



Paycheck Protection Program

Loan Forgiveness & Current Developments

May 29, 2020

The following information reflects Grossman Yanak & Ford's responses to questions submitted regarding the Paycheck Protection Program Loan Forgiveness Webinar hosted by the Firm and facilitated by Bob Grossman, Don Johnston and Mike Weber on May 29, 2020 at 10:00 am EST. A recording of that Webinar as well as copies of the slides and the forgiveness application are available at the links below:

- [Sample Forgiveness Application Form](#)
- [Download Slides](#)
- [Link to Recording](#)

Please note that the questions were answered in the order in which they were submitted from participants in the Webinar. As such, they are not presented by technical area. For the most part, however, the questions obviously follow the comments being made by the speakers.

Note that the information in these answers do not include the effects of the Paycheck Protection Program Flexibility Act of 2020 ([H.R. 7010](#)) passed by the House of Representatives on May 28, 2020, and the United States Senate on June 3, 2020. [Click here](#) for details on this legislation.

The information set forth on the following pages does NOT constitute tax advice of any kind and is not intended to be interpreted as final guidance or a formal opinion of any specific matter. Each of the questions contains limited facts, and we reserve the right to alter the answers set forth below should additional information be made available.

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PPP Part II Questions & Answers

1. Are there any updates PPP relating to 1099s and this forgiveness program?

Answer: We have not, to date, seen any Forms 1099 requirements specific to this program. In a normal tax environment, any debt forgiveness by an institution would require a Form 1099-C, *Cancellation of Debt* to be provided to that party who had the loan forgiven. As the amount of the forgiven PPP loan is clearly not taxable, there would seem to be no reason that such a form would be required of any party, including the lender, who will be responsible for making the decision as to how much of the PPP loan for any eligible recipient is forgiven.

2. The House passed an extension for PPP from 8 weeks to 24. The Senate wants it to be 16 weeks. Are you going to address this today?

Answer: This bill, H.R 7010, titled the Paycheck Protection Program Flexibility Act was discussed in the webinar. A detailed posting is available on our website at <https://gyf.com/house-passes-bill-to-provide-flexibility-on-forgiveness-requirements-for-ppp-borrowers/>

3. Can we get CPE for this webinar?

Answer: No. The time sensitivity of the information required we move forward quickly to present this to our clients and contacts. Thus, time was not available to obtain CPE accreditation.

4. If we got a rent or benefit payment deferral in May, can we include this cost in our rent or benefit expenses used to calculate our loan forgiveness?

Answer: There has been no specific guidance issued addressing this matter. If the rent or benefit payment in question was totally forgiven and represents an expense for which the employer/borrower did NOT and will NOT sustain an economic outlay of any kind, it does not seem that the amount should be included in the calculation for loan forgiveness. However, if the May rent in the question were simply deferred (perhaps added to the end of the lease), or the benefit payment is payable at a later date, I would suggest that consideration be given to including the amounts because an economic outlay was incurred in the form of issuing a liability for later payment. In this situation, however, it appears as though any rent “incurred” during the “covered period” would need to be paid before or on the due date of the next month’s regular payment.

5. Is pre-paid rent eligible?

Answer: While there is no direct guidance on this point, language throughout the available guidance indicates that prepaid rent is not considered in the determination of the amount of the loan forgiveness.

6. Are employer-paid retirement contributions eligible? (eg: 401k contributions or SEP contributions)

Answer: Employer retirement contributions are clearly includible as non-cash compensation payroll costs. These amounts are included on Line 7 on the [Loan Forgiveness Application](#).

- 7. If an employer is short of meeting the 75% spend on payroll, can/should employers pay employee bonuses or pay employees unearned but anticipated overtime to meet the 75%?**

Answer: The 75% test is a bright line demarcation, so a failure to meet this threshold will certainly lead to a reduced amount of loan forgiveness. Pursuant to [guidance issued by the SBA on May 22, 2020](#), bonuses and payments for hazard pay are includible in the computation of covered payroll costs for purposes of loan forgiveness. The payment of “as of yet” unearned overtime would not seem to be includible as the economic impact of such payments have not yet been incurred (though they will have been paid). Such an approach would be akin to “prepaying,” which, while not directly addressed in any guidance related to payroll, seems to be in conflict with the intent of the program.

Note, as discussed in the webinar, the Paycheck Protection Program Flexibility Act (H.R. 7010) reduces the payroll requirement to 60% and expands the covered period to 24 weeks. This bill has not been passed, as of June 3, 2020.

- 8. We have a discretionary match to our 401(k). Are there any provisions for making a discretionary match to 401(k)? If so, do we have to do it by the end of the 8-week period?**

Answer: Employer discretionary matches are not specifically addressed in guidance issued to date. However, as addressed in Question 6, above, employer retirement contributions are clearly includible as non-cash compensation payroll costs as long as they are paid during the covered period. Employer matches should be considered part of employer retirement contributions.

- 9. Are workers comp and general liability forgiven? Are state unemployment compensation taxes forgiven?**

Answer: Worker’s compensation and general liability insurance (presumed to be the question) are not items that have been identified in any guidance issued to date. As those costs do not have a direct tie to amounts paid and benefitting employees, it is currently our thought that these costs do NOT factor into the determination of loan forgiveness. However, we believe that state unemployment payment can be included.

- 10. Are you recording this webinar so we can refer back to your thoughts?**

Answer: The webinar was recorded in its entirety and is available along with the slides on our website’s our [Coronavirus Resource Center](#). [Click here](#) a direct link to the recording.

- 11. If you are claiming expenses on a grant and using PPP money, will that be allowed? Different than the tax return and not sure if there is specific guidance on that regarding utilities... several employees are required to work remotely to continue sustaining business operations. Can we claim cell phone and internet service as utilities if we are reimbursing them for those services?**

Answer: With respect to the use of “forgiven loan amounts” that were used to pay covered expenses that are being included in needs requests under various grant applications, we recommend looking to guidance issued by the grant-making party. While we have observed certain grant-makers allowing this inclusion in the grant request, there is no official guidance to this point (nor would we expect any) from the SBA or Treasury. As such, it seems that this consideration will have to be addressed with each specific grant-maker.

With respect to covered non-payroll expenses, and within those expenses, those identified as utilities, the SBA rules require that any included utilities must have been related to services in place as of February 15, 2020. However, if cell phones and internet services were in place at the employer/borrower place of employment on that date, it appears that those same costs being reimbursed to employees as a result of the government mandated closure of that office/business, should be included in the computation of covered utilities.

12. Would a forgiven loan be taxable income?

Answer: The forgiven portion of the loan will not constitute cancellation of indebtedness income and, as such, will not be taxable for federal income tax purposes. Note, however, that Internal Revenue Service [Notice 2020-32](#) ruled that any amounts paid for covered expenses which were, in fact, satisfied with PPP loan proceeds that are forgiven, will NOT be deductible in the determination of 2020 taxable income.

The Senate has introduced a bill, S.B. 3610, which would restore the deduction. However, this bill has not yet been passed. Finally, note that the debt forgiveness is currently, and will likely remain, taxable in the Commonwealth of Pennsylvania.

13. Wouldn't there be a matching of forgiveness of debt income and expenses paid from the loan proceeds, so they would net?

Answer: That is correct. The employer/borrower will still have benefited economically. For example, assume a PPP loan of \$1M. While the loan forgiveness of \$1M is not taxable, taxable income will be increased by \$1M because each of those expenses paid with the forgiven proceeds would no longer be deductible. The tax cost to losing these deductions for a pass-through business owner might be 40%. Thus, the net tax savings of \$400K associated with the deductions would not be realized, and the overall net economic benefit is \$600K versus \$1M.

This matter is discussed more fully in a posting on our website at <https://gyf.com/irs-denial-of-tax-deductions-paid-from-ppp-loans-draws-congressional-ire/>

14. How will expenses be recorded for GAAP purposes if the PPP money is used and the loan is forgiven?

Answer: PPP loan forgiveness will be reflected as other income, typically as a grant, in the "Other income (expense)" section of the income statement. The actual expenses paid with the proceeds will be reported as they always are, according to the latest accounting guidance. While this is non-operating income, most lenders and others are allowing it as an EBITDA add-back since the related costs were charged against EBITDA.

15. Will the loan amount be considered income and taxable?

Answer: See Question 12.

16. What are the ramifications, if any, if an employer applies salary reductions to their full-time staff after the 8-week period expires?

Answer: There is no guidance that requires consideration of reductions in Full Time Equivalent Employees (FTEs), or wages after the end of the covered period or the alternative covered period.

- 17. Also, if we need to furlough staff AFTER the 8-week period expires, will this impact our forgiveness, or must we keep them on payroll for an extended period of time past the 8 weeks?**

Answer: There is no guidance, to our present knowledge, that requires maintaining employee counts beyond the end of the covered period or the alternative payroll covered period.

- 18. Will recruiting costs be forgiven?**

Answer: No information has been issued related to recruiting costs. As there are no portion of those costs that directly benefit an employee and, as such, the consideration of recruiting costs is likely to be excluded in determining the amount of the loan that qualifies for forgiveness.

- 19. The original application asked for head count and now the loan forgiveness form wants FTEs, which is a different comparison. How will this be reconciled?**

Answer: The “head count” that was included on the original application does not need to be reconciled to the FTE employees that will be used for the [Loan Forgiveness Application](#). Based on our understanding, the head count included on the original application was for general informational purposes and only needs to be reasonably close to the FTE employees that are used in the calculation of your loan forgiveness. The more important designation will be the change in FTE employees, which may cause a portion of the loan to be non-forgivable if there is a net reduction in your FTE employees between the selected “base” period and the “covered period.” (See Question 48 for more detail)

- 20. Can you elaborate on the 40-hour FTE requirements? Many nonprofits have 32-hour FTEs.**

Answer: The fact that a borrower has employees that are not FTE employees (i.e. employees that work at least 40 hours per week) should not be a problem as long as there is not a net change in hours from the “base” period as compared to hours during the “Covered” period.

For example, if a borrower has 5 employees who all work 32 hours per week, the FTE employee figure would be 4 ($32/40 * 5 = 4$). In this example, as long as your FTE employees during the Covered Period was 4, and your FTE employees during the “base” period was no more than 4, you would not have a change in your total FTE count.

For purposes of this question, if your employees were working 32 hours per week before COVID-19 and continue to work at least 32 hours per week during the Covered Period, there would be no net change in total FTE employees.

- 21. Are additional bonuses and wage increases paid to employees for working during COVID-19 lockdown conditions eligible for forgiveness?**

Answer: Yes. Pursuant to [guidance issued by the SBA on May 22, 2020](#), bonuses and payments for hazard pay are includible in the computation of covered payroll purposes of loan forgiveness.

- 22. Does rent include Common Area Maintenance (CAM) charges?**

Answer: To date, no guidance is available on this specific item, but our opinion is that this is a non-includible “non-payroll” expense unless the common area maintenance is included in the rent, itself, under the lease.

23. To clarify on eligibility of pre-paid rent (and now it appears not) – the rent was for this period, but was paid prior to COVID-19. (Annual rent payment made in advance of pandemic.)

Answer: Generally, as noted in Question 5, above, prepaid rent is not includible in the calculation of loan forgiveness.

There is an important distinguishing fact in this question in that the rental payment is made just once a year. In this instance, the proper inclusion in the calculation for loan forgiveness should be the amount of rent “incurred” in the covered period. The “prepayment” of rent in this example would seem to be in conflict with the answer to Question 5. The purpose of the “prepaid” exclusion appears to be the prevention of including more than 56 days rent in any particular case. In this fact pattern, it would seem necessary to reflect 56 days of rent in the calculation, as that is the amount of rent expense that would be allocable under any reasonable accounting method to the applicable covered period.

24. Are payments on vehicle purchases covered? We buy vehicles we don't lease them?

Answer: The answer is, generally, no. However, there is an ability to deduct interest payments on a “covered mortgage obligation” under Section 1106 of the CARES Act. That term is defined as “any indebtedness or debt instrument incurred in the ordinary course of business” that:

- A. Is a liability of the borrower;
- B. Is a mortgage secured by real or personal property; and
- C. Was incurred before February 15, 2020.

While we have not observed personal property being subjected to a mortgage, it is not uncommon to see equipment and vehicle financings secured by liens. In our opinion, and because rent was later expanded to include personal property, we think that the interest on vehicle financing costs is includible in covered “non-payroll” costs.

25. My company runs three separate payrolls, all with different pay periods. What is your opinion on how we treat the alternative period? Do we pick one payroll, or calculate on all three?

Answer: First, to qualify for the alternative payroll covered period, you must have a payroll cycle that is bi-weekly or more frequent. In the circumstance set forth in your facts, it would seem appropriate to look at each payroll separately and develop your analysis on a combined basis (additively).

We have not observed or worked with multiple payroll cycles in the same business. Please understand that there is no detailed guidance on this matter. As such, we would first look at the information separately. Though this will involve more detailed analysis, the result should be a very comprehensive calculation, able to more easily withstand any challenges or scrutiny.

If you should find that this methodology impacts your potential forgiveness in a significant manner, it would be our recommendation to look at different methodologies to see first, if they make sense, and second, to determine if an appropriate alternative method might produce a better result for you while still meeting the spirit and language of the guidance.

26. So if we pay twice per month, not every 2 weeks, we are not eligible for alternative payroll period?

Answer: That is correct. Biweekly and weekly payroll cycles are the most frequent, and it is assumed that the biweekly, or more frequent (weekly) payroll cycle was provided this opportunity to minimize the gap between the start of the covered period and the actual pay date.

Biweekly pay cycles number 26 pays in any tax year and offer pay on consistent days. Semi-monthly, by comparison, offer 24 pays per year, on inconsistent paydays (generally on the 15th and the last day of the month). A biweekly payroll period results in employees receiving three pays in two different months each year.

27. What about those businesses who are not fully operational? We brought back just a small portion of payroll as allowed by the governor's orders.

Answer: This is a difficult matter. The purpose of the PPP loan program was to bring employees back or maintain employees through the pandemic shutdowns. In effect, the employer/borrower in these instances continued to pay employees whether they are functional or not. The fact that the business is not operational has proven difficult for many employer/borrowers but, again, the purpose of the program was to keep employees in place, even if they had nothing to do. The exception, of course, was for those nonessential businesses who were expected to continue to pay the employees even if they were at home.

28. How does this affect employee unemployment?

Answer: There should be no effect on unemployment for the employees. If the employees continued to be paid by employer/borrowers under the program, they had no cause to file for unemployment.

29. Specifically, a dentist office who is still not allowed to bring back hygiene staff, just restorative staff – less than 50% of overall payroll and amount of PPP loan.

Answer: See Question 27. The proceeds were to be used to maintain employment levels in place prior to the pandemic shutdowns. Thus, hygiene staff staying at home should have continued to be paid with the loan proceeds. If they were not paid, those amounts would not be eligible for forgiveness.

30. What if a company received its Loan on April 16th, and its pay date is also April 16th. If the company uses the Alternative Payroll Covered Period, theoretically, could it include 9-10 weeks of payroll for forgiveness calculation? Essentially, the company includes full two weeks of payroll paid on loan proceeds date (April 15th) + 6 more weeks of payroll paid during Covered Period + Payroll INCURRED through JUNE 10th (end of Covered Period)?

Answer: This is a question that has been posed by many commentators, and the common thought is, in limited circumstances, including the fact pattern to this question, employer/borrowers may be able to include more than eight weeks of covered payroll. Such an outcome may arise as a result of the “payroll paid and payroll incurred” language included in the application instructions, but questions remain as to whether consideration of more than 56 days of covered payroll goes against the spirit of the law. SBA could simply issue an additional FAQ at any point in time that eliminates this opportunity.

If the Paycheck Protection Program Flexibility Act (H. R. 7010) moves forward, as currently expected, and the eight-week covered period is extended to 16 weeks or 24 weeks, this issue becomes moot.

31. When is it anticipated for the Senate vote on the House-passed extended period to spend the funds? This is critical for some businesses who have not been permitted to reopen completely.

Answer: There is no date for the movement of this bill through the Senate. However, similar legislation in the Senate has wide bipartisan support, and it is expected that the Senate bill will pass this week (as of 6/3/20). The bill then moves to a reconciliation process with Senate Finance Committee members and House Ways and Means Committee members. It is expected that this process will be quick, and after both Chambers vote on the reconciled bill, the President, who supports the changes, is likely to sign it quickly.

32. Is workers' compensation insurance premiums covered in payroll cost?

Answer: See Question 9. To our knowledge, no guidance has been released that allows for the consideration workers' compensation expense in determining covered payroll for the purpose of determining loan forgiveness.

33. If self-insured health care – can you use COBRA premium amount or would you need to use only claims paid for forgiveness calculation?

Answer: No guidance has been released regarding this matter. It is our thought currently that the COBRA payments, as well as actual claims, can (and should) be considered as the two pieces, together, constitute the employer/borrower's contributions to the health care benefits for its employees.

34. How about HSA contributions made by employers?

Answer: No guidance has been issued on this matter. However, in line with the response to Question 33, above, we currently think that the employer's HSA contributions should be considered in the determination of covered payroll for purposes of loan forgiveness.

35. Is employer paid SUI allowed to be included?

Answer: Yes. The SUI is includible in the determination of covered payroll per the [Loan Forgiveness Application](#) instructions to Line 8 on page 5. (See Question 40)

36. I am correct that the employer still must cover the cost of Social Security and Medicare?

Answer: It is necessary that employers continue to withhold federal income tax, state income tax, social security tax, Medicare tax and, perhaps, local income tax. In addition, it is necessary to pay the employer's share of the social security and Medicare tax.

Note that Paycheck Protection Program Flexibility Act (H.R 7010), contains a provision removing the previous (and current) restriction that does not allow employers to defer their share of the social security tax until 2021 and 2022.

37. What if we have a self-funded health plan? Would those costs be covered as long as we show the invoices we are paying?

Answer: See responses to Questions 33 and 34, above.

38. Are benefits and bonuses included in the \$100,000 cap for employees or separate?

Answer: Covered payroll includes all “cash” compensation. Total cash compensation (including vacation pay and bonuses) is then capped at \$100,000 per year. Employee benefits, including healthcare insurance premiums and retirement plan contributions are considered “non-cash” compensation. These amounts are NOT included in the amount subject to the \$100,000 cap and can be considered separately, as per the [Loan Forgiveness Application](#). This is true for employees who are not considered “owners.”

39. Some companies are self-insured for health insurance. Are actual claims paid under the self-insurance included in insurance costs?

Answer: We believe so, yes. See Questions 33 and 34 above.

40. In your opinion, would state unemployment tax qualify as a state tax based on compensation?

Answer: See Question 35, above. State unemployment tax is includible per the [Loan Forgiveness Application](#) instructions.

41. Our SBA loan "funded date" on our agreement is 4/28/2020, but the funds were not disbursed into our account until 5/7/2020. Which is day 1 regarding the start of the 56-day period?

Answer: The date that the covered period begins is the date that the funds are made available for your use. Thus, in this fact pattern, that date is May 7, 2020. It is important to maintain proof of the date those funds were transferred to your account.

42. We still owe 2019 employer Section 401(k) contributions. If those are paid during our 56-day period, will those payments count towards eligible payroll costs for forgiveness?

Answer: There has not been specific guidance issued on this point. We do NOT believe that an accrual for the entire prior year should be included in the determination of covered payroll for purposes of calculating the potential loan forgiveness. The problem is that the language of the law addressing covered expenses that are “paid and incurred” may leave room for an alternative interpretation without further guidance.

43. If you choose an alternate payroll period, do the other non-payroll costs follow that same period or do they remain based on the original loan date?

Answer: The Alternative Payroll Covered Period does not extend to non-payroll expenses. However, in [guidance issued by the SBA on May 22, 2020](#), non-payroll costs considered for loan forgiveness are those that are incurred and/or paid, if it was:

- A. paid during the covered period; or
- B. incurred during the covered period and paid on or before the next regular billing date, *even* if the billing date is after the covered period.

- 44. If the 8-week period is extended to 24 weeks, do you know how that applies to self-employed individuals? My understanding is that at 8 weeks, the most that could be forgiven would be \$15,385. If expanded to 24 weeks, does the self-employed individual now get forgiveness at \$46,154? This question also applies to any employees, especially those making over a \$100K.**

Answer: No. The extension, as we understand it and as we expect it to shake out, is that the \$100,000 cap will NOT be changed. The effect of the extension is entirely one of allowing more flexibility for employers/borrowers. Thus, employers/borrowers will be given more time to ensure that the \$15,385 payment threshold is met.

- 45. If you choose the “alternative covered period,” does that only refer to your payroll calculation and you would still use the “covered period” for your other expenses?**

Answer: See Question 43, above.

- 46. Does compensation (draw) paid to partners qualify for forgiveness?**

Answer: The salient consideration is self-employment income for the measurement period. Based on [guidance issued by the SBA on April 14, 2020](#), prohibited partners in partnerships from submitting a separate PPP loan application for themselves as self-employed individuals. Instead, the self-employment income of general active partners was to be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by, or on behalf of, the partnership. It is unclear whether a partnership will be required to make distributions to its partners within the 8-week period, or whether the “owner compensation replacement” model for Schedule C will prevail.

- 47. Is there consideration if employees quit during the base periods and the employer is unable to fill their vacancy?**

Answer: When an employee of the borrower is fired for cause, **voluntarily resigns**, or voluntarily requests a reduced schedule during the covered period or the alternative payroll covered period (FTE reduction event), the borrower may count such employee at the same full-time equivalency level before the FTE reduction event when calculating the section 1106(d)(2) FTE employee reduction penalty. The Administrator and the Secretary have decided to exempt such employees from the calculation of the FTE reduction penalty.

Section 1106 is silent concerning how to account for employees who are fired for cause, voluntarily resign, or voluntarily request a reduced schedule. The Administrator and the Secretary have determined that such an exemption is de minimis, because a limited number of borrowers will face an FTE reduction event during the covered period or the alternative payroll covered period.

Further, borrowers should not be penalized for changes in employee headcount that are the result of employee actions and requests. Borrowers that avail themselves of this de minimis exemption shall maintain records demonstrating that each such employee was fired for cause, voluntarily resigned, or voluntarily requested a schedule reduction. The borrower shall provide such documentation upon request.

- 48. I have the same exact number of employees pre- and post-pandemic. The problem is the initial application asked for head count, and I indicated “7.” However, they are all PT. Now the loan forgiveness indicates FTEs. I am sure the SBA or bank will go back and look at the head count when verifying even if I convert the initial 7 employees to FTEs.**

Answer: See Question 19, above. As stated, the “head count” that was included on the original application does not need to be reconciled to the FTE employees that will be used for the [Loan Forgiveness Application](#). Based on our understanding, the head count included on the original application *was for general information purposes* and only needs to be reasonably close to the FTE employees that are used in the calculation of your loan forgiveness. The more important designation will be the change in FTE employees, which may cause a portion of the loan to be non-forgivable if there is a net reduction in your FTE employees between the selected “base” period and the “covered period.”

Note that the number of employees is reduced through the final guidance to a factor. Every 40-hour employee would be an FTE. If an employee worked 32 hours, they would be assigned factor of .8. There is a safe harbor in the rules that anyone working less than 40 hours can use a factor of .5 without undertaking a detailed analysis. In cases where employees work 20 hours or less, this will be useful. However, where one works 32 hours as noted above, the detail would need to be gathered to obtain the .8 factor.

Interestingly, the loan forgiveness process (and application) require a comparison of the FTEs in the measurement period to the end of the employer’s/borrower’s covered period. Thus, if the factored amount was seven part-time employees and the safe harbor of .5 was used, the employer/borrower would have had 3.5 FTEs at the date of application. If everything remained constant at the end of the covered period, the employer/borrower would have the same 3.5 FTEs. Thus, there would be no adverse effect of the change in personnel count.

- 49. For FTE calculation, how do you calculate salaried staff? Assume 40 hrs/wk?**

Answer: The language in the guidance related to the [Loan Forgiveness Application](#), defined FTEs as employees working 40 hours per week. If salaried staff are working 40 hours a week, as noted in the question, they would simply count as a factor of 1 for their cash compensation computation (See Question 38), and are subject to the \$100,000 cap, the same as any other employee.

- 50. With overtime, can an employee be greater than 1 FTE?**

Answer: No.

- 51. If employees did not work but we paid them anyway, do those paid hours count as worked?**

Answer: Yes. You should count the hours that they were paid during the covered period.

- 52. Your FTE calculation seems to include overtime hours. Are you required to include OT hours?**

Answer: Yes, it appears as though you are required to include the total hours worked during both the base period and the covered period.

53. How do you calculate if you are a bi-weekly payer?

Answer: See Question 26, above.

54. You are using the term *hours worked*. Is it really *hours paid*?

Answer: It is assumed that the hours being paid reflect a return to the employee for the hours worked. As such, we have used the terms synonymously.

55. How is a salaried person who works over 40 hours per week counted for the FTE?

Answer: See Questions 49 and 50, above.

56. What if we do not track hours? Everyone is paid a salary so assume they are full time. Is there an issue if we assume everyone is 40 hours but do not have actual timesheets to support this?

Answer: No guidance has been issued regarding this specific issue. As such, there is no safe harbor factor for full-time employees who are salaried. However, it would seem that compensation levels would be able to be confirmed by comparison with industry norms, if proof became necessary.

The more likely challenge could come from the lender who is responsible for assessing what portion of the PPP loan may be forgiven. We suggest that some consideration be given to provide proof in your situation. We also recommend that you confirm exactly what evidence the lender may require.

57. We have 5 employees who are on salary, but 2 get commissions for sales. The sales are down. Is this considered a wage reduction?

Answer: No Guidance has been issued on this exact issue. Commissions are included in cash compensation considered for covered payroll determinations. If these commissions were considered in applying for the loan, it seems logical that this would constitute a wage reduction (if it exceeds the 25% threshold).

58. What if you included an independent contractor in your employee count on your PPP Application? How do you correct that on your Loan Forgiveness Application?

Answer: We would assume that this was an inadvertent inclusion and that you were given a larger loan because of the inclusion. It would be intentionally errant to include amounts paid to this independent contractor in the covered payroll calculation for loan forgiveness purposes. Thus, while your actual loan forgiveness will be determined based on a number of factors specific to your company, this error would generally serve to reduce the amount of the loan qualifying for forgiveness.

59. Wage reduction – how do you deal with a terminated employee who is replaced by a new employee?

Answer: Assuming the employee was terminated for cause, it does not seem as if there is a direct comparison between the old and new employee. Wage reductions are to be applied on a per employee basis and not in the aggregate.

60. Within what time frame upon conclusion of the covered period must a loan recipient start and complete submission of loan forgiveness application documents?

Answer: At this point there is no definitive timeframe for when a borrower must submit the application to the lender. Per the [most recent SBA guidance](#), the lender must issue a decision to the SBA not later than 60 days after receipt of a completed loan forgiveness application.

61. If an hourly EE worked more than 40 hours per week prior to 8 week covered period but now working 40 hours/week during covered period at the same hourly rate, then is no reduction in forgiveness? There would be no change in FTE, still at 1; however EE compensation reduced because working less hours.

Answer: In this situation, under the current law, you may have a problem meeting the 75% payroll test and will likely be required to repay some portion of the loan. You should not have a problem with either the FTE or the wage test.

62. Is interest on loans for trucks and heavy equipment forgivable?

Answer: We believe this to be the case if the interest payments are on debt that was in place on February 15, 2020, and that debt is secured by personal property. (See Question 24, above)

63. Can I get a copy of the sample loan forgiveness forms?

Answer: Yes, the form is available for download in our website's [Coronavirus Resource Center](#) under "Access Past Webinars." [Click here](#) for a direct link to the PDF.

64. Is there a time window that an application for forgiveness to the lender must be filed?

Answer: The [Loan Forgiveness Application](#) and the corresponding instructions indicate that the application must be filed by October 31, 2020.

65. I have 2 different pay periods and pay dates for my employees. The office staff is paid semi-monthly while my warehouse employees are paid bi-monthly. Can I have 2 different covered periods for PPP forgiveness?

Answer: See Question 25. While you may have only one "covered period," you may assimilate data from two payroll cycles.

66. If my company has a sister company in a different state and we both are owned by a foreign entity, are both of our companies' PPP loan amounts combined in determining whether the loan amount exceeds \$2 million?

Answer: [Per the instructions, page 1:](#)

If Borrower Received PPP Loans in Excess of \$2 Million: Check the box if the Borrower, *together with its affiliates (to the extent required under SBA's interim final rule on affiliates (85 FR 20817 (April 15, 2020))* and not waived under 15 U.S.C. 636(a)(36)(D)(iv)), received PPP loans with an original principal amount in excess of \$2 million.

- 67. We have an employee whose payroll the company paid her salary on the first payroll. However, she applied for the *Families First Corona Virus Response* and this will cover her payroll from the remaining of the 8-week payroll. How would this impact the FTE or the salary calculation. Can the requirement be waived for this employee?**

Answer: Apologies, but we do not completely understand the question. Generally, you are able to exclude certain employees from the FTE calculation if there is a reasonable reason to do so. We are uncertain as to whether you would fit one of those exclusions as we do not have all of the facts.

Please feel free to reach out to your GYF contact to further clarify your specific question/situation.

- 68. Where does the \$15,385 come from? [see page 5 of [Sample Application Form](#)]**

Answer: It is simply a mathematical computation of 8 weeks of cash compensation at the capped level of \$100,000. ($\$100,000/52 \times 8$)

- 69. If you're counting 10 weeks you could earn more than \$15,385 and be less than \$100,000 per year?**

Answer: We are not certain that we understand the question. In the forgiveness calculations, both covered payroll and covered "non-payroll" expenses are based on an eight-week period. It is understood that the application applied a factor of 2.5 to average monthly payroll. Thus, it is accurate that the loan, if properly determined, is based on 10 weeks of average payroll.

At the end of the day, no single employee's cash compensation above \$100,000 (or \$15,385) should be considered for the loan forgiveness computation.

- 70. For FTE base calculation, do you add up all the FTEs per payroll for the base period and divide by payrolls? Or do you just use one payroll period in the base period? We had staff positions empty for several weeks during both periods.**

Answer: The rules specify that you are to take the average hours worked per week. To compute this amount add the total hours up, and then divide the total hours by the number of weeks during the applicable period. This calculation should be done for both the selected base period and the covered period.

- 71. To clarify: If PPP loan received April 22 and we only do payroll once a month, then (today) we can use the PPP loan for ALL of April payroll and ALL of May? So alternative Payroll would be April 30 - May 31 OR just 56 days total...but starting with April total payroll?**

Answer: The Alternative Covered Payroll Period is not available for employers/borrowers who pay less frequently than bi-weekly. With respect to the timing of your payroll periods, we believe that you would be able to include all of the payroll for the months of April and May (i.e. the amounts were paid), and then you can use a prorata portion of the June payroll up to June 16th (i.e. amount incurred).

...And if under \$100K, we can include a "bonus, correct?"

Answer: This is correct.

72. [Step 4 on Sch A worksheet](#): do we have to keep all staff on payroll through June 30 if our 8-week period ended prior? We are looking at furloughing some staff after the period expires (June 6).

Answer: This is a tough one. We don't think you need to have employees on your payroll at June 30th unless you are trying to meet the safe harbor (i.e. you laid employees off and then brought them back to qualify for the safe harbor). In your case, it appears as though once you get past the 8 week covered period, you can reduce your FTE head count.

73. [Line 7, health insurance](#), does that include vision, dental, LTD, STD, life, AD&D?

Answer: It is our current thinking that health insurance includes vision and dental, not long-term or short-term disability, group life insurance or Accidental Death and Dismemberment.

74. The maximum calculations are based on 8 weeks for the [PPP Schedule A Worksheet](#). I thought we could count up to 10 weeks using a combination of the cash and accrual method?

Answer: See Question 30, above.

75. I thought federal taxes (FICA and fed taxes) was also allowed. It appears that only state and local were referenced.

Answer: Federal income tax withholding is already considered in the total "cash" compensation paid to employees in the average payroll calculations on which the base for the loan was determined. That is also the case for the employee's share of social security and Medicare. Finally, that total already includes state and local withholding.

The employer's share of social security and Medicare are outside the total cash compensation considered in the determination of the loan amount. However, these are both excluded in the computation by virtue of the language in the statute.

76. Is compensation to owners only for self-employed not for S corp?

Answer: Assuming you are referring [line 9 of PPP Schedule A](#), all owners, including S corporation owners who are also employees are reported on this line. To date, specific guidance has not been released. For now, we believe that all owners should be included.

77. Are Health Care premium reimbursements made to an Owner (paid via W2) included as eligible health insurance expenses for forgiveness?

Answer: If these amounts are included in cash compensation, it would seem that they should be included in cash compensation, subject to the \$100,000 cap.

78. [Line 7 employee retirement plan \\$](#) – Is that the \$ for the 8-week period or is it the \$ actually contributed? If we make our TOTAL annual safe harbor can we use the annual amount?

Answer: Specific guidance has not been issued for this matter. However, it is likely that the retirement amounts to be included here are the prorata amount that has been incurred and paid either during the covered period or the period that includes the next payroll period.

79. My warehouse employees are paid bi-weekly. Can I have 2 different covered periods based upon different payroll periods and dates for office staff and warehouse staff?

Answer: It does not appear as though you can use both the covered period and the alternative payroll covered period. However, this is not completely definitive as there may be some room for interpretation here. For now, the answer appears to be no, but future guidance may allow for you to use different periods for your particular situation.

80. How do you handle a person who decided to retire prior to the loan application and whose effective retirement date occurred during the covered period? Are you penalized in the FTE calculation?

Answer: No. Specific guidance has been issued regarding employees who voluntarily retire. Those individuals do not cause negative consequences to your FTE calculation.

81. What are the key dates/forms required for the loan compliance and PPP forgiveness?

Answer: The [Loan Forgiveness Application](#) must be filed before October 31, 2020. The information required to be provided to obtain loan forgiveness is set forth in the instructions on page 10, under the section titled, *Documents that Each Borrower Must Submit with its PPP Loan Forgiveness Application*. Also at the bottom of the same page, there is a section titled, *Documents that Each Borrower Must Maintain but Is Not Required to Submit*. All records must be maintained for six years.

82. Our 8-week spending period expires June 10. Is there a date by which our application for forgiveness must be submitted (i.e., 30 days from June 10)?

Answer: To our knowledge, there is no required filing date, but applications will not be accepted after October 31, 2020. It would seem prudent to apply for loan forgiveness at the employer's/borrower's earliest convenience.

83. Will a 100% S Corp shareholder be able to add health insurance and retirement benefits to \$15,385 for forgiveness?

Answer: No. At this point, we do not believe that an employee owner's payroll costs can exceed \$15,385. While additional guidance would be helpful, it appears that [IFR 2020-0032](#) section 3c addresses this question. This section specifies that "the amount of loan forgiveness requested for owner-employees and self-employed individual's payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e. approximately 15.38 percent of 2019 compensation) or \$18,385 per individual in total across all businesses." This same section goes on to specify that "owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf."

84. What if employees leave voluntarily and you are unable to re-hire within the 56 day period?

Answer: Pursuant to the [Loan Forgiveness Application](#) instructions, the calculation for the change in number of employees will not include:

- Any positions for which the Borrower made a good-faith, written offer to rehire an employee
- Any employees who were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction of their hours

85. We have an EE receiving compensation based on the COVID 5 wages at 66% of his base wages. Do we need to record him as a reduction in wages? We are not including him in our total compensation count. Is this correct?

Answer: *(amended and corrected)* Section 1102 of the CARES Act specifically excludes amounts paid under the Families First emergency paid leave program from the definition of “payroll costs” for PPP loan purposes. If an eligible employer receives a payroll tax credit for Emergency Sick or Family Medical Leave under FFCRA, they may apply for a PPP loan but may not include emergency leave amounts as part of the PPP loan’s payroll cost calculation.

This response is further confirmed in the Application for Loan Forgiveness on the Instructions for PPP “[Schedule A Worksheet](#)”, on page 7, where the calculation for “Cash Compensation” specifically excludes compensation for leave covered by the FFCRA.

86. For the other expenses reported – can the company use either the date paid or the date due as long as only two months are claimed?

Answer: A non-payroll cost is eligible for forgiveness if it was: (1) Paid during the covered period; or (2) incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the covered period.

87. Base period date coverage – we purchased a company and had payroll starting in July 2019. However, our FTE is larger in the first quarter of 2020. Do I have to use that period or can I use the April to June base?

Answer: With regard to the base period you have two options. You can choose the lower of the FTE employees for the period from either 2/15/19 through 6/30/19 or 1/1/20 through 2/29/20. If your FTE employee count is higher in the first quarter of 2020 than it was during the first two quarters of 2019, you may be able to use the prior-year FTE count depending upon how the acquisition was structured.

This is obviously a complex issue that deserves more time and consideration than can be given here. Please reach out to your GYF contact.

88. For eligible retirement benefits, we make a 4% safe harbor contribution in the year following the plan year. For loan forgiveness, is the calculation based on the actual payment of contributions for the current 8-week covered period only?

Answer: Our current understanding is that the latter is appropriate. We would expect the loan forgiveness to be based on eight weeks (56 days) of economic cost incurred. Employers accustomed to making year-end retirement plan contributions may have to adjust and pay a pro-rated portion of the retirement plan contributions during the covered period in order for those contributions to count towards forgiveness.

- 89. Regarding owner-employee compensation, do attribution rules apply for spouse and children who are employees (i.e., is the total family compensation limited to \$15,385)?**

Answer: No guidance has been released to suggest that family attribution is applicable to the compensation caps. It would be assumed that each family member serves a specific function and is reasonably compensated for those services rendered in that function, thereby, allowing the amounts to be properly tax deductible. Under this assumption, each employee should be considered separately.

- 90. We have a part-time employee who works only as needed and for the most part schedules their own hours. This can vary in the period. Can I use just the simple method for the FTE? We have not reduced the salary rate, but what is paid may be less during the period. Will this have an impact on either the FTE or Salary reduction?**

Answer: As long as you continue to pay him/her the same rate of during the covered period, there will be no reduction with respect to the salary reduction portion of the computation. There might be a reduction in your FTE count based upon on the number of hours this employee works relative to their hours during the measurement period (and relative to what other employees were working during the measurement period versus the covered period). Using the safe harbor approach may produce the best answer, but it may also result in a worse answer. Each situation needs to be analyzed to determine the most advantageous methodology.

- 91. We pay on a monthly basis. 8 weeks are not exactly 8 weeks. How shall we handle this?**

Answer: The computation of covered payroll in determining the amount of loan forgiveness is based on amounts “incurred and/or paid.” As such, depending on specific circumstances, your company should consider any amounts “paid” in the covered period, as well as those amounts that were incurred between the payment date and the last day of the covered period.