

## The Ever-Changing Guidance Regarding PPP Loan Forgiveness

They say that the only thing constant is change. This especially seems to be the case with all of the new programs enacted in response to the COVID-19 crisis, including the Paycheck Protection Program (PPP) loan program. On June 5 the Paycheck Protection Program Flexibility Act, which aims to add some flexibility to the Paycheck Protection Program, was signed into law.

To help PIASC members understand what this entails, Chris Falco, Founding Partner of CPA firm Falco Sult ([www.falconsult.com](http://www.falconsult.com)), recently presented the latest webinar in our COVID-19 series, “PPP Loan Forgiveness Guidance: Part 2.” In case you missed it, the following provides an overview of that webinar, the recording for which can be found at <https://bit.ly/PPP-2-recording>.

The following provides a summary of the key points made in this presentation...

### **The “covered period” has been extended from 8 weeks to 24 weeks**

While you can still choose to use the 8-week period, this change gives you more time to spend the money on forgivable expenses, which can increase the amount of loan forgiveness for which you will qualify.

### **Loan terms have been extended**

Loans for which the Small Business Administration (SBA) assigned a loan number on June 5 or later are now automatically 5-year loans. Loans made prior to that still have a 2-year maturity date, although borrowers and lenders can agree to change this to five years.

### **Loan deferral period has been extended**

You now have 10 months (not just six) from the end of the covered period to submit your application for loan forgiveness. Your payments will be deferred until after the SBA lets the lender know what portion of your loan is being forgiven.

### **Amount of loan that must be used for payroll costs has been reduced**

Instead of having to spend 75% of the loan on payroll costs, now you only have to spend 60% on payroll costs and up to 40% on payments for interest, rent or utilities. Plus, you can get partial forgiveness even if you spend less than 60% on payroll costs.

This, combined with the new 24-week period, will make it much easier for businesses that have seen a reduction in FTEs or wages to qualify for full loan forgiveness. If, for example, you took out a \$100,000 loan, instead of having to spend \$75,000 on payroll costs in eight weeks, now you need to spend \$60,000 on payroll costs in 24 weeks.

### **More expenses now qualify as forgivable non-payroll costs**

The new rules provide more flexibility. Some of the items that now appear to count as rent or utility costs include car payments for business vehicles, interest on a line of credit that was in force before February 15, 2020, business cell phones and the fuel for business vehicles.

### **There are new ways to be forgiven for a reduction in FTEs**

PPP loans are based on your historical payroll data. All employees who work 40 hours or more per week count as 1.0 FTE (Full Time Equivalent), while those who work less than that either count as 0.5 FTE or are calculated as a percentage based on actual hours worked.

*Loan forgiveness is based in part on your having the same FTEs, at the same wage levels, during the covered period as during the comparison period.* If you choose to use the new 24-week period, this means you'll have to maintain your FTEs for a longer period of time. If you cannot, you may be better off electing to stick with the eight-week period.

The new Act provides a few ways that a reduction in workforce can be excused (i.e. not count against you in the loan forgiveness calculations):

- You make a written employment offer for rehire for the same number of hours at the same salary or wages, the person refuses, and you cannot hire similarly-qualified individuals for unfilled positions by the end of your selected covered period or no later than December 31, 2020.
- Between March 1, 2020 and December 31, 2020 you are unable to return to the same level of business activity you had as of February 15, 2020 due to OSHA, CDC or HHS requirements or guidelines. Note that state mandates are not covered here.

As before, you will also not be dinged if an employee voluntarily resigns, voluntarily requests a reduction in hours or is fired for cause. Also, as before, owner/employees do not count as part of the FTE calculation, as they are in a separate category on the loan forgiveness forms.

### **You may be able to use excess forgivable costs to offset an FTE shortfall**

PPP loans were made based on an eight-week period of expenses. Now that the covered period has been extended to 24 weeks, if you have an FTE shortfall you may be able to make up for this because your forgivable expenses incurred over a 24-week period may add up to more than your original loan amount.

For example, say you have a \$100,000 loan but, due to layoffs, your FTE quotient is only 0.5. This means that only 50% of your theoretically-forgivable costs will be forgiven. With the previous eight-week covered period, you probably would have come up short. Now, if you have \$200,000 in forgivable costs in a 24-week period (with at least 60% being payroll costs), you may be able to get full loan forgiveness.

### **There may be tax implications of loan forgiveness**

As of right now, the IRS' stance is that the expenses for which you get loan forgiveness will not count as deductible expenses. There is a bill in the House to clarify that Congress' original intent was that PPP funds would not be taxable to businesses. Hopefully this bill will get passed this summer.

### **Conclusion**

Additional guidance is expected in the next few days. As we said, the only thing constant here seems to be change.