

# Economic Sustainability Strategy Session Questions and Answers

May 12, 2020

5:00 - 6:00

# Congressional Considerations

## Another round of Stimulus Funding



Senate was  
back in  
session May 4

House back in  
session May 11



- CARES 2.0
- House Speaker Pelosi signaling that a draft of this legislation could be out early this week – with potential for a vote no earlier than Friday
- Package slated to include:
  - Additional investments in the Provider Relief Fund – administered by HHS
  - Additional funding for COVID testing

# Reminders:

## Provider Relief Fund

- You must sign an *attestation* confirming receipt of the funds
- You must to *accept* the terms and conditions
- HHS extended deadline for the attestation and acceptance of Terms and Conditions for Provider Relief Fund Payments from 30 to 45 Days



## HRSA – Uninsured Claims Reimbursement

Providers are eligible to seek reimbursement for COVID-19 testing / treatment

# PPP Loan Overview

The loan will be fully forgiven if 75% of the funds are used for payroll costs and 25% of the funds are used for interest on mortgages, rent, and utilities

## Forgiveness Criteria

Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels.

Forgiveness will be reduced if full-time headcount declines or if salaries and wages decrease.



# Key PPP Messages:

Regulations around the PPP (and EIDL) loans have been changing constantly since the enactment of the CARES Act

It is likely that they will continue to change – it is important to track these regulatory modifications

Leading trade associations are advocating for these changes with the treasury Secretary – mostly around loan forgiveness

Treasury guidelines extended the date to return the PPP funds with “no questions asked” until May 14



# Guest Subject Matter Expert: Richard Tinsley

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# A Few Key Opening Thoughts

- Plan Ahead, Plan Ahead, Plan Ahead
- Document, Document, Document
- Have a separate account for the PPP loan proceeds so you have a clear accounting trail of fund disbursements.
- I believe the spirit of the PPP loan and corresponding expense forgiveness rely on accrual accounting principles, but you need to show cash payments during the 8-week window
  - Accrual Accounting recognizes expenses when they occur
  - Cash Accounting recognizes expenses only when money changes hands

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# Documentation Worth Reviewing

## PPP Application Declarations (example):

Estimated Loan Availability		
Below is a calculator to estimate the maximum loan available:		
	12 Months 2019	Average Monthly
<b>Maximum loan available:</b>		
Payroll costs:*		
Employee compensation, as defined	\$ 840,000	\$ 70,000
Group health insurance premium payments	72,000	6,000
Retirement benefit payments	39,000	3,250
State/local taxes on employee compensation	9,000	750
		80,000
		2.5
<b>Maximum loan amount (lesser of a. or \$10 million)</b>		<b>\$ 200,000</b>

Amount Eligible for Forgiveness		
Below is a calculator to estimate the amount eligible for forgiveness:		
<b>Estimated costs incurred during the "covered" period (8 weeks after loan origination)</b>		
Payroll costs (defined above)		160,000
Interest on covered mortgages (on real or personal)		-
Rent		30,000
Utilities		10,000
<b>Tentative amount eligible for forgiveness, before</b>		<b>\$ 200,000</b>

## Loan Contract Terms -- Section 10: LOAN FORGIVENESS (example):

Pursuant to Section 1106 of the CARES Act, the following provisions shall apply to the Loan:

1. The Loan is subject to the limited loan forgiveness provisions of Section 1106 of the CARES Act, and the SBA Interim Final Rule dated April 2, 2020.
2. The amount of loan forgiveness is determined by and is subject to the sole approval of the SBA.
3. Limited loan forgiveness is provided for amounts spent on payroll costs, rent and utilities payments, and interest payments on mortgages for Borrowers that apply. No more than 25.0% of the amount forgiven may be for costs other than payroll costs.
4. The amount of loan forgiveness will be reduced if Borrower reduces the number of their employees (layoffs).
5. Borrower is eligible for loan forgiveness on a covered loan in an amount equal to the following payments made during the 8-week period beginning on the Loan Date ("covered period"):
  - payroll costs;
  - interest payments on mortgage obligations (excluding principal and prepaid principal);
  - rent; and
  - utility payments.
6. The amount of loan forgiveness cannot exceed the principal balance of the Loan.
7. **Cancelled indebtedness will not be included in the Borrower's taxable income.**
8. To receive loan forgiveness, Borrower must apply for loan forgiveness through Lender. The Borrower must submit to the Lender servicing the Loan application, which must include documents verifying the number of fulltime employees and the pay rates for the period described, including payroll tax filings to the IRS and State, income, payroll, and unemployment insurance filings, cancelled checks, payment receipts, transcript of accounts, or other documents verifying payments on covered mortgage loan obligations, lease obligations and utility payments, plus any other documentation the SBA deems necessary.
9. There will be no loan forgiveness without Borrower's submission of the proper application and documentation to Lender.



# CASE STUDY

## Question:

I received my PPP loan proceeds, but now my office manager will not come back to work for fear of getting COVID. What do I do? How should I expend the proceeds that should have paid this employee's salary?

## Answer:

New guidance from SBA states that businesses can exclude laid-off employees from loan forgiveness reduction calculations if the employees turn down a written offer to be rehired while simultaneously warning employees who reject offers of reemployment may find themselves ineligible to continue receiving unemployment benefits. Please see the "References" page at the conclusion of this deck for additional materials regarding this topic.

Consult your attorney because under the new FFCRA, employees are eligible for paid sick leave if a health care provider directs or advises them to stay home or otherwise quarantine themselves because the health care provider believes that they may have COVID-19 or are particularly vulnerable to COVID-19, and quarantining themselves based upon that advice prevents them from working (or teleworking). That said, you could be exempt from FFCRA all together and FMLA does not protect employees who stay home for the "purpose of avoiding exposure."

Any legitimate payroll costs would qualify under the PPP loan forgiveness criteria, so it does not have to be the same employees. If all that fails, you can return the money or take it as a 1% loan.

#1



# CASE STUDY

## Question:

I am not sure that I am going to be able to use 75% of my loan proceeds on payroll. What do I do?

## Answer:

1. You're doing the right thing by asking this question now!
2. Make sure all eligible payroll expenses are included (e.g. health care, retirement, bonuses, other benefits, etc.)
3. Potentially conflicting goals of spending everything within 8 weeks vs. spending only in "approved" categories
  - "How much of my loan will be forgiven? You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan." from US TREASURY PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET
  - That's said, I would still recommend using PPP funds only in "approved" categories even if the payments are made outside of the 8 week forgiveness window
4. Unfortunately, there does not seem to be a mechanism to immediately return a portion of the funds to reduce the loan amount; so a final option is to return the entire loan by May 14<sup>th</sup>

#2



# CASE STUDY

## Question:

What if I don't use all the PPP proceeds for payroll or rent, utilities, or interest payments?

## Answer:

When you applied for the PPP loan, your bank may have asked you to certify how you intend to use the funds which likely was limited to payroll, rent, utilities, or interest payments. I would strongly suggest that funds be used only to fund those categories even if the payments are made beyond the 8 week forgiveness window.

## Useful Notes:

- Only PPP funds used for payroll, rent, utilities, and interest payments during the 8 week window are eligible for forgiveness
- Money not spent during the forgiveness window is converted to a 2-year loan @ 1% interest

**#3**



# CASE STUDY

## Question:

One of my NPs quit. Can I hire a different role to replace the NP or will that disqualify me for full forgiveness?

## Answer:

The forgiveness calculations are based on FTEs not individuals or roles but document the circumstances of the NP departure, nevertheless.

It is our understanding that your bank will be most interested in verifying that your payroll amount and total FTEs are the same or greater than the average upon which the loan amount was based versus auditing names and positions of specific individuals. However, banks will be looking at individuals to identify any payroll decreases of >25% from Q1 2020 to 8-week forgiveness period.

**#4**



# CASE STUDY

## Question:

In accordance with a business arrangement that I had prior to the pandemic, I plan to bring a new physician into my practice during my 8 week PPP window. How will this affect my forgiveness eligibility?

## Answer:

If you have capacity for additional forgiveness, it should only help. Any new physician wages (below the annualized \$100k salary cap) should qualify for forgiveness and the person should also count within your average FTE calculation for whatever period he/she is employed.

**#5**



# CASE STUDY

## Question:

How are Full Time Equivalents computed under the PPP?

## Answer:

There is no explicit SBA guidance, but the Affordable Care Act and the IRS seem to use similar calculations. The key is to be consistent. Please see the “References” page at the conclusion of this deck for an Affordable Care Act FTE calculator.

### **IRS Definition: Full-time Employees and Full-Time Equivalent Employees**

A full-time employee for any calendar month is an employee who has on average at least 30 hours of service per week during the calendar month, or at least 130 hours of service during the calendar month.

A full-time equivalent employee is a combination of employees, each of whom individually is not a full-time employee, but who, in combination, are equivalent to a full-time employee. An employer determines its number of full-time-equivalent employees for a month in the two steps that follow:

1. Combine the number of hours of service of all non-full-time employees for the month but do not include more than 120 hours of service per employee, and
2. Divide the total by 120

#6





# CASE STUDY

#7



## Question:

I decreased the hours of several of my staff in response to the pandemic. Do I need to reinstate these employees to their former full-time status now that I've received my PPP loan?

## Answer:

The key to the answer to this question is the difference between “need” and your desire to qualify for full forgiveness. Your forgiveness amount will be reduced if you do not maintain your staff and payroll at levels prior to the Covid-19 pandemic during the 8-week forgiveness period.

Practically, it will be hard to spend 75% or more of your PPP loan on payroll without rehiring laid-off or furloughed employees. Additionally, the forgiveness amount may be lowered if your practice cuts pay for employees making less than \$100,000 a year by more than 25%.

# Reference Materials

- [Paycheck Protection Program FAQs -- May 6, 2020](#)
- [Rotenburg Merrill -- Certified Public Accountants Loan Forgiveness Calculator](#)
- [CARES Act Provider Relief Fund Website](#)
- [HRSA Uninsured Claims Reimbursement Website](#)
- [Affordable Care Act FTE Calculator](#)
- [Journal of Accountancy PPP Guidance on Laid-off Employees Refusing Rehire](#)



# Appendix:

## Checklist of typical documentation needed for loan forgiveness application

Please note: Your lender may require different or additional data

- Copies of monthly payroll tax reports filed with the IRS (including Forms 941, 940, state income and unemployment tax filing reports) for the 8 week period following the origination of the loan
- Copies of monthly payroll reports for each pay period for the 8 week period following the origination of the loan. Gross wages including PTO (which might include vacation, sick, and other PTO) should be reflected.
- Documentation reflecting the health insurance premiums paid by the company under a group health plan including owners of the company for the 8 week period following the origination of the loan should be provided.
- Copies of the monthly invoices, canceled checks or ACH drafts are acceptable.
- Documentation of all retirement plan funding by the employer for the 8 weeks following the origination of the loan should be sufficient. Copies of work papers, schedules and remittances to the retirement plan administrator should be available.
- Copies of all lease agreements for real estate and tangible personal property should be presented along with proof of payment during the 8 week period following the loan origination date.
- Copies of all statement of interest paid on debt obligations incurred prior to February 15, 2020 indicating payment amounts and proof of payment for the 8 week period following the loan origination date.
- Copies of cancelled checks, statements, or other evidence of utilities paid during the “covered period” for the 8 week period following the loan origination date.

# Appendix: US Chamber of Commerce Explanation of PPP Forgiveness

## 4 Will this loan be FORGIVEN?

Borrowers are eligible to have their loans forgiven.

### How Much?

A borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following items during the 8-week period beginning on the date of the origination of the loan:

- Payroll costs (using the same definition of payroll costs used to determine loan eligibility)
- Interest on the mortgage obligation incurred in the ordinary course of business
- Rent on a leasing agreement
- Payments on utilities (electricity, gas, water, **transportation**, telephone, or internet)
- For borrowers with tipped employees, additional wages paid to those employees

The loan forgiveness cannot exceed the principal.

### How could the forgiveness be reduced?

The amount of loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees. Specifically:

#### Reduction based on reduction of number of employees

**PAYROLL COST** Calculated on page 2

$$\times \frac{\text{Average Number of Full-Time Equivalent Employees (FTEs) Per Month for the 8-Weeks Beginning on Loan Origination}}{\text{Option 1: Average number of FTEs per month from February 15, 2019 to June 30, 2019 OR Option 2: Average number of FTEs per month from January 1, 2020 to February 29, 2020 OR For Seasonal Employers: Average number of FTEs per month from February 15, 2019 to June 30, 2019}}$$

#### Reduction based on reduction in salaries

**PAYROLL COST** Calculated on page 2

$$- \text{For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than \$100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.}$$

### What if I bring back employees or restore wages?

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness **IF** by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages.

## WHAT'S NEXT?

Look out for more information about eligible lenders and additional guidance from the SBA soon.

For more guidance and resources for small businesses, visit [uschamber.com/cfo](https://www.uschamber.com/cfo)

## Key Takeaways:

- 1 • SBA guidance #20 states the “clock” starts when money first arrives
- 2 • Assume the cash needs to leave your account prior to 56<sup>th</sup> day
- 3 • If your original calculation included year-end bonuses or similar, partial 2020 bonuses paid during 8 weeks can be included
- 4 • I don’t really understand what a “transportation” utility is?
- 5 • “Or” means both must be met
- 6 • They are asking for an “average” FTE calculation
- 7 • Your choice, calculate both and obviously use the lower FTE as your denominator
- 8 • Your choice, calculate both and obviously use the lower FTE as your denominator
- 9 • Kind of a “get out of jail” card to achieve 100% forgiveness, but it may be hard to spend the PPP loan money if you wait until late June to bring employees back on board and/or up to full salary

## Appendix:

# CASE STUDY

**#8**



### Question:

When can I apply for forgiveness? How do I go about doing this?

### Answer:

We are hearing that most lenders will begin the forgiveness application process at seven weeks from fund disbursement; however, it likely makes sense to wait until at least the 8-week period ends and the last check is cashed. We implore you to reach out to your lender now to confirm this timeline and to begin a discussion on what documentation your lender will want to see when you go to apply for forgiveness.

Documents that you will likely have to present include verification of the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

## Appendix:

# CASE STUDY

#9



### Question:

Is the PPP loan forgiveness taxable?

### Answer:

The forgiveness of small business loans under the Paycheck Protection Program (PPP) will not be subject to federal income tax. We expect that PPP loan forgiveness will not be taxable for state or local income tax purposes but await further guidance from the states and local taxing jurisdictions.

April 30, 2020: The IRS issued Notice 2020-32 on April 30, 2020 which denies a tax deduction for “covered costs” in an equal amount to the loan forgiveness amount, essentially making the debt forgiveness amount tax neutral, with no tax benefit to the recipient of the loan forgiveness.

Consult your lender, your financial advisor,  
and/or your attorney to determine the best  
strategies for you and your business!