

A detailed, grayscale microscopic image of a virus particle, showing its spherical structure and numerous protruding spikes. A second, less detailed virus particle is visible in the background to the left.

# SBA PPP – Does the Finish Line Keep Moving?

A vertical line of small white dots on the left side of the slide.

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# Presenters



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# Agenda

- Forgiveness application filing date
- New FAQs Issued 8/4/20
- Update on pending legislation
- Do you qualify for the EZ form?
- FTE calculations and safe harbors
- Q&A from the participants





New FAQs Issued 8/4/20

# SBA FAQs

- 23 New FAQs
- Much was related to applications released on June 16, 2020
- Some additional clarification are:
  - Group Health Care
  - Retirement Benefits
  - Lease Renewals
  - Definition of Transportation (finally!)
  - Interest on Unsecured Credit
  - FTE Reduction of Exemption
  - Owners Compensation and Benefits



# Group Healthcare and Retirement

- **Acceleration** of group health care and retirement is **not allowed**.
- What expenses for group health care benefits will be considered payroll costs that are eligible for loan forgiveness?
  - ....Forgiveness is not provided for expenses for group health benefits accelerated from periods outside the Covered Period or Alternative Payroll Covered Period.
- What contributions for retirement benefits will be considered payroll costs that are eligible for loan forgiveness?
  - ....Forgiveness is not provided for employer contributions for retirement benefits accelerated from periods outside the Covered Period or Alternative Covered Period

# Lease Renewal

- Clarifies that if the current lease is the **renewal** of a lease entered into prior to February 15, 2020 then the rent expense is eligible for forgiveness even if the lease extension was signed after February 15, 2020. This same treatment is also available for re-financed mortgage loans on real or personal property.
- Question: Are payments made on recently renewed leases or interest payments on refinanced mortgage loans eligible for loan forgiveness if the original lease or mortgage existed prior to February 15, 2020?
- Answer: Yes. **If a lease that existed prior to February 15, 2020 expires on or after February 15, 2020 and is renewed, the lease payments made pursuant to the renewed lease during the Covered Period are eligible for loan forgiveness. Similarly, if a mortgage loan on real or personal property that existed prior to February 15, 2020 is refinanced on or after February 15, 2020, the interest payments on the refinanced mortgage loan during the Covered Period are eligible for loan forgiveness.**

# Transportation

- Long awaited, most speculated question. Is it gasoline or fuel?
- Fee used as a financing mechanism that treats the transportation system like a utility. Residents and businesses pay a fee based on their use of the system rather than a tax on their value of their property. Generally, this is found only in small cities in Washington, Idaho, Utah, Colorado, Texas, Missouri and Florida. **What this means is that if you have been counting on using “fuel” or “gasoline” or “mileage” as a qualified expense, you need to recast your model and remove that as a qualified expense.**
- Question: Covered utility payments, which are eligible for forgiveness, include a “payment for a service for the distribution of . . . transportation” under the CARES Act. What expenses does this category include?
- Answer: **A service for the distribution of transportation refers to transportation utility fees assessed by state and local governments.** Payment of these fees by the borrower is eligible for loan forgiveness



# Interest on Unsecured Credit

- Interest on unsecured credit has caused confusion amongst borrowers because that interest was explicitly deemed a permissible expense but it was notably absent on the list of expenses qualifying for forgiveness.
- While a company may pay for interest on, for example, a line of credit, that interest would not count towards forgiveness.
- Question: Is interest on unsecured credit eligible for loan forgiveness?
- Answer: No. Payments of interest on business mortgages on real or personal property (such as an auto loan) are eligible for loan forgiveness. **Interest on unsecured credit is not eligible for loan forgiveness because the loan is not secured by real or personal property.** Although interest on unsecured credit incurred before February 15, 2020 is a permissible use of PPP loan proceeds, this expense is not eligible for forgiveness.

# FTE Reduction

- The SBA provided certain exemptions for the FTE reduction including those that you were unable to hire back, left voluntarily or could not find suitable replacements for. This FAQ clarifies that even employees making more than \$100,000 would qualify under this exception and how to appropriately fill out the form to account for these FTE exceptions.
- Question: When calculating the FTE Reduction Exceptions in Table 1 of the PPP Schedule A Worksheet on the Loan Forgiveness Application (SBA Form 3508 or lender equivalent), do borrowers include employees who made more than \$100,000 in 2019 (those listed in Table 2 of the PPP Schedule A Worksheet)?
- Answer: Yes. **The FTE Reduction Exceptions apply to all employees, not just those who would be listed in Table 1 of the Loan Forgiveness Application** (SBA Form 3508 or lender equivalent). Borrowers should therefore include employees who made more than \$100,000 in the FTE Reduction Exception line in Table 1 of the PPP Schedule A Worksheet.

# Owners' Compensation

- The FAQs provide additional clarity on how much owner's compensation can be included in the forgiveness amount. In addition to the caps on individual compensation for each entity, the FAQs add a new cap on owner's compensation across all entities in which the owner has an interest.
- Question: How is the amount of owner compensation that is eligible for loan forgiveness determined?
- Answer: The amount of compensation of owners who work at their business that is eligible for forgiveness depends on the business type and whether the borrower is using an eight-week or 24-week Covered Period. **In addition to the specific caps described below, the amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation is capped at \$20,833 per individual in total across all businesses in which he or she has an ownership stake. For borrowers that received a PPP loan before June 5, 2020 and elect to use an eight-week Covered Period, this cap is \$15,385.** If their total compensation across businesses that receive a PPP loan exceeds the cap, owners can choose how to allocate the capped amount across different businesses. The examples below are for a borrower using a 24-week Covered Period.

# Owners' Compensation

- In examples for various entity types, the FAQs also explain that forgivable owner compensation for any one entity is capped at 2.5/12 of 2019 cash compensation (or 2.5/12 of 2019 net profit for owners reporting their business income on Schedule C or Schedule F).
- Finally, additional guidance is provided on the forgiveness eligibility of health care and retirement payments made on behalf of owners, as summarized below:

Entity Type	Health Care	Retirement
C-Corp	Yes	Yes - capped at the amount of 2.5/12 of the 2019 employer retirement contribution
S-Corp	No, for owners of at least a 2% stake in the business (and any family members of such owners).	Yes - capped at the amount of 2.5/12 of the 2019 employer retirement contribution
Schedule C or F	No	No
General Partners	No	No



# Pending Legislation

# PPP Automatic Forgiveness (Proposed)

- Loans equal to or less than \$150,000 would qualify for automatic forgiveness after submitting a one-page attestation form
  - Covers 85% of borrowers
  - Covers 26% of funds borrowed
  - Based on individual loans, not in the aggregate
- Alleviate administrative burden for small businesses and lenders
- Borrowers will “attest” to good faith effort to comply with PPP loan criteria
  - Remains subject to SBA audit or review
  - No application process will be required

# Documentation Submission (Proposed)

- For loans between \$150,000 and \$2M
  - No requirement to submit formerly required “lender documentation”
  - Required to certify the existence of the documentation
  - Must retain records and worksheets for 3 years from forgiveness application date

# Covered Period Flexibility (Proposed)

- Period of time selected by borrower
- Starts on the date after the borrower receives the funds
- Ends on the date selected by the borrower, but no later than December 31, 2020
- Allows borrowers to cutoff testing period for wage reduction and FTE penalties
  - Current rule requires wage reduction and FTE penalties to be calculated through the earlier of forgiveness application submission date or December 31, 2020.



# Expansion of Non-payroll Costs (Proposed)

- Software, cloud computing and other HR and accounting needs
- Property damage costs during 2020 not covered by insurance
- Covered supplier costs so long as contract in place as of 2/15/20
  - Essential to current operations
- Covered worker protection expenditures between 3/1/20 and 12/31/20
  - Both PPE and adaptive investments to comply
- Costs from lawyers and accountants related to PPP is NOT permitted

# New Round of PPP Loans (Proposed)

- Certain small-business owners could apply for a second PPP loan if certain qualifications are met
- Eligibility requirements
  - 50% reduction in gross receipts from 1/1/20 to 3/31/20 or 4/1/20 to 6/30/20 as compared to same period of 2019 due to COVID-19
  - Additional criteria is available for those not in business during 2019
  - Borrower must employ no more than 300 employees or meet alternative size standard under SBA guidelines
    - Restaurants/franchisee carve out expected to remain
  - Publicly traded companies and entities affiliated with Chinese ownership are not eligible
- Hospitality and lodging businesses with multiple locations are limited to an aggregate loan amount of \$2 million
- Set aside \$25 billion (20%) for employers with fewer than 10 employees and businesses in underserved and rural communities

# PPP Loan Amount (Proposed)

- Will approximate original PPP loan amount, 2.5x average monthly payroll costs
- New loan cannot exceed \$2M
- New loan cannot exceed \$10M in aggregate with other SBA loans, including PPP loans taken within the last 90 days
- Request higher loan amount based on more favorable rules enacted after original loan application (e.g., seasonal businesses and partnerships)
- Forgiveness still based on 60% spent on payroll costs

# Bankruptcy Exception (Proposed)

- Able to apply under special rules by the SBA
- Gives government super priority claim in bankruptcy process

Do you qualify for the EZ Form?

# Forgiveness Applications

- Two options
  - ✓ Regular form - 3508
  - ✓ EZ Form – 3508EZ
- You can file the EZ Form if you meet certain criteria
- You can find the applications and the instructions here:
- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>



# Form 3508-EZ – Options for Filing

1. The Borrower is a self-employed individual, independent contractor, or sole proprietor, who had no employees at the time of the PPP loan application and did not include any employee salaries in their loan application.
2. The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the covered period, **AND** did not reduce the number of employees or the average paid hours of employees between January 1, 2020, and the end of the covered period.
3. The Borrower did not reduce annual salary or hourly wages of any employee by more than 25 percent during the covered period, **AND** was unable to operate during the covered period at the same level of business activity as before February 15, 2020 due to compliance with COVID-19 requirements established, or guidance issued by, various federal agencies.

# New FTE Safe Harbor

- “If the Borrower has checked the box for FTE Reduction Safe Harbor 1 on PPP Schedule A, the Borrower was unable to operate between February 15, 2020 and the end of the Covered Period at the same level of business activity as before February 15, 2020 due to compliance with requirements established or guidance issued between March 1, 2020 and December 31, 2020, by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to the maintenance of standards of sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.”
- Must maintain documentation supporting this claim in order to get the safe harbor



# Safe Harbor Date

- The safe harbor date for both the FTEE (see page 4, step 4 of the form) and wage rate reductions (see page 4, step 2c of the instructions) are now the **earlier** of the **submission date of the forgiveness application and December 31, 2020.**

# When Can I Apply?

- Banks are not ready to accept applications
- Many are building on-line portals for the forms to be entered electronically. You or your CPA will be able to enter this information
- Currently the banks do not have guidance from the SBA on how the applications will be submitted.
- Timeline seems to be August/September from most banks
- Once submitted
  - ✓ Bank has 60 days to approve/deny once they have a complete application
  - ✓ If >\$2 million, goes to the SBA who has 90 days



# How Can GBQ Help?

- General consulting on rules and strategy
- Preparation of loan forgiveness application
- Second review of loan forgiveness application
- Good Faith Certification Memo assistance

# Questions



# Additional Resources

- [23 New FAQs and Long Awaited Definition of Transportation](#) (8/5/20)
- [Is it the end of the tunnel or a train?](#) (7/29/20)
- [Can a Restaurant File the EZ Application](#) (7/16/20)
- [What the FTE?](#) (7/2/20)



# What to Expect from GBQ

- **Knowledge.** We're reading and reacting all day every day so that we can share important information with you quickly.
- **Accessibility.** We're not in the office, but we're on high alert to help with whatever you need.
- **Reliability.** One of us may not know the answer, but our team will find it, whether inside or outside of GBQ. We will help you solve your problems.
- **Empathy.** We are learning every day, just like you. We are worried about our employees, our customers and our families, just like you.

# Contact Information



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