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Presented by:

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GYF TAX SERVICES GROUP

GYF VIRTUAL CPE DAY 2020

November 12, 2020

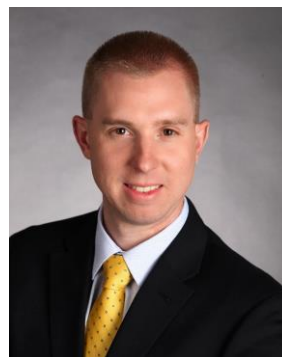
Paycheck Protection Program (PPP) Loan Forgiveness & Procedures



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PPP LOAN FORGIVENESS GUIDANCE



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Paycheck Protection Program (PPP) Loan Forgiveness & Procedures



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PPP LOAN FORGIVENESS – GUIDANCE

Section 1106, LOAN FORGIVENESS

- Provisions contained in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was enacted March 27, 2020
- CARES Act mandated that all guidance is to be issued by the SBA within 30 days of enactment (April 26, 2020)
- Quick-guidance mandate was ignored by both the Treasury and the SBA, with direction issued primarily in a series of “Frequently Asked Questions” (FAQs) that were updated over many months



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PPP LOAN FORGIVENESS – GUIDANCE

Lack of timely, clear guidance continues to be a problem

- A number of issues requiring further clarification for borrower/applicants for loan forgiveness still remain open and unanswered
- Guidance has been issued to address both borrower and lender questions concerning forgiveness of Paycheck Protection Program (PPP) loans, as provided for under section 1106 of the CARES Act, and as amended by the Paycheck Protection Program Flexibility Act (Flexibility Act)
- Most-current guidance (dated 10/13/20) available as [FAQs on SBA website](#)



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PPP LOAN FORGIVENESS – GUIDANCE

Additional guidance from the SBA and Treasury

- Borrowers and lenders may rely on the guidance provided in the FAQs as SBA's interpretation, in consultation with the Department of the Treasury, of the CARES Act, the Flexibility Act, and the PPP Interim Final Rules
- Links to updated versions of program rules and relevant documents can be found on the CARES Act/PPP page of the Treasury website:
 - <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>



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PPP LOAN FORGIVENESS FUNDAMENTALS



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PPP LOAN FORGIVENESS – FUNDAMENTALS

Eligibility for Loan Forgiveness Under SBA Rules

- Borrowers may be eligible for loan forgiveness if the funds were used for eligible payroll costs, payments on business mortgage interest payments, rent, or utilities during either the 8-week or 24-week [covered] period after disbursement
- A borrower can apply for forgiveness once it has used all loan proceeds for which the borrower is requesting forgiveness



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PPP LOAN FORGIVENESS – FUNDAMENTALS

Timing of Forgiveness Application

- Borrowers can apply for forgiveness **any time up to the maturity date** of the loan
- **If borrowers do not apply for forgiveness within 10 months after the last day of the covered period, then PPP loan payments are no longer deferred and borrowers will begin making loan payments to their PPP lenders**
 - *Exception for timely applying for forgiveness (to be addressed later)*



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PPP LOAN FORGIVENESS – FUNDAMENTALS

Deadline for Submission of Forgiveness Application

- **PPP Loan Forgiveness FAQ #4 (October 13, 2020)**
 - ***Question:*** *The PPP loan forgiveness application forms (3508, 3508EZ, and 3508S) display an expiration date of 10/31/2020 in the upper-right corner. Is October 31, 2020 the deadline for borrowers to apply for forgiveness?*



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PPP LOAN FORGIVENESS – FUNDAMENTALS

Deadline for Submission of Forgiveness Application

- **PPP Loan Forgiveness FAQ #4 (October 13, 2020)**
 - ***Answer:*** *No. Borrowers may submit a loan forgiveness application any time before the maturity date of the loan, which is either two or five years from loan origination.*

However, if a borrower does not apply for loan forgiveness within 10 months after the last day of the borrower's loan forgiveness covered period, loan payments are no longer deferred and the borrower must begin making payments on the loan.



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PPP LOAN FORGIVENESS – FUNDAMENTALS

PPP Loan Forgiveness Application

- 3 forgiveness applications forms available from the SBA
- The application that each borrower uses is dependent upon the facts and circumstances of their particular situations
- It appears that most lenders have developed processing software that allows for the input of borrower data in a manner that will automatically default to the most appropriate form of the application



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PPP LOAN FORGIVENESS – FUNDAMENTALS

PPP Loan Forgiveness Application – 3 Variations

- [SBA Form 3508](#) – “Loan Forgiveness Calculation” (June 16, 2020)
- [SBA Form 3508EZ](#) – “EZ Version” (June 16, 2020)
- [SBA Form 3508S](#) – “Streamlined Version” (October 8, 2020)



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PPP LOAN FORGIVENESS – FUNDAMENTALS

SBA Form 3508 (5 pages)

- **This form is the longest and most detailed of the three applications**
 - *It includes sufficient information to fully comply with the required reductions in the loan forgiveness amount for borrower reductions in full time equivalency (FTE) employees and wage reductions exceeding 25% for certain employees*



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PPP LOAN FORGIVENESS – FUNDAMENTALS

SBA Form 3508EZ (3 pages)

- **This shorter version of the application can be used if:**
 1. *Borrower is a self-employed individual, independent contractor, or sole proprietor who had no employees at the time of the PPP loan application, and did not include any employee salaries in the computation of average monthly payroll in the Borrower Application Form ([SBA Form 2483](#))*



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PPP LOAN FORGIVENESS – FUNDAMENTALS

SBA Form 3508EZ (3 pages)

2. Borrower did not reduce the annual salary or hourly wages of any employee (earning <\$100,000 annually) by more than 25% during the Covered Period or Alternative Payroll Covered Period, compared to period between January 1, 2020 and March 31, 2020; and

Borrower did not reduce the number of employees or average paid hours of employees between January 1, 2020, and the end of the Covered Period

- May ignore reductions arising from inability to rehire individuals who were employees on Feb. 15, 2020, if unable to hire similarly qualified employees for unfilled positions on or before Dec. 31, 2020
- May ignore reductions in an employee's hours that Borrower offered to restore and employee refused



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PPP LOAN FORGIVENESS – FUNDAMENTALS

SBA Form 3508EZ (3 pages)

3. Borrower did not reduce the annual salary or hourly wages of any employee (earning <\$100,000 annually) by more than 25% during the Covered Period or Alternative Payroll Covered Period, compared to period between January 1, 2020 and March 31, 2020; and

Borrower was unable to operate during the Covered Period at the same level of business activity as before February 15, 2020, due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the CDC or OSHA, related to maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19



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PPP LOAN FORGIVENESS – FUNDAMENTALS

SBA Form 3508S (2 pages)

- This version can only be used if the total PPP loan amount received from their Lender was \$50,000 or less
- However, a borrower that, together with its affiliates, received PPP loans totaling \$2 million or more cannot use this form
 - See [85 FR 20817](#) (April 15, 2020) regarding application of SBA's affiliation rules and the exemption of otherwise qualified faith-based organizations from these rules



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PPP LOAN FORGIVENESS PROCESS



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PPP LOAN FORGIVENESS – PROCESS

Loan Forgiveness Protocols

- **4-step process** is controlled by the original lender/provider of the PPP loan
 1. *Contact the PPP loan lender and complete the appropriate form*
 2. *Compile proper documentation*
 3. *Submit the forgiveness form and documentation to the PPP lender*
 4. *Continue to communicate with the lender throughout the process*



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PPP LOAN FORGIVENESS – PROCESS

Required Documentation (Payroll)

- **Borrower must provide documentation for all payroll periods that overlapped with the Covered Period or Alternative Payroll Covered Period, including:**
 - *Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees*
 - *Tax forms (or equivalent third-party payroll service provider reports) for appropriate periods*
 - Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 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
 - *Payment receipts, cancelled checks or account statements documenting amount of employer contributions to employee health insurance and retirement plans included in the forgiveness*



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PPP LOAN FORGIVENESS – PROCESS

Required Documentation (Non-Payroll)

- Borrower must provide documentation for expenses that were incurred or paid during the covered period and showing that obligations or services existed prior to February 15, 2020, including:
 - *Business mortgage interest payments: Copy of lender amortization schedule and receipts verifying payments, or lender account statements*
 - *Business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments*
 - *Business utility payments: Copies of invoices and receipts, cancelled checks or account statements*



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PPP LOAN FORGIVENESS – PROCESS

Required Documentation Notes

- Listing of required documents is taken from the [SBA website](#), and it is noted therein that it is not all-inclusive
- It is expected that document requests may vary from lender to lender
- Note that scanned documents, E-signatures, etc., are permissible per SBA guidance, [PPP Forgiveness FAQ #2](#) (October 13, 2020)



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PPP LOAN FORGIVENESS – PROCESS

Eligibility and Timing

- Funds must have been used for eligible payroll costs, payments on business mortgage interest payments, rent, or utilities during either the 8-week or 24-week [covered] period after disbursement
- A borrower can apply for forgiveness once it has used all loan proceeds for which the borrower is requesting forgiveness, at any time up to the maturity date of the loan
- If borrowers do not apply for forgiveness within 10 months after the last day of the covered period, then PPP loan payments are no longer deferred and borrowers will begin making loan payments to their PPP lender (*See exception on next slide*)



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PPP LOAN FORGIVENESS – PROCESS

Exception for Application Deadline

- [PPP Loan Forgiveness FAQ #3](#) *Loan Payment Exception for Timely Application*
 - **Question:** *If a borrower submits a timely loan forgiveness application, does the borrower have to make any payments on its loan prior to SBA remitting the forgiveness amount, if any?*
 - **Answer:** *As long as a borrower submits its loan forgiveness application within 10 months of the completion of the Covered Period (as defined below), the borrower is not required to make any payments until the forgiveness amount is remitted to the lender by SBA (Continued on next slide)*



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PPP LOAN FORGIVENESS – PROCESS

Exception for Application Deadline

- **PPP Loan Forgiveness FAQ #3 *Loan Payment Exception for Timely Application***
 - ***Answer: (continued) If the loan is fully forgiven, borrower is not responsible for any payments. If only a portion of the loan is forgiven, or if the forgiveness application is denied, any remaining balance due on the loan must be repaid by the borrower on or before the maturity date of the loan. Interest accrues during the time between the disbursement of the loan and SBA remittance of the forgiveness amount.***
 - Borrower must pay accrued interest on any amount of the loan that is not forgiven
 - Lender must notify borrower of remittance by SBA of the loan forgiveness amount (or that no amount of loan is eligible for forgiveness) and date first payment is due, if applicable



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PPP LOAN FORGIVENESS – PROCESS

Requirements for Forgiveness of the Entire PPP Loan Amount

- **The following conditions must all be met to qualify for complete forgiveness:**
 - ***Not more than 40% of the forgiveness amount used for non-payroll costs;***
 - ***Employee headcount is maintained; and***
 - ***Compensation levels for employees earning less than \$100,000 per year are not decreased more than 25%***
- **If any of these factors are not satisfied fully (or full amount of the PPP loan is not used in the selected 8-week or 24-week period), a portion of the loan will not be forgiven and must be repaid**



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PPP LOAN FORGIVENESS CALCULATION



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Paycheck Protection Program (PPP) Loan Forgiveness & Procedures



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PPP LOAN FORGIVENESS – CALCULATION

Overview of Calculation Process

- The determination of how much of those amounts borrowed under the PPP can, and will, be forgiven is a multiple-step process that requires consideration of the statutory language included in the CARES Act under Section 1106 and later issued guidance issued by the SBA, in conjunction with Treasury



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PPP LOAN FORGIVENESS – CALCULATION

Pursuant to Section 1106 of the CARES Act:

“...an eligible recipient [of a PPP loan] shall be eligible for forgiveness of indebtedness on a **covered loan** in an amount equal to the sum of the following costs **incurred** and **payments made** during the **covered period.**”

1. *Payroll costs*
2. *Interest on covered mortgage obligation (no prepayments or principal)*
3. *Any payment on any covered rent obligation*
4. *Any covered utility payment*



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PPP LOAN FORGIVENESS – CALCULATION

General Definitions (pursuant to Section 1106 of the CARES Act)

- **Covered Loan** – the PPP loan under Section 1102 of the CARES Act
- **Covered Mortgage Obligation** – any indebtedness or debt instrument incurred in the ordinary course of business that:
 - a) *is a liability of the borrower*
 - b) *is a mortgage on real or personal property and*
 - c) *was incurred before February 15, 2020*



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PPP LOAN FORGIVENESS – CALCULATION

General Definitions (pursuant to Section 1106 of the CARES Act)

- **Covered Period** – the selected 8-week, or 24-week, period beginning on the date of the origination of the loan (the proceeds disbursement date)
- **Covered Rent Obligation** – rent obligated under a leasing agreement in force before February 15, 2020
- **Covered Utility Payment** – payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020



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PPP LOAN FORGIVENESS – CALCULATION

General Definitions (pursuant to Section 1106 of the CARES Act)

- **Eligible Recipient** – the recipient of the loan
- **Expected Forgiveness Amount** – the amount of principal a lender reasonably expects a borrower to expend during the covered period on the sum of any:
 - a) *Payroll costs*
 - b) *Payments of interest on any covered mortgage*
 - c) *Payments of any covered rent obligations*
 - d) *Payments of covered utility costs*



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PPP LOAN FORGIVENESS – CALCULATION

General Definitions (pursuant to Section 1106 of the CARES Act)

- **Payroll Costs** – defined as in Section 1102 for use in determining maximum loan amount for which applicant might qualify under the program; includes:
 - a) *Salary, wages, commissions, or tips (capped at \$100,000 annually per employee);*
 - b) *Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required to provide group health care benefits including insurance premiums; and payment of any retirement benefit;*
 - c) *State and local taxes assessed on compensation; and*
 - d) *For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000*



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PPP LOAN FORGIVENESS – CALCULATION

Further Clarification of Payroll Costs per the [SBA FAQs](#)

- Payroll costs **DO NOT** include:
 - *Any payments made to an independent contractor*
 - *Any adjustments to gross wages, either up or down, for federal payroll taxes including the employer's share of FICA taxes*
- Payroll costs **DO** include:
 - *Any payments made to general active partners*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 1)

Covered Costs and Loan Forgiveness

- Determine the date that the **8-week or 24-week** period begins and that marks the start of the “covered period”
 - *The statute defines this date as the date of origination of the loan*
 - *The FAQs released by the SBA clarify this start date as the date the lender makes the first disbursement of the PPP loan to the borrower*
 - *In other words, the clock starts ticking the day your PPP loan funds are deposited in your bank account*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 1)

Covered Costs and Loan Forgiveness

- Determine the total amount of loan proceeds utilized in the covered period for “incurred and paid” payroll costs and other allowable costs, i.e., the “covered expenses”
- If the covered expenses do not rise to the level of the loan proceeds, the difference does not qualify for forgiveness



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PPP LOAN FORGIVENESS – CALCULATION (STEP 1)

Covered Costs and Loan Forgiveness

▪ **Example:**

- *Company A borrows \$1,000,000 under the CARES Act PPP*
- *In the covered period, Company A incurs and pays \$850,000 of covered expenses*
- *The difference, or \$150,000, does not qualify for forgiveness and must be paid back*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 1)

Covered Costs and Loan Forgiveness

- **Determine if that amount potentially qualifying for loan forgiveness was used in proper proportions to further qualify for loan forgiveness – was the amount incurred or paid from the remaining \$850,000 used 60% for covered payroll?**
 - *If yes, the eligible recipient moves to Step 2*
 - *If the “other, non-payroll” covered expenses exceed 40% of the remaining qualifying loan, there is a further limitation in Step 1*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 1)

Determine If Proportions Used Qualify for Loan Forgiveness

▪ **Example:**

- *Company A incurs or pays \$382,500 for non-payroll covered expenses (45% of \$850,000) in the covered period.*
- *The amount of Company A's potential loan forgiveness is further reduced by the 5% excess (\$42,500), leaving \$812,500 as potential*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Maintaining Employee Levels

▪ **Pursuant to Section 1106 of the CARES Act:**

- *The amount of loan forgiveness will be reduced by any proportionate reduction in the number of employees retained during the covered period compared to one of two prior pay periods to be determined by the borrower in its sole discretion*
- *The amount of the loan forgiveness is reduced by multiplying the forgivable amount by the quotient (expressed as a percentage) obtained by dividing (X) the **average** number of full-time equivalent employees (FTEs) per month employed by borrower during the Covered Period by (Y), the lower of one of two alternative pay periods*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Maintaining Employee Levels

- This test is shown as:
 - Forgivable amount multiplied by the **lower** (expressed as a %) of:
 - $\frac{\text{Number of FTEs during the Covered Period (i.e. the 8-week period)}}{\text{Number of FTEs during the period from 2/15/19 through 6/30/19}}$
 - OR**
 - $\frac{\text{Number of FTEs during the Covered Period (i.e. the 8-week period)}}{\text{Number of FTEs during the period from 1/1/20 through 2/29/20}}$
- Note that you are permitted to choose the better option, the one which provides the lower employee count (expressed as a %)



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Maintaining Employee Levels

- **Example:**
 - $\$100,000 * 64/62 = \$ 100,000$ (no limitation)
 - $\$100,000 * 64/72 = \$ 88,888$
- The higher ratio would be chosen as it would produce no FTE-related reduction to the forgivable loan amount



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Maintaining Employee Levels

- How are FTEs defined for purposes of this calculation?
 - *The average number of full-time equivalent employees (FTEs) is determined by calculating the **average** number of FTEs for each pay period falling within a month*
 - *For an eligible recipient that is a **seasonal employer** (as determined by the SBA), the average number of FTEs per month employed by the borrower must be determined during the period beginning 02/15/19 and ending 06/30/19*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Loan Forgiveness Application Anomaly

- **The original borrowing under the PPP loan provisions was essentially 2.5 months of qualifying payroll, thus, most borrowers requested a loan equal to 10 weeks of payroll**
- **For borrowers who later elected the 24-week covered period, the forgiveness qualification requirement is to have spent the loan proceeds on covered expenses in the 60/40 ratio noted earlier**



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Loan Forgiveness Application Anomaly

- The change in the covered period (from 8 to 24 weeks) gives borrowers 24 weeks to pay 10 weeks of qualifying payroll
- In effect, this allows borrowers three times the original “spend-period” to properly disburse the funds on covered expenses
 - *This extension of time equates to allowing borrowers 2.4 times the original time period for paying qualified payroll – making it far easier to spend the proceeds on qualifying payroll*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 2)

Loan Forgiveness Application Anomaly

- This outcome is borne out in the application process on Form 3508
 - *It appears that proper completion of the form in a circumstance where a 24-week covered period is selected produces a loan forgiveness amount that is larger than the original PPP loan*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 3)

Reduction Relating to Salary and Wages

- Amount of the loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee during the covered period which is in excess of 25% of the total salary/wages of the employee during the most recent full quarter during which the employee was employed before the covered period
 - *Employees for this calculation are those who did not receive in any single pay period during 2019, wages or salary at an annualized rate of pay in an amount above \$100,000*
 - *Employers with tipped employees may receive forgiveness for additional wages paid to those employees*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 3)

Reduction Relating to Salary and Wages

- Wage reductions occurring between February 15, 2020, and 30 days following passage of the CARES Act, will not reduce the amount of loan forgiveness, if by December 31, 2020, the borrower eliminates the reduction in employees or reduction in wages



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PPP LOAN FORGIVENESS – CALCULATION (STEP 3)

Reduction Relating to Salary and Wages

- Divide the average annual salary or hourly wage during your Covered Period by the average annual salary or hourly wages of the *Look-Back Period*
 - *Look Back Period = January 1, 2020 – March 31, 2020*
- If result is 0.75 or more, no salary or hourly wage reduction for that employee
 - *If the wage reduction is 0.75 or more, consider the safe harbor provisions*
 - *If the safe harbor does not apply, then proceed to the reduction calculation*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 3)

Reduction Relating to Salary and Wages

- Calculation mechanics:
 - *Multiply Look-Back Period amount by 0.75 (3a Amount)*
 - *Subtract this amount from your covered period amount (3b Amount)*
 - *If the employee is an hourly worker, compute the total dollar amount of the reduction that exceeds 25% (see next slide)*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 3)

Reduction Relating to Salary and Wages

▪ **Calculation mechanics:**

- *Multiply the 3b amount by average number of hours worked per week during the Look-Back Period, then, multiply this amount by your covered period (8 or 24 weeks), which will result in the salary reduction for the hourly employee*
- *If the employee is a salaried worker, compute the total dollar amount of the reduction that exceeds 25% as follows:*
 - *Multiply the 3b amount by your Covered Period (either 8 or 24 weeks) and divide by 52 – the result is the salary reduction for the salaried employee*



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PPP LOAN FORGIVENESS – CALCULATION (STEP 3)

Reduction Relating to Salary and Wages

▪ **Wage Restoration Provision**

- *If, by December 31, 2020, wages are restored for those employees who had a salary reduction from February 15, 2020, to April 26, 2020, there will be no decrease in loan forgiveness for this specific provision*
- *If wages are not restored under this provision, loan forgiveness will be limited*



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PPP LOAN FORGIVENESS OTHER MATTERS



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PPP LOAN FORGIVENESS – OTHER MATTERS

Matters of Taxation

- Forgivable PPP loans are excluded from federal taxable income by the CARES Act
- The IRS issued [Notice 2020-32](#) in April 2020, which stated that expenses associated with the tax-free income are NON-DEDUCTIBLE
 - *Remains an unresolved issue*
 - *Issues related to the non-deductibility of the expenses*



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PPP LOAN FORGIVENESS – OTHER MATTERS

Matters of Taxation

- When are the expenses nondeductible?
- How to consider non-deductibility in transactions?
- What is effect on state income taxes?
- Other concerns – where does cash flow come from to pay tax?



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PPP LOAN FORGIVENESS – OTHER MATTERS

Recent Developments from the SBA

- [SBA Procedural Notice 5000-20057](#) – Paycheck Protection Program Loans and Changes of Ownership (10/2/20)
- [SBA Notice 85 FR 67809](#) – Solicitation of Public Comments (10/26/20)
 - *Draft Forms 3509 and 3510, PPP Loan Necessity Questionnaires*
 - [Form 3509 \(For-Profit Borrowers\)](#) and [Form 3510 \(Non-Profit Borrowers\)](#)
 - Required for loans at \$2 million and above



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GYF VIRTUAL CPE DAY 2020

Questions?

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