

Q&A from Webinar, "PPP Loans: An Initial Look at Forgiveness," 4/14/2020

Is there a need to put loan funds in a separate account to prevent intermingling of funds? Or are records of payroll, rent, utilities, etc. sufficient?

There is no requirement to keep loan proceeds and related expenditures within one particular bank account. You are certainly allowed to do that if it lets you track your spending better, but we have not seen anything to indicate, either in SBA guidance or the actual law, that a separate account is required.

Are there any documentation requirements to prove that before the PPP loan a loan taker would not have retained the employee anyway?

There has been some discussion about how to address a planned termination for performance or other for-cause issues. As yet, I've seen no exceptions for only retaining an employee because of PPP loan, and this is just me opining here, I don't expect to see any. I believe the government views this as funding companies to keep their people receiving money and that a reduction in staff, regardless of reason, will reduce forgiveness amounts. We will see for sure when the application for forgiveness is released, but I don't suspect the government wants to try to verify an employer's rationale for reductions.

Can you include any owner guaranteed payments in wages for forgiveness?

Our interpretation is that you can include guaranteed payments, and we have seen support for this position. The guaranteed payments would still be limited to roughly \$15k per person during the 8 weeks to be eligible for forgiveness, but we believe that guaranteed payments are allowed to be considered as wages. We have only seen one very small bank with a differing opinion on this, so we are relatively comfortable with our position.

If I have two business that work with each other but are under different EIN's, can I use the loan to pay payroll for both business (since we can only get one loan)?

My assumption is that there is going to be payroll reports that are required as substantiation with the forgiveness application, so if there are wages being run out of two separate companies, then only the wages that are for the EIN that received the funds are likely to be applicable. If when you applied you were able to combine the wages out of two separate EINs into one loan, then perhaps you'll be okay to cover payroll in both. My overall suggestion is that you follow how the loan was applied for. If you feel, after reading this, that you should have applied for a loan with each of your two companies, that may still be possible. Although the \$349B is almost completely spoken for as of Wednesday afternoon, the Treasury wants to put another \$250B into the program and they appear to be getting closer to that being a reality based on today's news.

If number of FTEs is increased and wages per FTE are increased compared to Q1 and all of the PPP loan is used for wages is it eligible for 100% forgiveness?

As long as your FTEs and wage limits are equal to or greater than they were compared to Q1 by June 30, you will be eligible for 100% forgiveness of the 8-week spend. However, if wages increase and go

over the \$100k/yr prorated amount, the amount of your spend is still limited to the roughly \$15k/person for that 8-week period. There is no upward restriction on how much of the PPP loan can be used for wages, only the requirement that no less than 75% can be for wages, health, retirement, PA unemployment tax.

I was told that it would be wise to open a separate bank account to put the money in once it is awarded, so that it is easier to track where all of the loan money went. Do you think this would be wise/the best way to handle this?

There is no requirement to keep loan proceeds and related expenditures within one particular bank account. You are certainly allowed to do that if it lets you track your spending better, but we have not seen anything to indicate, either in SBA guidance or the actual law, that a separate account is required.

What if the funds do not hit my account till after May 1 but the 8 weeks end on June 30?

Unable to answer question to anonymous, but most funds will be issued prior to May 1. Technically 8 weeks ahead of June 30 is May 6, so additional funds that are made available and distributed after May 6 will be subject to additional clarification.

What happens to the unforgiven portion of the loan?

The loan portion that is not forgiven, assuming all proceeds have been spent in accordance with the guidelines during the allowable spend period, will be turned into a 2-year note at 1% interest with payment deferrals allowed for the first six months.

What happens to the provisions/timing if the Governor mandates a change in our ability to be "open" if non-essential are still required to maintain social distancing?

So far, we have not seen any evidence in the Act or related guidance that make any differentiation between essential and non-essential services in terms of PPP Loans and forgiveness. The Act is a federal law that does not really contemplate state regulations. Additionally, the concept of the law is that they want to encourage businesses to pay their employees, whether they are working or not. I recognize this is an atypical business strategy, but that's the intent of the law, so I do not anticipate any further clarification on essential/non-essential classifications and how it relates to spend and forgiveness.

Are bonuses eligible for forgiveness if they are paid in the 8 week period.

This can be a little tricky, and there are a number of aspects that will come into play. For one, there is the incurred and paid issue. So, a bonus that had been accrued from a prior period and paid during the 8-week period was not incurred during the period and would not be allowable. If you give your employees a bonus for staying with you during the 8-week period, for example, that could be eligible. So, the incurred and paid is a key factor. The other thing is the \$15k (approx.) limit for the 8-week period. Bonuses that would take someone over that limit would be disallowed as well. So, those are the two main considerations. Absent those, I don't see anything that prohibits the giving of bonuses and allowing them to be forgivable, but it's possible this will be addressed in subsequent guidance.

Do you need to meet both the FTE and Wage reduction qualifications or just one of them as compared to Q1?

Yes, if there were reductions in wages and workforce, both have to be reinstated to Q1 levels by the end of June in order to use the 100% method of forgiveness.

Would May 5th technically be the last day they would provide funding since this would be the start of the 8 week period ending 6/30?

You have a very good point, and it appears that it would make sense that funding after May 5 would have an 8-week period that runs beyond June 30. The news today is that the original \$349B is accounted for in the next round of \$250B is still being haggled over in Congress, so it is possible that there are funds issued after the first week in May. I suspect that additional guidance will be necessary in those cases. Sorry I don't have a better answer for you, but I agree that you have a proper outlook on the potential timing difficulties.

We have not reduced our workforce or wages to date. Are we eligible to cover employee wages even though we did not lay anyone off or reduce wages?

You will be eligible and you are acting in the spirit of the law, which wants there to be no reductions or wage levels. Absent reductions, you will not have any reinstatements, so the 100% method will not work for you, and you will have to use the fractional method of comparing FTEs during the 8-week spend to your FTEs 2/15/19-6/30/19 or 1/1/20-2/29/20, but your spend during the 8-week period should still be relatively high. So, you are eligible for forgiveness for sure.

Is forgiveness "all or nothing" or will legitimate costs incurred and payments made be forgiven while the remainder becomes allowable? Or, if the total loan isn't used within 8 weeks, will the loan become allowable in its entirety and nothing forgiven?

Forgiveness will not be all or nothing. We anticipate that companies will have a wide range of forgiveness ratios. What is not forgiven, will be wrapped into a 2-year, 1% interest loan assuming all non-forgiven costs are appropriately spent.

What is the transportation portion of utilities?

That is a question that we definitely have some need of clarification on. A moving company, for instance, is a public utility, so hauling, etc. is potentially includable as utilities. Travel expenses, such as airfare, hotel, gas, general vehicle costs, etc. are probably not includable as allowable or forgivable utility expenditures. That's just an educated guess, though. I am anxious to hear what further guidance says about what "transportation" means.

Can we use the loan for severance payments

There is no simple answer to the general question of severance payments, so I will give a couple conditional responses. If you are paying a severance to someone who was let go prior to the applicable spending or forgiveness period, I think you could run into problems with the cost being incurred and paid during the period. Paid, yes. Incurred, probably not. If you dismiss someone during the applicable period and you offer them severance, I would think that this probably is includable, but after they are finished working (i.e. when the severance takes effect), I don't think you could count

them as an FTE, which will reduce forgiveness amounts. So, if there is someone that you presently need to move away from, you may want to consider the benefits of paying that person and providing benefits at least through June 30 or when you've spent the entire loan amount so that you are not losing an FTE. This could potentially take the place of a severance if you are paying the person to stay home. So, without knowing the exact situation, I tried to give a couple examples of where I think this applies. Overall, incurred and paid will be important, as will the \$100k/yr prorated amount. For instance, if you pay someone a \$25k severance and it's paid on 1 month, it's going to be limited because that is an annual rate of \$300k and 2/3 of the severance (at least) would not count as an allowable or forgivable expense.

Note: If you have a LOC you should see if you need a waiver.

Not a question, necessarily, but potentially applicable to our clients.

You implied that we had to bring people back to work for them to be paid and that pay be forgiven. What if we do not have work that they are allowed to do? Can we pay them to sit at home?

The question you raise is a common one that we are getting, and the answer is that, yes, you may pay them to sit at home. This is, I believe, one of the goals of the law, that people can continue to get paid even if there's not work for them to do, which is why the government would essentially forgive that debt. There are a number of considerations that go into that decision, such as emotional impact on employees who are getting paid to work while others are paid not to, whether employees receive more money on unemployment than they do being employed, and how paying them plays into your allowable use spend and your forgivable use spend.

For a partnership who has employees but whose partners are paid from the profits, can you partners' share of the profits be included as payroll costs in the PPP loan? Is there a different mechanism for obtaining funding for the partnership distributions?

This is a very key question that may require additional clarification. The mechanism that you described above is true for sole proprietors, per our reading, and we generally believe that guaranteed payments are includable as payroll costs (up to \$100k/person prorated over the applicable period) though some banks are balking at that idea. That said, I don't have a great answer for you on partnership income being includable. It's not a reach to treat that income the same as sole proprietor income, but it's definitely something that would be supported by additional clarification. Sorry I couldn't be of more help in this specific instance.