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PPP LOAN FORGIVENESS: What You Need to Know

 **Aldrich**

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PPP UPDATES

- FAQ Updates
 - Question #48 – related to lender completion of required SBA form
- Interim Final Rules
 - May 20th – Formal extension of time to return funds from May 14th to May 18th
 - May 22nd – Loan Forgiveness
 - May 22nd – SBA loan review procedures and related borrower & lender responsibilities
- Round 2 Usage
 - Interestingly overall utilization declined from 5/16/20 report (\$513 billion) to 5/23/20 report (\$511 billion)
- Main St. Lending Program
 - Expected to be making loans within next two weeks per Boston Fed President

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PPP UPDATES: FORGIVENESS PROCESS

Interim Final Rule: 5/22/20 on Forgiveness

- The general process of obtaining forgiveness (on loans not subject to SBA Review)
 1. Submit application (SBA Form 3508 or lender equivalent) and supporting documentation to lender
 2. Lender will review application and make forgiveness decision
 3. Lender has 60 days from receipt to issue a decision to the SBA
 4. Lender requests payment from SBA upon issuing decision to SBA
 5. SBA remits forgiveness amount to the lender (plus interest accrued) within 90 days of receiving decision from lender
 6. Lender notifies borrower of forgiveness amount
- When is application due to lender still a question – October 31st (due date of forgiveness application?)

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PPP UPDATES: FORGIVENESS PROCESS

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- The general process of obtaining forgiveness – (Continued)
 - What if only a portion is forgiven, or the request is denied due to lack of eligibility?
 - Any remaining balance due on the loan must be repaid by the borrower on or before the two-year maturity of the loan.
 - What if the borrower had already remitted payments to Lender?
 - Any amount remitted to the Lender in excess of remaining principal balance of the PPP loan, will be paid back to the borrower plus accrued interest (could happen if SBA settles after end of deferment period and borrower begins making payments).

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PPP UPDATES:

PAYROLL COSTS

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- When must payroll costs be incurred and/or paid to be eligible for forgiveness?
 - Payroll costs paid or incurred during the eight-consecutive week (56 days) covered period or alternative covered period are eligible for forgiveness.
 - Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness.
 - Employees being paid but not performing work; payroll costs are considered incurred based on the schedule established by borrower (typically each day the employee would have performed work).

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PPP UPDATES:

PAYROLL COSTS

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- When must payroll costs be incurred and/or paid to be eligible for forgiveness? – (Continued)
 - Example shown in IFR:
 - "Payroll costs paid during this alternative payroll covered period are eligible for forgiveness. In addition, payroll costs incurred during this alternative payroll covered period are eligible for forgiveness as long as they are paid on or before the first regular payroll date..."
 - Alternative Payroll Covered Period - Keep in mind that the alternative payroll covered period is only available for payroll cycles that are bi-weekly or more frequent!

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PAYROLL EXAMPLE

Option 1: Disbursement Date

Loan Origination Date: April 16, 2020
 8 Week Covered Period End: June 10, 2020
 Pay Cycle: Bi-Weekly
 First Pay Date in 8-week Covered Period: April 16, 2020
 First Pay for Wages Incurred: 3/29 - 4/11

Cumulative Weeks Covered	Payroll #	Dates Worked	Date Paid	Covered Period Criteria		Forgiveness Eligible?
				Incurred	Paid	
2	1	3/29 - 4/11	April 16, 2020	N	Y	Y
4	2	4/12 - 4/25	April 30, 2020	Y	Y	Y
6	3	4/26 - 5/9	May 14, 2020	Y	Y	Y
8	4	5/10 - 5/23	May 28, 2020	Y	Y	Y
	5	5/24 - 6/6	June 11, 2020	Y	N	N
	6	6/7 - 6/20	June 25, 2020	Partially	N	N
	7	6/21 - 7/4	July 9, 2020	N	N	N

Option 1 - payroll costs paid starting with disbursement date

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PAYROLL EXAMPLE:

ALTERNATIVE PAYROLL COVERED PERIOD

Option 2: Alternative Payroll Covered Period

Loan Origination Date: April 16, 2020
 Alternative Payroll Covered Period Start: April 26, 2020
 8 Week Alternative Covered Period End: June 20, 2020
 Pay Cycle: Bi-Weekly
 First Pay Date in 8-week Covered Period: May 14, 2020
 First Pay for Wages Incurred: 4/26 - 5/9

Cumulative Weeks Covered	Payroll #	Dates Worked	Date Paid	Covered Period Criteria		Forgiveness Eligible?
				Incurred	Paid	
	1	3/29 - 4/11	April 16, 2020	N	Y	N
	2	4/12 - 4/25	April 30, 2020	N	Y	N
2	3	4/26 - 5/9	May 14, 2020	Y	Y	Y
4	4	5/10 - 5/23	May 28, 2020	Y	Y	Y
6	5	5/24 - 6/6	June 11, 2020	Y	Y	Y
8	6	6/7 - 6/20	June 25, 2020	Y	N	Y
	7	6/21 - 7/4	July 9, 2020	N	N	N

Option 2: Payroll costs start with pay period starting after loan origination date

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PPP UPDATES: RETIREMENT COSTS

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- While not explicitly included in the guide the guidance may have added significant flexibility around retirement costs.
 - Payroll costs paid during the period would imply that any retirement costs paid would be eligible for forgiveness – meaning that 2019 or 2020 retirement contributions could be funded.
 - Benefit of retirement cost funding as it relates to forgiveness would be limited to the FTE and Wage reduction calculations.
 - Extreme example would be using PPP solely for retirement while everyone laid off – forgiveness would be negated.

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PPP UPDATES: OWNER COMP

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- Is there a cap on amount of forgiveness for owner-employees and self-employed individuals?
 - Yes. The lesser of 8/52 of 2019 compensation or \$15,385
 - In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf.
 - Schedule C filers: capped at amount of owner compensation based on 2019 net profit
 - General partners: capped by amount of 2019 net earnings from self-employment (reduced by Sec 179, unreimbursed partnership expenses and depletion from oil and gas properties) multiplied by 0.9235
 - No additional forgiveness provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners

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PPP UPDATES:

FTE & SALARY REDUCTIONS

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- Exemption from forgiveness reductions if rehire and restore wages
- Exemption where offer to restore not accepted (document it)
- FTE Calculation Options – 40 hour average base (max 1) or ½ FTE for under 40 hours

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FTE REDUCTION EXAMPLE

Reference Period Option 1:	2/15/19 - 6/30/19	average # FTEs/Month:	12
Reference Period Option 2:	1/1/20 - 2/29/20	average # FTEs/Month:	10
Average FTE employees during the covered period or alternative payroll covered period:			8
Total eligible expenses:		\$	1,000,000
Reduction due to FTE reduction:	20%		(200,000)
Available for Forgiveness:		\$	<u>800,000</u>

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SALARY REDUCTION EXAMPLE

Salary Reduction Example (assume all were full-time during reference period)

Reference Period: 1/1/2020 to 3/31/2020

	# Weekly Hours Worked During Covered Period	Bi-weekly Wage During Reference Period	Bi-weekly Wages Limited	Bi-weekly Wage During Covered/Al t Payroll Covered Period	% Wage Rate Reduction	Applied Reduction (in Excess of 25%)	Total Eligible Wages Paid	Total Amount Reduced
Employee A	40	6,400.00	3,846.15	4,000	N/A	-	15,385	-
Employee B	40	2,000.00	2,000.00	1,400	30%	100	5,600	400
Employee C	40	1,600.00	1,600.00	1,200	25%	-	4,800	-
Employee D	20	1,600.00	1,600.00	560	30%	40	2,240	160
Employee E	40	6,400.00	3,846.15	4,000	N/A	-	15,385	-
Employee F	40	6,400.00	3,846.15	4,000	N/A	-	15,385	-
Employee G	40	6,400.00	3,846.15	4,000	N/A	-	15,385	-
Employee H	40	3,600.00	3,600.00	2,700	25%	-	10,800	-
Employee I	20	1,400.00	1,400.00	700	0%	-	2,800	-
						140	87,778	560
Total Wages Eligible						87,778		
Less: Reduction in Forgiveness Due to Salary/Wage Reduction						(560)		
Wages Eligible for Forgiveness						87,218		

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PPP UPDATES: FTE REDUCTION EXCEPTIONS

Interim Final Rule: 5/22/20 on Forgiveness – (Continued)

- What's New with the FTE Reductions Exceptions?
 - The borrower must inform the state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer (noted that further clarification will be provided on SBA's website)
 - Offer to return to work must be for the same salary / wages and hours as before separation

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PPP UPDATES: REVIEW PROCEDURES GUIDANCE

Interim Final Rule: 5/22/20 on Review Procedures

- Clarifies scope & process related to SBA loan review
 - Largely consistent with prior guidance
 - Scope of review can include:
 - Eligibility (assuming this will only be reviewed for loans > \$2mm based on FAQ #46 and safe harbor certification re: need)
 - Amount and use of proceeds
 - Forgiveness Amounts
 - Can be inspected anytime for up to six years after date loan is forgiven or paid in full

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PPP UPDATES: REVIEW PROCEDURES GUIDANCE

Interim Final Rule: 5/22/20 on Review Procedures – (Continued)

- Borrowers have opportunity to respond to SBA's questions in review
- Will be an appeal process related to eligibility – details to come in future interim final rule
- Also hits on impacts on lender fees based on outcome of SBA's review – fees can be "clawed back" if lender fails to perform its obligations

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PPP UPDATES: REVIEW PROCEDURES GUIDANCE

Interim Final Rule: 5/22/20 on Review Procedures – (Continued)

- Lender procedures outlined as it relates to their review and what is required by lender if SBA selects file for review
 - Lender requirements mainly to confirm full set of documents provided and accuracy of forgiveness calculation on line 10 of calculation form.
 - Payroll review noted to be “minimal review of calculations based on a payroll report by recognizable third-party payroll processor would be reasonable”
 - Clarifies that **borrower** has responsibility for calculation of loan forgiveness amount and must attest to accuracy
 - Specifically states that “lender does not need to independently verify the borrower’s reported information if the borrower submits documentation supporting its request for loan forgiveness and attests it accurately verified the payments for eligible costs”
- Guidance above implies that lender’s review should be minimal. Would push-back on lender if level of scrutiny isn’t consistent with the above.

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PPP FORGIVENESS REMINDERS: REQUIRED DOCUMENTS - SUBMITTED

- Payroll
 - Bank account statements or payroll reports documenting cash paid
 - Payroll tax filings
 - Payment receipts, statements for health insurance & retirement plans and invoices
- FTE
 - Average # of FTE’s for various points
- Non-payroll Costs
 - Mortgage interest – amortization schedule, receipt or cancelled checks verifying payments
 - Rent & lease – copy of current lease agreement, receipt or cancelled checks
 - Utilities – copy of invoices, receipt, cancelled checks, or account statements

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PPP FORGIVENESS REMINDERS:

REQUIRED DOCUMENTS – RETAINED BUT NOT SUBMITTED

- Schedule A Worksheet
- Documentation supporting Schedule A Table 1 & 2
- Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by employees for reductions in work schedule
- Documentation around Schedule A Worksheet FTE reduction safe harbor

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PPP FORGIVENESS CONSIDERATIONS

- Would not be in a rush apply for forgiveness!
- Potential for extensions of 8-week forgiveness periods
- Clarifications on forgiveness items lacking uncertainty which may be favorable
- Determination of deductibility of forgiveness funded expenses
- Government Contractors and impact on overhead rate

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QUESTIONS?



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