

How Do I Get Loan Forgiveness?

The most common question we are getting from clients right now is “How do we use the PPP loan proceeds in a manner that will assure maximum forgiveness?” The following is our attempt to answer this question.

First, there are several important notes:

- On April 2, 2020, the SBA issued Interim Final Rules that added the requirement that at least 75% of the loan forgiveness amount must be attributed to payroll costs.
- Language in the CARES Act directed Treasury to provide guidance on the Act within 30 days. If they meet this deadline, we should have more specifics by April 26, 2020.

The following standard type face is wording from the CAREs Act, Treasury Regulations, their borrower or lender guides, or SBA Rules. *The italic type face is Brickley DeLong commentary added to provide additional guidance.*

- A. Payroll costs - Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee). *There are two important payroll factors:*
1. *Reducing wages per employee by more than 25% during the 8 weeks, as compared to the most recent quarter before the PPP loan was made, will reduce loan forgiveness. There is considerable controversy on how this calculation will be made. One of the issues is that borrowers are not supposed to be penalized for reductions that occurred between February 15, 2020 and April 26, 2020, presumably to account for the disruption that occurred between that time. Some experts theorize that you will need to compare each employee’s average earnings during the 8 weeks to that of a base quarter. It remains to be seen how items such a bonuses paid during the base period for the results of the prior quarter or year will impact the calculation.*
 2. *Reducing headcount (FTE’s) during the 8 weeks as compared to the FTE’s listed on your loan application will also result in a reduction of the loan forgiveness. The CARES Act allows businesses to remedy any reduction in the forgiveness amount caused by a reduction in FTE’s by June 30. It is unclear how this will work and will need to await further guidance.*

Other payroll notes:

- *The CARES Act excludes compensation payments for which there are other special credits being obtained, such as qualified family leave wages.*
- *The ability to reduce payroll taxes provided by the Employee Retention Credit program is not available to any business that applied for Paycheck Protection Program (PPP) loan.*
- *How “payroll” will be determined for the 8 week period for the self-employed is anyone’s guess at this time.*

B. Allowed Employee Benefits:

1. Employee benefits including costs for vacation, parental, family, medical, or sick leave, and allowance for separation or dismissal.
2. Payments required for the provisions of group health care benefits including insurance premiums, and payment of any retirement benefit. *Group health care benefits likely includes any health benefit that the employer has previously been paying on at least a monthly basis including basic health insurance, dental, and visions insurance. Retirement benefits are likely to be limited to employer contributions made during the 8 weeks required by the plan(s). This will likely exclude profit sharing contributions made during the period for the prior year.*
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D. Other Qualified Payments – Subject to the 25% Limitation:

1. Interest on mortgage obligations, incurred before February 15, 2020. *It appears interest on all debt obligations will apply as long as there is mortgage lien and a UCC Filing on the underlying asset. This would expand the interest allowed beyond traditional building mortgages to include personal property loans (machinery and vehicles), as well as line-of credit interest, as long as it is secured financing.*
2. Rent, under lease agreements in force before February 15, 2020. *Most likely refers only to real property leases, such as office or other facility leases, not equipment leases. We have seen no restrictions that would disallow related party rent. However, the lease must have been in force before February 15, 2020, and would expect that you will need to prove that lease payments are consistent with prior activity.*
3. Utilities, for which service began before February 15, 2020. Covered utilities are defined by Section 1106(a)(5) of the CARES Act as payment for service for distribution of electricity, gas, water, transportation, telephone or internet access. *Neither the CARES Act nor the applicable federal regulations provide guidance as to what is considered “transportation” costs. Unless you have significant expenses that you think might qualify as “transportation” costs, we advise that you document payment of traditional utilities, including electricity, gas, water, phone, and internet.*

The second most asked questions is “How will I request loan forgiveness?” You will 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.

At one time we considered recommending that a separate bank account be established to help document the use of the PPP Loan. We no longer think that is necessary. For users of QuickBooks or other software products that allow cash basis reports to be run for a specific period, we expect that reports from the software with totals input into a summary spreadsheet will be sufficient evidence of payments made.

Important reminders:

1. Your lender will be making the final determination on the amount of loan that will be forgiven. Therefore, you should stay in communication with them throughout this process.
2. Use at least 75% of the proceeds on payroll costs, including allowed benefits.
3. Maintain good documentation on the use of funds to support forgiveness request.

Stay tuned as more guidance, official rules, and regulations are yet to come.