

# Paycheck Provision Program Loan Forgiveness Strategies and Frequently Asked Questions

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# Coronavirus Related Legislation

## Coronavirus Preparedness and Response Supplemental Appropriations Act (Phase I)

Signed by President March 6

### Families First Coronavirus Response Act (Phase II)

- Signed by President March 18
- DOL Q&A released March 25 and March 27
- Over 200 pages
- Mandates Emergency Paid Sick Leave and Expanded FMLA for employers under 500 employees
- Size is determined by counting employees in the US and its territories as of the date leave is taken. The 500 threshold includes: full-time, part-time, employees on leave, temporary employees and day laborers
- Is not the topic for the next hour, but NFP is hosting future webinars to address FFCRA and has a plethora of useful information at the NFP Insights page

### Coronavirus Aid, Relief, and Economic Security Act or the CARES Act (Phase III)

- Signed by President March 27
- Over 800 pages
- No regulations or Q&A have been released
- Much is known, but much is not yet knowable
- Most parts of the law apply to employers with under 500 employees
  - How to determine size varies in different parts of the law, in general it includes US based full-time and part-time employees
  - Size determined by location for some businesses
- Is the main topic for the next hour

## Coronavirus Aid, Relief, and Economic Security Supplemental Appropriations Act (Phase IV)

- Signed by President April 23
- Increased funding for Paycheck Protection Program by \$310 billion
- Increased funding for Economic Injury Disaster Loans by \$60 billion
- Appropriated \$75 billion for hospitals
- Appropriated \$25 billion for expanded testing

# PPP Loan Eligibility Update

## CARES Act

- "(iv) Sense of the Senate. It is the sense of the Senate that the Administrator should issues guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 8(d)(3)(c)), women, and businesses in operation for less than 2 years."
- "the uncertainty of current economic conditions makes the loan request necessary to support the ongoing operations"
- "During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in section 3(h), shall not apply to a covered loan."

## Paycheck Protection Program FAQs and Interim Final Rules

- *Interim Final Rule guidance*: Is the PPP "first-come, first-served?" Yes.
- "Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary."
- "Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that "[c]urrent economic uncertainty makes this loan request necessary to support ongoing operations of the Applicant."
- "Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business."

# Expected Forgiveness Amount Eligible Expenses

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- Payroll costs

- Qualified payroll costs consist of salary, wages, commissions, or similar compensation; payment for vacation, parental, family, medical or sick leave; allowance for separation or dismissal; payment for employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees
- Qualified payroll costs exclude compensation of an employee whose principal place of residence is outside of the United States, compensation of an individual employee in excess of an annual salary of \$100,000, prorated as necessary; qualified sick and family leave wages for which a credit is allowed under FFCRA

- Mortgage interest payments

- Covered mortgage obligation is a liability of the borrower on real or personal property that was incurred before February 15, 2020
- Note: “Interest on any other debt obligations” is not mentioned in determining the eligible forgiveness amount

- Rent payments

- Covered rent obligation is rent obligated under a leasing agreement in force before February 15, 2020

- Utility payments

- Covered utility payment means payment for service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020
- Note: Transportation costs is believed to include fuel used in driving your business vehicle



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# Forgiveness Frequently Asked Questions

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- Who is considered a full-time equivalent?
  - IRC Section 4980H(c)(4) provides that a full-time employee for any month is an employee who is employed on average at least 30 hours of service per week.



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# Forgiveness Frequently Asked Questions

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- Employees who make over \$100,000:
  - Are their salaries and wages an allowable cost?
    - Yes - only up to \$100,000, annualized for the covered period
  - FTE Reduction Test – Include
  - Salary Reduction Test – Exclude based on 2019 wages
    - However it should be noted that the Act reads as follows “an employee described in this subparagraph is any employee who did not receive, during any single pay period in 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.”



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# Forgiveness Frequently Asked Questions

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- Incurred and Paid...what does this mean?
  - Payroll spanning the 8-week period
  - 2020 year-end bonuses
  - 2019 bonuses and other compensation
  - Commissions
  - Retirement Plan Contributions
  - Self-Insured Health Plans



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# Forgiveness Frequently Asked Questions

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- Is Severance an Allowable Expense?
  - Question 2(f) of the Interim Final rule states that “payroll costs” include “allowance for separation or dismissal” which is consistent with the definition of “payroll costs” under 1102(a) of the Act and the forgiveness provisions of section 1106 reference this definition.



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# Forgiveness Frequently Asked Questions

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- A company cannot include in their expected forgiveness amount the prepayment of mortgage interest or payment of principal on mortgage obligation.
- Excluded payroll costs:
  - Compensation paid to an employee whose principal place of residence is outside of the United States.
  - A company cannot include in their payroll costs qualified sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act (FFCRA).
  - Note: no mention if you include these individuals in the salary reduction test or the FTE reduction test.



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# Forgiveness Frequently Asked Questions

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- Do rental payments include equipment leases?
  - As it stands right now, there are no restrictions on the type of rent payments other than the fact that the lease must have been in place before 2/15/2020.
- How will my forgiveness be taxed?
  - Forgiveness is not taxable for federal purposes.
  - Section 265 of the Internal Revenue Code provides that expenses “allocable to” tax-exempt income are not deductible, but there’s no guidance which truly indicates one way or another.
  - State taxability to be determined on a state-by-state basis.



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# Forgiveness Frequently Asked Questions

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What is the 25% non-payroll limit based on?

- The PPP loan amount
- The expected forgiveness amount
- The actual forgiveness amount

*Interim Rules* state:

- "not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs."
- "At least 75 percent Current guidance conflicts. Waiting of the PPP loan proceeds shall be used for payroll costs."
- " SBA will issue additional guidance on loan forgiveness."



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# Forgiveness Strategy

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- Use of separate bank accounts
- Timing of the forgiveness calculation and application
  - Estimating and managing Maximize payroll tax deferral
  - Check loan document
- your loan forgiveness
  - Incorporate into your cash flow model
  - Maximize qualified expenses
  - Determine your base-line FTE
- Manage current FTEs



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# Contact the Presenters: [kmiller@kmco.com](mailto:kmiller@kmco.com)

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***Thank you  
for your participation!***

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