covered Period, but allowable expenses may not have to be.
- Expenses paid in advance (rent, health ins., etc.) can be trouble if not managed – Example: If these expenses were paid on 4/1/20 for April and a PPP loan was received on 4/16/20, no portion of these expenses may qualify since they were not **paid** during the 8-week period (no guidance).



## LOAN FORGIVENESS

# Tips, Techniques & Risks

- Payroll expenses can be trouble if not managed – Example: Payroll for the pay period 4/1/20 – 4/15/20 paid on 4/20/20 with proceeds from a PPP loan received on 4/16/20 may not qualify since the expenses were not **incurred** during the 8-week Covered Period (no guidance).



LOAN FORGIVENESS

## Tips, Techniques & Risks

- Payments for forgivable expenses made on the back-end of the 8-week period may also be problematic – Example: payments made during the 8-week Covered Period that related to obligations that extend past the 8-week Covered Period.





## LOAN FORGIVENESS

# Tips, Techniques & Risks

- Prepare for special payroll runs (Example: if the 8-week period ends on 6/10/20 but payroll for that period isn't paid until 6/20/20, a special payroll run may be necessary to be funded on 6/10/20 for wage expenses incurred through 6/10/20.)
- Consider whether any salary, wage or additional retirement plan contributions are appropriate given the circumstances.

# PAYCHECK PROTECTION PROGRAM

## Litigation Issues



Claims against banks/lenders	Claims against professionals	Claims against borrowers
<ul style="list-style-type: none"><li>• Favoring certain clients</li><li>• Failing to process applications timely (failure to communicate)</li></ul>	<ul style="list-style-type: none"><li>• Failure to advise to apply timely</li><li>• Failure to advise as to allowable uses and risks of violation</li><li>• Failure to advise how to manage forgiveness</li></ul>	<ul style="list-style-type: none"><li>• For return of proceeds</li><li>• For false claims (certifications)</li></ul>

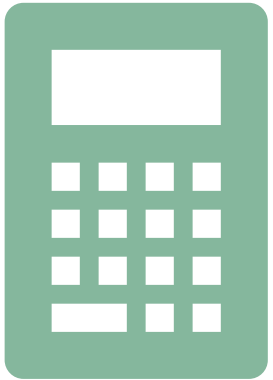
# >> **Loan Forgiveness**

## Calculator Walkthrough



## LOAN FORGIVENESS

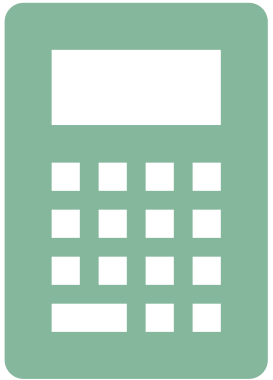
# Loan Calculator as a Tool



We will now go through the loan forgiveness calculator which is a tool for clients and friends to use and is provided as part of the webinar materials. If you do not have it, you can email any of us to receive a free copy.

## LOAN FORGIVENESS

# Conclusion



Achieving 100% forgiveness of PPP loans can be managed. In order to do so, borrowers need to pay careful attention to the nature of payments made, amount of payments made, reductions in employee compensation, reductions in FTE, and the timing of payments.

**Happy Calculating!**

Thank you.  
**QUESTIONS?**



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