



QUICK UPDATE

How much of your Payroll Protection Loan (PPP) will you have to repay??

THE GOVERNMENT ACTUALLY PUT OUT A SIMPLE PROGRAM:

This program started with a simple idea and hopefully the final guidance on the forgiveness will be as simple. The original program allowed business to borrow 10 weeks of gross wages plus state unemployment cost, related employee health insurance and retirement contributions for those 10 weeks of wages. The goal was simple, give employers the money to keep their trained workforce on payroll so when the economy opened up the workforce would still be in place.

The concept of the forgiveness can be just as simple. The law allowed your business to borrow 10 weeks wages and in calculating loan forgiveness you only get to count 8 weeks of wages paid after you get the loan. The other 2 weeks of payroll you borrowed can be used to pay rent, lease, utilities and interest on agreements in existence before you applied for the loan.

I believe almost every small business will have to repay some of their PPP loan but the business owner still gets the benefit of no labor cost for the part of the loan that is forgiven which allows more funds to the business owner to support the troubled areas of their business.

The real key is to monitor your costs so you minimize the repayment and maximize the benefit to your business from this one time program.

I have spoken with members of congress involved in putting this program together and they feel strongly the forgiveness calculation should be as easy as the application. These loans are made by the banks and the banks have received written assurance from the US Treasury they can rely on assertions of the borrower so as not to leave the bank hanging with the liability on these loans. I have never seen a simpler government form than the two page loan application. Unfortunately it seems every bank wanted different information. I saw some where the bank's legal disclaimer was longer than the government application form.

YOU RECEIVED THE LOAN, SO NOW WHAT YOU CAN SPEND THE MONEY ON AND WHEN?

Here are the basic expenses you need to track in order to determine forgiveness (the law states you use costs incurred and paid to keep people from claiming expenses outside a normal two month operating period in the forgiveness calculation). All costs below are those actually paid during the 8 week period starting on the date the loan is deposited into your checking account:

1. Gross wages paid for pay checks issued (wages over \$100,000 per annum excluded)
2. State unemployment and other state taxes assessed on the employer based on those wages.
3. Employer costs for employee health insurance related to those 8 weeks of payroll.
4. Employer SEP/SIMPLE/401k match/Profit sharing/pension contribution related to those 8 weeks of payroll including partner/member/owner retirement.
5. Partners in a partnership and members of an LLC get to use their self-employment earnings from Form 1065 Sch K-1, box 14A of their 2019 partnership tax return as the owner wages since the owner does draw wages on a W-2.
6. Self-employed business owners get to use Form 1040 Sch C line 31 or Sch F line 34 of their 2019 individual tax return as their wages.
7. Business lease payments paid on leases in effect 2-15-20.
8. Business utility bills for utilities in effect 2-15-20 including electricity, gas, water, telephone, internet and gas for business vehicles.
9. Interest on business loans in effect 2-15-20.

Items 7,8 & 9 above combined cannot exceed 25% of the total PPP costs forgiven.

WHAT IS AN FTE AND WHY DOES IT MATTER?

Remember the purpose of the law is to help a business owner keep employees on payroll. Therefore, the forgiveness of the loan is reduced if the employer pays less in wages or has less employees during the 8 week period of loan spending compared to an earlier period. As a result, there are two numbers that are important when it comes to payroll (wage cost and number of full time equivalent employees). In addition to measuring gross wages you have to measure full time equivalent employees (FTE) during the 8 week period of loan spending as compared to your choice of one of two look back periods.

QUESTIONS AND ITEMS LEFT TO INTERPRETATION PENDING FURTHER GUIDANCE:

1. Rents/leases on self-rented property. Many businesses have their real estate and equipment titled in separate entities for legal protection and the business makes a lease payment to the separate entity. We believe the CARES act allows these rent payments even though they are to related parties because SBA rules clearly allow owner occupied real estate in business loan relationships. However, we believe the allowable rent payments will be restricted to those in normal course of business so the bank will look back to rents prior to the PPP loan to determine a fair rent. We also believe where those rents are triple net which includes payment of taxes, insurance and repairs, a normal accrual of those amounts should be an allowable cost of the PPP loan forgiveness calculation.
2. Retirement contributions are normally not paid until year end and will most likely not be paid during the 8 week time period. If 401ks have to do discrimination testing on an 8 week period for determining employer contributions it could well be those calculations cannot be done and paid by the end of the 8 week period. We believe there is logic to

include normal calculation as an accrual based on what was done in the 2019 look back year for the initial accrual and apply those rates to the payroll during the 8 week forgiveness period.

3. The law says costs incurred and paid so some will want to make the computation complex and say payroll earned before the date of the loan and paid after the date of the loan must be split. We believe that is not the intent of the law and in general the goal is to have 8 weeks of payroll and other related costs in the calculation based on date paid.

THE TWO MOST COMPLEX AREAS OF THE LAW THAT REDUCE FORGIVENESS (reduction for reduced payroll and FTE):

4. How does the reduction in forgiveness based on reduced FTE work? There are 5 FTE calculations that can come into play here.
 - a. You must compute the average FTE for the 8 week loan period
 - b. Compute the average FTE for either Feb 15, 2019-June 30, 2019 or Jan 1, 2020-Feb 29, 2020. The employer gets to choose which period is most beneficial
 - c. Compute FTE Feb 15-April 27, 2020.
 - d. Compute FTE on Feb 15, 2020
 - e. Compute FTE from date of loan to June 30, 2020

Each of the above can be used at different parts of the calculation. One area of the law says you can restore employees laid off during item c above if you restore them by June 30. However, this seems to contradict the purpose of the law to keep employees on payroll and we believe a reduction in FTE between item a and b will be the main factor in the final calculation. This is truly an area we hope to receive clarity in future guidance.

5. How does the reduction in forgiveness based on payroll cost reductions work?
 - a. Forgiveness is reduced by the amount of any reduction in wages during the 8 week period is in excess of 25% of the wages of the employee during the most recent full quarter the employee was employed. That would generally be the quarter ended Mar 31, 2020. If you are comparing wages for a full quarter to an eight week period you automatically have more than a 25% drop which we believe is not the intent of the law but which needs further guidance. We believe the final interpretation will come out to say the 25% drop is calculated by comparing the average pay per pay period during the quarter as compared to the average pay per pay period during the 8 week period.

The reality is this law was drafted quickly with input from congressional leaders, the President's staff and the US Treasury at a very tough time in our country. The US Treasury has been put in charge of implementing this program and they have done a tremendous job to get billions in the hands of small business in a two week time period. That is no small task. A big thank you to the US Treasury. Yes, we could use clarity on many issues and there are conflicts in the law but I would hope those who are holding things up would step back and look at the intent of the law and what it was designed to do. Treasury Secretary Mnuchin has been very transparent in what this program was designed to do. If government would have waited for every legal question to be answered they would have failed the American small business who needs the money now. I

thank our leaders for proceeding even though there are unanswered questions. We intend to help guide our clients using the same “spirit of the law” until we see any further guidance.

Please contact us if you would like us to assist you with any of the loan forgiveness calculations. Our goal is to help you to maximize the benefit from this PPP program.