

# PPP Loan Forgiveness

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ARIZONA  
SMALL  
BUSINESS  
BOOT CAMP &  
COLLECTIVE

RESPOND → PLAN → RETURN STRONGER



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# Disclaimer

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This presentation is based on relevant government guidance available as of July 30, 2020. There are many areas of the CARES Act, related guidance and the SBA's Loan Forgiveness Application that are unclear and additional clarification from the government is needed. In addition, there may be legislation in future weeks that modifies the program rules. This presentation includes our best interpretation of the guidance.

# PPP Loan Forgiveness

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- Eligibility certification
- PPP loans and your loan covenants
- What we still don't know
- Best practices for documentation
- Open Q&A



# Eligibility Certification

# Eligibility Certification

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- There is an increased spotlight on the certification that you signed when you filed your PPP Application
- We recommend you prepare a formal, written document that spells out exactly what factors you were considering when you decided to apply
- Factors to consider: industry, COVID impact at time of application, supply chain, subcontractors, contract status, social distancing, A/R collections, unknowns, etc.

# Eligibility Certification

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- On May 13, an Interim Final Rule provided a safe harbor for companies that, when combined with their Affiliates, have a loan less than \$2M.
- Under the safe harbor, the company will be deemed to have met the good-faith certification.
- We still recommend that companies with loans less than \$2M document the decision process as noted on the previous slide.



# Eligibility Certification

- The forgiveness application includes the following on the “Representations and Certifications” page:

I understand, acknowledge, and agree that SBA may request additional information for the purposes of evaluating the Borrower’s eligibility for the PPP loan and for loan forgiveness, and that the Borrower’s failure to provide information requested by SBA may result in a determination that the Borrower was ineligible for the PPP loan or a denial of the Borrower’s loan forgiveness application.

The Borrower’s eligibility for loan forgiveness will be evaluated in accordance with the PPP regulations and guidance issued by SBA through the date of this application. SBA may direct a lender to disapprove the Borrower’s loan forgiveness application if SBA determines that the Borrower was ineligible for the PPP loan.

<hr/> <p>Signature of Authorized Representative of Borrower</p> <hr/> <p>Print Name</p>	<hr/> <p>Date</p> <hr/> <p>Title</p>
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# Eligibility Certification

- From the June 22 Interim Final Rule

~~of the CARES Act.~~ If SBA determines in the course of its review that the borrower was ineligible for the PPP loan based on the provisions of the CARES Act, SBA rules or guidance available at the time of the borrower's loan application, or the terms of the borrower's PPP loan application (for example, because the borrower lacked an adequate basis for the certifications that it made in its PPP loan application), the loan will not be eligible for loan forgiveness. ~~The~~



# Loans and Loan Covenants

# Loans and Loan Covenants

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- Every borrower signed a full set of legally binding loan documents
- They provide for the start of payments 7 months from the loan date
- Loans prior to June 5, 2020 have a 2-year maturity, loans after have a 5-year maturity
- Loans with a 2-year maturity can be renegotiated to 5-years with the lender (lender does not have to)

# Loans and Loan Covenants

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- The Flexibility Act extended the payment deferral period to the date that the SBA remits the forgiveness amount to the lender
- The SBA will also remit accrued interest on the forgiven portion of the loan
- Infers the borrower will have to pay the accrued interest on any unforgiven portion

# Loans and Loan Covenants

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- If your company received an EIDL Grant/Advance – this was \$1,000 per employee up to \$10,000 - and you provide sufficient documentation to receive 100% forgiveness, you still end up with a loan in the amount of the EIDL Grant/Advance.
- Not talking about EIDL loans, just the Grant/Advance

~~decision to SBA.~~ If applicable, SBA will deduct EIDL Advance Amounts from the forgiveness amount remitted to the Lender as required by section 1110(e)(6) of the CARES Act. ~~If SBA determines in the course of its review that the~~

# Loans and Loan Covenants

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- Lender has 60 days to approve or deny the forgiveness application
- Approved applications are forwarded to the SBA
- SBA has 90 days to approve or deny the forgiveness application and remit funds to the lender

# Loans and Loan Covenants

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- As of today, the SBA portal for receiving forgiveness applications from lenders is not open
- In a Procedural Notice to lenders on July 23, they indicated the portal will open on August 10, “subject to extension if any new legislative amendments to the forgiveness process necessitate changes to the system.”

# Loans and Loan Covenants

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- Hypothetical “Best Case Scenario” Timeline:
  - submit to lender on August 1
  - lender approves and submits to SBA on August 10
  - 90 days from August 10 is November 18
- In theory this can all be wrapped up before 12/31

# Loans and Loan Covenants

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- Consider whether your PPP loan may be a violation of existing covenants on other debt:
  - PPP loan was from a different bank
  - PPP loan caused an interim ratio violation
  - Forgiveness might not happen by 12/31
- Discuss your PPP loan and your covenants with your lender and determine if a waiver for 2020 is needed



# The Unknowns

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# The Unknowns - FTEs

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- How does the FTE computation work when you opt for the 24-week covered period?
- If you capture and report data for all 24 weeks, it works the exact same as for 8 weeks.
- Average FTEs for covered period compared to Average FTEs for selected base period (two choices)

# The Unknowns - FTEs

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- If you spend all of the PPP funds in less than 24 weeks, you are eligible to file for forgiveness at that time. HOWEVER, there is no guidance yet on how filing before 24 weeks affects the FTE computations.
- We are referring to this as “Transition Guidance” ... how do you complete the application if you spend the money in 10 weeks, 12 weeks, etc.

# The Unknowns - FTEs

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- It seems logical to us that once the PPP funds are spent, a company would no longer be required to maintain the same FTE count as the base period.
- How can the SBA expect a company to maintain the FTE count when the funds are gone?
- But without Transition Guidance, we have no authoritative answer to either agree or disagree with our logic.

# The Unknowns - FTEs

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- So what should you do?
- Wait for Transition Guidance to apply for forgiveness
- The decision to let people go should be a business decision, not tied to forgiveness.
- Mathematically, the ability to include and report 24 weeks of payroll and other costs ensures that almost all businesses, even those with an FTE reduction, will still get 100% forgiveness (excluding the effects of an EIDL grant).

# The Unknowns - FTEs

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Example: \$250K PPP loan

A business who received a PPP loan had \$100K average payroll costs per month in 2019.

If the business had a 20% FTE reduction, they may have only \$80,000 in average payroll costs per month during their covered period.



# The Unknowns - FTEs



$\$80,000 * 6 \text{ months (equivalent of 24 weeks)} = \$480,000$

$\$480,000$  payroll costs

\* 80% (to reflect the FTE reduction)

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$\$384,000$  allowable payroll costs

Compared to the  $\$250,000$  Loan amount, the company gets 100% forgiveness (assuming no EIDL grant). Even without including any nonpayroll costs.

# The Unknowns - FTEs

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- While we know that the math works, we realize that companies do not want to have to wait and report 24 weeks of data.
- This is why the Transition Guidance is important, to provide the framework for how to compute and report costs and FTEs when the funds are spent in less than 24 weeks



# The Unknowns - Owners

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## Owner Compensation

- The Interim Final Rule issued on June 22, 2020 infers that owner compensation includes: wages, health insurance premiums and retirement plan contributions
- To compute the limitation (\$15,385 or \$20,833), you would use the total of those three amounts

# The Unknowns - Owners

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## Owner Compensation

- There is no clarity on whether you also get to use the total of those same three amounts when computing the 2019 limitation
- This is a significant restriction for companies with multiple owners... may prohibit them from being able to file and elect 8 weeks as the covered period

# The Unknowns - Owners

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## Owner Compensation

- This computation makes the definition of “Owner” even more important.
- Current guidance does not define owner. Until we receive guidance, assume it means any individual with any ownership percentage.



# The Unknowns - Owners

*c. Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?*

Yes. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week covered period, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at eight weeks' worth (8/52) of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual, whichever is less, in total across all businesses. For all other borrowers, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at 2.5 months' worth (2.5/12) of 2019 compensation (i.e., approximately 20.83 percent of 2019 compensation) or \$20,833 per individual, whichever is less, in total across all businesses.

# The Unknowns - Payroll

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What are the compensation limits if a business files for forgiveness after 8 weeks but before 24 weeks?

- Owner compensation limits: \$15,385 and \$20,833.  
Is it a cliff? Proration seems illogical.
- Employee compensation limits: \$15,385 and \$46,154  
Cliff seems illogical, proration makes more sense. \$1,923 for each week of payroll included?

# The Unknowns – Costs

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## Utilities

- Still don't know what a “transportation utility” is
- If any cost is questionable, and you are filing on the 24-week program, leave it out
- Include more payroll, or one more month of rent, etc.



# The Unknowns – Costs

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## Retirement

- No guidance on which cost are eligible, here are the options as we see them:
  - 2020 costs incurred (paid when due)
  - 2020 costs incurred and paid within the covered period
  - 2019 accrued costs paid within the covered period



# The Unknowns – Taxes

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- As of today, July 30, 2020, the forgiven portion of the loan is not taxable and the expenses for which the PPP money was used for are not deductible.
- Your expenses may hit in one tax year and the loan forgiveness income in another, DOUBLE WHAMMY!
- Legislation has been introduced to make the expenses deductible



# The Unknowns – Taxes

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Under current law:

- What is the impact of nondeductible payroll on your R&D Credit or QBI computation?
- How should you compute projected taxable income and quarterly estimates?
- Fiscal year filers.... How do you compute your extension payment?

# The Unknowns – Taxes

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What to do?

- Fiscal year filers... Consider an extension
- Decide how to compute estimates and extension payments, use current law or compute assuming expenses will be deductible.
- This is a business owner / business risk decision



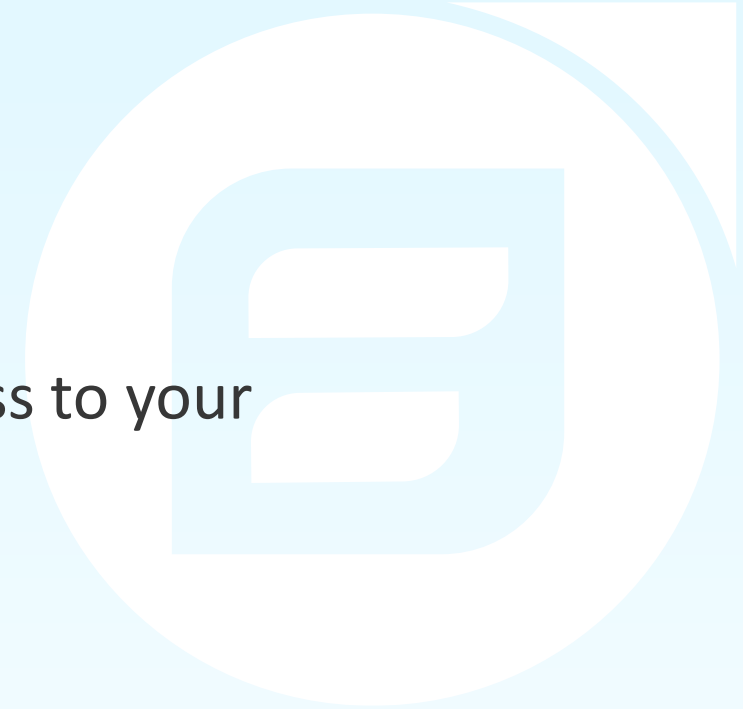
# Documentation

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# Documentation

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- When you submit your application for loan forgiveness to your lender, they will expect documentation of everything:
  - Average FTEs for the covered period
  - Average FTEs for the chosen base period
  - Payroll tax reports to support gross wages
  - Account statements for health insurance, utilities, rent, interest, etc.
  - Verification of payment: bank statements, cancelled checks, etc.



# Documentation

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Best practices:

- Keep a spreadsheet of all covered costs.
- As you pay a bill for a covered cost, put a copy in a designated file folder (paper or digital).
- Put copies of bank statements in the folder.
- Put copies of your payroll reports in the folder.



# Documentation

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## Document Retention Period:

All records relating to the Borrower's PPP loan, including documentation submitted with its PPP loan application, documentation supporting the Borrower's certifications as to the necessity of the loan request and its eligibility for a PPP loan, documentation necessary to support the Borrower's loan forgiveness application, and documentation demonstrating the Borrower's material compliance with PPP requirements. The Borrower must retain all such documentation in its files **for six years after the date the loan is forgiven or repaid in full**, and permit authorized representatives of SBA, including representatives of its Office of Inspector General, to access such files upon request.

If a business does not receive 100% forgiveness, for example due to an EIDL grant, it makes sense to repay the loan as quickly as possible, to start the clock on the document retention period.

# Documentation

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- SBA’s Loan Forgiveness Application was revised on June 16, 2020.
- There are now two versions: Regular and EZ
- The forms and related instructions can be found here, under the heading “For Borrowers”

<https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

# Documentation

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- Do you qualify for the EZ?
- The criteria is on page 1 of the EZ instructions
- For more information on the 3<sup>rd</sup> item, related to reduced business activity, refer to the July 22 Interim Final Rule, item 1.f. (see example right above item 1.g.)





# Documentation

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Example: A PPP borrower is in the business of selling beauty products both online and at its physical store. During the covered period, the local government where the borrower's store is located orders all non-essential businesses, including the borrower's business, to shut down their stores, based in part on COVID-19 guidance issued by the CDC in March 2020. Because the borrower's business activity during the covered period was reduced compared to its activity before February 15, 2020 due to compliance with COVID Requirements or Guidance, the borrower satisfies the Flexibility Act's exemption and will not have its forgiveness amount reduced because of a reduction in FTEs during the covered period, if the borrower in good faith maintains records regarding the reduction in business activity and the local government's shutdown orders that reference a COVID Requirement or Guidance as described above.



# Q&A

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