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PPP LOAN TERMS

Prior to June 5, 2020

2-year term

1% interest rate

IF lender and borrower mutually agree, can change to a 5-year term

June 5 and later

5-year term 1% interest rate

If the application for loan forgiveness is submitted to the lender within 10 months of the end of the covered period, no payments are due until SBA determines amount eligible for forgiveness.

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PPP FORGIVENESS STEPS

- Borrowers will compile documentation to support their application for forgiveness
- Borrowers will complete their application AFTER their covered period is complete OR AFTER they have spent all of their loan funds
- Borrowers will need to submit the package to their PPP lender
- Lender submits package to SBA for forgiveness
- SBA notifies lender how much forgiveness is approved
- Lender notifies borrower how much forgiveness has been approved, and any remaining loan balance due (if applicable)

PPP LOAN FORGIVENESS

THEN

When MOST of you applied for your PPP loan, the rules were:

- Must spend loan proceeds in 8 weeks
- AT LEAST 75% on payroll
- NO MORE THAN 25% on interest, rent and utilities

NOW

Since then, the rules have changed:

- Must spend loan proceeds in 24 weeks or 12/31/2020, whichever comes first
- AT LEAST 60% on payroll
- NO MORE THAN 40% on interest, rent and utilities

If you applied prior to June 5, 2020, you may keep the old rules – but we are focusing the new rules today.





BASICS – THE COVERED PERIOD

- This is the amount of time in which you have to spend your PPP funds to qualify for forgiveness
- It starts the day you got your PPP loan funds
- Runs for 24 weeks (168 days)
 If it started on a Friday, it ends on a Thursday
- Ends NO LATER than December 31, 2020 (IF your loan disbursement is AFTER July 24, you will have less than 24 weeks in your Covered Period)

Yikes! How do you handle payroll with this?





BASICS - ALTERNATIVE PAYROLL COVERED PERIOD (APCP)

- Also 24 weeks (168 days) (or December 31, 2020)
- Starts the first day of the pay period immediately following the disbursement date
 - Ask: What day did you get the PPP funds? Use the first day of the next pay period as the start of your APCP $% \left(\mathcal{A}^{2}\right) =\left(\mathcal{A}^{2}\right) \left(\mathcal{A}^{2}\right) \left$
- Must pay biweekly or more frequently to be eligible for the alternative payroll covered period
- If you use the APCP for payroll, you must use it for all payroll calculations in your application (FTEs, etc.) unless it says COVERED PERIOD only.
- If you use the APCP, you must pay the last pay run by its normal pay date





COVERED PERIOD VS. ALTERNATIVE PAYROLL COVERED PERIOD

- The Covered Period is the period that started the date that you received your PPP loan and ends 24 weeks (168 days) later
- The time period that you MUST spend your PPP loan proceeds on qualified expenses in order to achieve loan forgiveness
- The Alternative Payroll Covered Period (APCP) is an option for payroll expenses only





WHAT COSTS COUNT TOWARD FORGIVENESS?

Payroll

- Gross wages to U.S. resident employees
- Max \$46,154 per employee in this time period
- Employer share of
 - Health care benefits
 - Retirement benefits
 - State and local payroll taxes

Notice

- Employer share of Social Security (FICA) and Medicare don't count, nor do FUTA or worker's comp
- Neither do withholdings (already included in gross wages)

Sound familiar? It's the same payroll expenses used to calculate loan eligibility

PAID AND INCURRED - No prepayments





ELIGIBLE FOR FORGIVENESS - SELF-EMPLOYMENT

If you are a self-employed individual, your 'paycheck' was calculated based on your 2019 tax return that was submitted with your application

Sole proprietors: Sch F or Sch C profit A sole proprietorship has one owner, even if the owner is married

Partners: Box 14A of your K-1

LLCs: Use your applicable tax filing status above

Corporations: Owners' pay was already included as salary/wages (2019) - there is no additional self-employment income

For sole proprietors/partners, the amount eligible for forgiveness based on your earnings (separate from payroll)

- $\,-\,$ is 2.5 / 12 of the amount above
- limited to \$20,833 per owner/partner





WHAT ABOUT H2A/H2B/J1?

- SBA guidance does not mention temporary workers
- Guidance points to the IRS residency test used to determine which state you pay income taxes to (not which country)
- With no more official word, it is unlikely banks will expand the acceptable expenses
- PLAN your PPP spending and forgiveness application without guest worker wages

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ELIGIBLE COSTS - COVERED MORTGAGE OBLIGATIONS

- Business mortgage interest (no principal)
 - payments during COVERED period only (no APCP) or
 - Incurred during COVERED Period and paid as scheduled
- On real or personal property
- Loans with collateral
 - Credit cards? NO
 - Operating loans? What's the collateral?
- These obligations must have:
 - been in place before Feb 15, 2020
 - written documentation
- NO prepayments

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ELIGIBLE COSTS – RENT

- Business rent or lease payments
 - On real or personal property
 - Paid during COVERED Period (no APCP)
 - Incurred during COVERED Period (no APCP) AND paid as scheduled (EVEN IF the billing date is after the end of the covered period)
 - Rent normally paid in November in arrears? (assuming your Covered Period ends

before November) The prorated portion of annual rent that is incurred during your covered period can count.

- These obligations must have been in place before Feb 15, 2020 and have written documentation.
- NO Prepayments
- "New York Times Test" related parties especially



ELIGIBLE COSTS – UTILITIES

- Business utility payments
 - Distribution of electricity
 - Gas
 - Water
 - Transportation
 - TelephoneInternet access
 - Internet access
- Paid during COVERED Period (no APCP)

or

- Incurred during COVERED Period (no APCP) AND paid on or before the next regular billing date (EVEN IF the billing date is after the end of the covered period)
- These services must have
 - been in place before Feb 15, 2020 and
 - written documentation
- NO Prepayments





ELIGIBLE PPP EXPENSES - RECAP

- The amount that you spent on PAYROLL determines the Maximum amount eligible for forgiveness
- Loan forgiveness cannot exceed payroll expenses divided by 0.60 (i.e. 60%)
- Note that this says Loan FORGIVENESS... not Loan Total

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FORGIVENESS REDUCTIONS – RATE OF PAY REDUCTION

For each employee, if pay is reduced by 25% or more when comparing the average pay for

- Jan 1, 2020-March 31, 2020 to your Covered period/APCP and
- It was not reinstated by December 31, 2020, or when you apply for forgiveness (if earlier)

your forgiveness will be reduced by a comparable percentage.

Bottom line: Use the PPP money to keep your employees paid!

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SAFE HARBOR – RATE OF PAY

Maintain rate of pay in place since January 1

(technically > 75% of what they were before 3/31/20)

or

Restore to pre-3/31 salary or wage level by December 31 (or when you apply for forgiveness, if earlier)

CAUTION: If you

- raised wages between 2/15 and 4/26

- and then reduced after you got PPP funds,

the safe harbor does not apply (must reinstate to 100% of new rate)



FORGIVENESS REDUCTIONS – FULL-TIME EQUIVALENTS

- Choose your reference period
 - Feb 15, 2019-June 30, 2019
 - Jan 1, 2020 Feb 29, 2020
 - IF you applied as a seasonal employer, either of these OR a consecutive 12-week period between May 1 and Sept 15, 2019
 HINT: Choose the one with the fewest FTEs
- Calculate average full-time equivalents (FTEs) for
- Your chosen reference period
- Your entire covered period / APCP





EXCEPTIONS TO THE FTE REDUCTION

- Any positions for which borrower made good faith written offer to rehire an individual who was employed on Feb. 15, 2020 and was unable to rehire a similarly qualified individual by 12-31-2020
- Any position for which borrower made good faith written offer to restore reduced hours (at same rate of pay) and employee rejected offer
- Any employee who was fired for cause, resigned, or requested a reduction in hours

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WHAT IF IT WAS THE EMPLOYEES' IDEA?

FTE Reduction Exceptions – document, document:

- Rejection of job (after good-faith written offer to rehire)
- Firing for cause
- Voluntary resignations
- Voluntary request for reduction of hours (must be in writing)

Any FTE reductions in these cases

- do not reduce the Borrower's loan forgiveness
- do not need to be reported if positions are filled by a new employee
- need to be documented in writing



SAFE HARBOR – FTE REDUCTION

lf you

- Reduced FTEs between Feb 15 and April 26, 2020 and
- Restored FTEs to Feb 15 pay period level by December 31, 2020 (or when you apply for forgiveness, if earlier)

then your forgiveness will not be reduced due to FTE reductions.

If you don't meet the safe harbor, the reduction is proportional based on the decrease in FTEs.

Note: FTE count is <u>not</u> related to the employee count on your application.





FTE REDUCTION

If you don't meet either of the safe harbors, the reduction is proportional based on the decrease in FTEs.

Note: FTE count is <u>not</u> related to the employee count on your application

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WHAT ABOUT OWNER COMPENSATION?

IF you included eligible owner compensation as part of your PPP loan application, you may include a specified amount of owner compensation replacement for forgiveness.



OWNER COMP AS IT RELATES TO FORGIVENESS:

Owner Compensation Replacement based on:

- Corps: Owner / Officer Salary (2019 rates)
- Partnerships: Box 14a of schedule K-1 (2019 return)
- Sole. Prop.: Schedule C or F profit (2019 return)
- Eight Week Covered Period: 8 weeks of owner compensation replacement (8 / 52) (if using)
- 24 Week Covered Period: 2.5 months of owner compensation replacement (2.5/12)
- Exclude any sick leave equivalent for which a credit is claimed



WHAT ABOUT OWNER BENEFITS?

- Depends on your business structure
 - C-Corps: may include company paid health and retirement benefits
 - S-Corps: may include company paid retirement benefits ONLY
 - Sole-props / Partnerships: may not include any owner health or retirement benefits







DOCUMENTATION - PAYROLL DOLLARS

- Bank account statements OR third-party payroll service provider reports
- Tax forms OR equivalent third-party payroll provider reports for periods that overlap the covered period OR alternative payroll covered period

Payroll tax filings reported (or that will be reported) to IRS on 941 What about 943s? Stay tuned!

And

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 for EmployER contributions to
 - Employee health insurance plans
 - Employee retirement plans

Note: Internal records will not suffice

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DOCUMENTATION - PAYROLL FTES

- Average number of FTEs from Feb 15, 2019-June 30, 2019 OR
- Average number of FTEs from Jan 1, 2020- Feb 29, 2020 OR
- Seasonal: either of the above OR any consecutive 12 weeks between May 1 and Sept 15, 2019
- Documents MAY include:

Payroll tax filings reported, or that will be reported, to the IRS (941)

and

State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state.

What about 943s? Stay tuned!



BUT I FILE A 943 AND AM NOT SUBJECT TO UNEMPLOYMENT...

WE KNOW!

- SBA generally doesn't work with farmers (that's USDA's job) so there is a learning curve
- It took a while for the Sch F/943s to be accepted for eligibility, but it did happen
- Patience and persistence pay off
- Talking points for discussing this with SBA offices are on FarmCreditEast.com





REQUIRED PAYROLL RECORDS TO KEEP

For each table

- Employee name
- Employee identifier (last 4 of SSN)
- Cash compensation
- Average FTE
- Salary/hourly wage reduction (Table 1 only)

Compare covered period (or alternate covered payroll period) vs. Jan 1 – March 31, 2020 (Realized Rate of Pay) And Feb 15 – April 26, 2020 (Safe Harbor)





DOCUMENTATION - UTILITIES

- Copy of invoices from February 2020 and during the covered period AND
- receipts, cancelled checks, or account statements
- Eligible business utility payments
 - Distribution of electricity
 - Gas
 - Water
 - Transportation
 - Telephone or
 - Internet access

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PPP LOAN FORGIVENESS APPLICATION FORM EZ

Borrower may use this form if:

- Self-Employed who had no employees at the time of the PPP loan application and did not include employee compensation in the PPP loan application OR
- Did not reduce average compensation of any employee by more than 25% during CP or APCP vs 1/1/2020 – 3/31/2020 AND Did not reduce the number of employees or average paid hours of employees between 1/1/2020 – end of CP (ignoring reductions for inability to rehire) OR
- Did not reduce average compensation of any employee by more than 25% during CP or APCP vs 1/1/2020 – 3/31/2020 AND was unable to operate during CP at same level as 2/15 due to compliance with COVID-19 restrictions



EZ FORM VS REGULAR FORM

- The EZ form ONLY requires less documentation to be submitted with your application (You still need to HAVE the documentation)
- You still need to be able to document that you did not reduce employee's pay and that you maintained employment levels, if asked for documentation by SBA
- You still must do the math to confirm that you have maintained employment levels and pay levels so that you can answer the certification questions accurately
- SBA has six years to come back and look at EVERYTHING associated with your loan and forgiveness... don't throw ANYTHING away

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DOCUMENTATION THAT BORROWERS MUST MAINTAIN BUT NOT SUBMIT (EITHER FORM)

- Documentation supporting the wages / salary rates of employees during CP / APCP vs 1/1/2020 – 3/31/2020. (Table 1 and Table 2 on regular form)
- Employee job offers and refusals, restoration of hours, etc. through 12/31/2020
- Documentation supporting no reduction in employee numbers or average paid hours of employees 1/1/2020 – end of CP (EZ Form)
- Documentation that business was unable to operate due to compliance with COVID 19 safety rules / regulations (if applicable)
- Everything else related to the PPP loan, including documentation used in application



TWO CERTAINTIES OF LIFE....

- Taxes is one of them...
- Any amounts of PPP loan forgiveness received will NOT be considered taxable income
- IRS has indicated that expenses used to qualify for PPP loan forgiveness will NOT be tax deductible
- This means that your taxable income will be higher, but you still will keep more than you will pay in taxes

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	COVERED PERIOD								ALTERNATIVE PAYROLL COVERED PERIOD						
	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
	26 APR	27	28	29	30	1 MAY	2	26 APR	27	28	29	30	1 MAY	2	
 Sunday- Saturday pay period 	3	4	5	6	7	8 \$	9	3	4	5	6	7	8	9	
	10	11	12	13	14	15 \$	16	10	11	12	13	14	15 \$	16	
	17	18	19	20	21	22 \$	23	17	18	19	20	21	22 \$	23	
	24	25	26	27	28	29 \$	30	24	25	26	27	28	29 \$	30	
 Friday pay day 	31	1 JUNE		3	4	5\$	6	31	1 JUNE		3	4	5 \$	6	
	7	8	9	10	11	12 \$	13	7	8	9	10	11	12 \$	13	
	14	15	16	17	18	19 \$	20	14	15	16	17	18	19 \$	20	
S - incurred before CP/APCP & paid in CP /APCP	21	22	23	24	25	26 \$	27	21	22	23	24	25	26 \$	27	
	28	29	30	1 JULY	2	3 \$	4	28	29	30	1 JULY	2	3 \$	4	
	5	6	7	8	9	10 \$	11	5	6	7	8	9	10 \$	11	
	12	13	14	15	16	17 \$	18	12	13	14	15	16	17 \$	18	
<mark>\$ </mark>	19	20	21	22	23	24 \$	25	19	20	21	22	23	24 \$	25	
	26	27	28	29	30	31 \$	1 AUG	26	27	28	29	30	31 \$	1 AUG	
	2	3	4	5	6	7 \$	8	2	3	4	5	6	7 \$	8	
	9	10	11	12	13	14 \$	15	9	10	11	12	13	14 \$	15	
\$ - incurred in CP/APCP & paid after CP/APCP ON SCHEDULE	16	17	18	19	20	21 \$	22	16	17	18	19	20	21 \$	22	
	23	24	25 1 CEDT	26	27	28 \$	29	23	24	25	26	27	28 \$	29	
	30	31 7	1 SEPT	2	3	4 \$	5	30	31	1 SEPT	2	3	4 \$	5	
	6 13	14	8 15	9 16	10 17	11 \$	12 19	6 13	14	8 15	9	10 17	11 \$ 18 \$	12 19	
	13	14 21	15 22	23	24	18 \$ 25 \$	19 26	20	21	22	16 23	24	25 \$	26	
	20	21	22 29	30	1 OCT	20 5	3	20	21	22	30	1 OCT	25 5	3	
	4	28 5	29 6	7	8	2 S 9 S	3 10	4	28 5	6	30	8	2 S 9 S	3 10	
	4	12	13	14	15	9 S	10	4	12	13	14	15	16 \$	17	
	18	12	20	21	22	23 \$	4	18	12	20	21	22	23 \$	4	
	5	6	7	8	9	10\$part	4	5	6	7	8	9	10 \$	4	
	5	0	· ·	0	/	10 \$FAR		3	0		0	/			