DEBT FORGIVENESS FAQ

What time period will "count" towards the debt forgiveness?

The measurement period to determine what is forgivable will be the 8 weeks after receiving the loan. Businesses can spend the proceeds on approved expenses after the 8-week time period; however, only the dollars spent in the 8 weeks after receiving the loan will be eligible for forgiveness.

What is included in eligible expenses?

The most important step is to make sure that a business has a plan for how the proceeds will be spent in accordance with the program. This creates a "pool" of dollars available for forgiveness, subject to other conditions (as described below).

The proceeds can be used on:

- Payroll costs - see definition below;
- Payments required for the provisions of group health care benefits including insurance premiums;
- Payment of any retirement benefit;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

Payroll costs include:

- Salary, wages, commissions, or tips (capped at $100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at $100,000 on an annualized basis for

Payroll costs do not include:

- Compensation of an employee outside of the United States;
- Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020 which recent guidance indicates that this intended to be the employer portion of FICA (in other words there does not need to be a reduction for any employee portion but there is also no addition for any employer portion); and
- Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.

What is the 75/25 rule?

While there are costs in addition to payroll that qualify as eligible expenses, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs (mortgage interest, rent and utilities). Thus, at least 75% of funds must be used for payroll costs (as defined above).

While this language was not originally in the CARES Act, the Small Business Administration ("SBA") Administrator has determined in consultation with the Secretary of Treasury that the 75 percent is an appropriate percentage in light of the Act's overarching focus on keeping workers paid and employed. Further, the Administrator and the Secretary believe that applying this threshold to loan forgiveness is consistent with the structure of the Act, which provides a loan amount 75 percent of which is equivalent to eight weeks of payroll (8 weeks / 2.5 months = 56 days / 76 days = 74 percent rounded up to 75 percent).

Limiting non-payroll costs to 25 percent of the forgiveness amount will align these elements of the program, and will also help to ensure that the finite appropriations available for PPP loan forgiveness are directed toward payroll protection.

What if I have laid off employees or reduced pay?

There are two potential reductions to the pool of forgivable dollars. The reduction in workforce penalizes an employer who does not maintain their workforce and the salary reduction penalizes an employer who does not maintain the salaries of employees as compared to prior to the COVID-19 pandemic.

Workforce Reductions

The workforce reduction adjustment is to incentivize employers to keep their workforce employed. Therefore, the calculation looks to determine whether an employer has retained its workforce.

The workforce reduction compares the average FTEE as of one of two dates, either:

- February 15, 2019 through June 30, 2019 or (at the employer's option)
- January 1, 2020 through February 29, 2020

This calculation establishes a baseline of FTEEs. Then the average FTEEs during the 8-week period is compared to that baseline's FTEEs. Below is an example:

- Average FTEE 2/15/2019 – 6/30/2019 – 65
- Average FTEE 1/1/2020 – 2/29/2020 – 72
- Baseline (smaller of the two) – 65
- Average FTEE during the 8-week period – 55
- Workforce reduction – 55/65 = 84.6%

Therefore, the 84.6% would be applied to the pool of eligible dollars to determine the maximum loan amount. A company that has the same FTEEs during the 8-week period as compared to the prior periods would have a 100% factor and thus no reduction in the loan forgiveness.

Note that if you re-hire to pre-COVID-19 levels by June 30, 2020, no matter your reduction during the 8-week period, you will not be penalized for a reduction during the 8-week period (see Re-Hire section).

Salary Level Reductions

The loan forgiveness can be further reduced if a company has reduced employees' (making less than $100,000) pay by more than 25%. Therefore, if you had reduced an employee's pay by 40%, then the reduction in excess of 25% would reduce the forgiveness. For example:

Total salaries prior to 2/15/2020	$300,000	
Salary reductions of 40%		
Reduction in excess of 25%	15%	(40% - 25%)
Dollar reduction	$45,000	($300,000 * 15%)

Re-Hiring

Note however that you have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020 to avoid such penalties.

How do I calculate a full-time equivalent employee ("FTEE")?

While we await additional guidance from the SBA, we believe the Affordable Care Act ("ACA") provides good guidance on how an FTEE may be measured. The ACA set 30 hours as the standard for "full time employee" and when calculating FTE, you sum all the hours for variable employees and convert them to FTE based on the 30 hours per week. ACA treats any person who holds a full time position as one FTE and then you do the math for variable employees and add the results.

What documentation will I need to provide to my bank for the forgiveness?

The CARES Act makes it clear that documentation will be required in order to receive the debt forgiveness. It will be up to the lender as to what documentation will be needed.

- The CARES Act states that the borrower shall submit to the lender that is servicing the covered loan an application which shall include
  - Documentation verifying the number of FTE employees on payroll and pay rates for the baseline period and the 8-week period
  - Payroll tax filings to the IRS
  - State income, payroll and unemployment figures
  - Documentation, including cancelled checks, payment receipts, transcripts of accounts or other documents verifying payments on covered mortgages, lease, utility
  - Certification from a representative of the company that:
    - The documentation is true and correct,
    - Amount for which forgiveness is requested was used in accordance with Act, and
    - Any other documentation determination necessary by the lender.

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