

Protected: Maximizing Debt Forgiveness on PPP Loans

Whether you have submitted your Paycheck Protection Program (PPP) loan application or have already been approved, you may be wondering what your business should do next. Make your next step one of developing a plan to spend the PPP funds in a way that maximizes debt forgiveness by complying with the requirements of the loan, and ultimately makes good business sense.

Learn more from GBQ's COVID-19 Response Team as they provide answers to questions following the WFA webinar session:

FTEE CALCULATION

1. If you have an employee at 40 hours and one at 20 hours, is that 2 FTEE or 1.5 FTEE?

A. Please refer to ACA definition; based on our understanding the 40-hour employee is 1 and the 20-hour employee is 0.667 (20/30).

2. FTEE – during the explanation you mentioned fractional FTEEs. Are we to calculate partial FTEEs? If so wouldn't it be more efficient to calculate total hours worked for all employees/30 to get the FTEE?

A. Yes, it would be more efficient to calculate in the aggregate, but there is the risk that guidance will be required on an individual basis. At this point, we believe the best estimate (FTEE calculation) to be used should be in sync with what you report for ACA using your payroll reports.

3. The borrowing application form 3245-0407 states that the measurement period for average monthly payroll must be February 15, 2019 to June 30, 2019, unless you are a new business, then you can use the 2020 timeframe. Did they not use the same guidelines for the calculation of FTEE?

A. That is the time frame for measuring FTEEs. You can also use 1/1/20 to 2/29/20; whichever is more favorable to you. Average monthly payroll was based on 2019 or trailing twelve months of the loan application.

4. We filed 24 separate applications. When choosing the FTE baseline, does it have to be the same across apps or can we change based on best outcome?

A. I believe you can pick between the two periods offered for each loan. Please confirm with your banker.

5. How sure are you that the ACA 30 hour FTE will stick? We used 40 hours to calculate FTE numbers for our application with no better guidance...

A. The loan application for employee count was using the SBA definition which counts each person as one. Using the definition of ACA is subject to clarification by the SBA, but the concept of FTEE only exists under the ACA definitions.

6. Does one person who averages 60 hours per week equal 2 FTEs?

A. No, so long as that person consistently works 30 hours or more, they can only count as one person.

PAYROLL RELATED COSTS

7. What about health insurance for S Corp owner? Not group plan?

A. So long as it's paid by the employer, it will meet the definition of payroll costs.

8. Is insurance cost only medical or can it be any type of insurance cost?

A. It needs to be health-related, so it can include dental, vision, etc.

9. Can you include FUTA taxes?

A. No.

DEBT FORGIVENESS

10. *Calculating the 25% reduction in pay seems to be the biggest grey area here. When will we get clarity? Doing this on an employee-by-employee basis seems extremely difficult, especially in a high turnover environment like QSR.*

A. We don't expect this penalty to apply for QSR so long as the hourly wage was not reduced but it is subject to interpretation. The SBA has until 4/26 to provide its instructions on forgiveness.

11. *Any work in paying back rent or even prepaying rent allowed? Thanks*

A. No prepayment is allowed for forgiveness. This loan provides two months of working capital which is two months rent. Even if you included a third month of rent, it could throw your 75/25 balance off and not qualify for forgiveness.

12. *You didn't touch on the closed stores in universities – are there special rules for closed stores?*

A. There are no special rules. Until those stores can be reopened, you would not have any payroll and no forgiveness eligibility.

13. *Is there a scenario in which the 25% non-payroll eligible expenses will be reduced?*

A. It depends on how much you spend on payroll during the 8 weeks as well as how much you spend on nonpayroll costs. If you don't pay any nonpayroll costs during those 8 weeks, then nothing can be forgiven for those costs. If you spend 50% on payroll, then your spending on nonpayroll costs will be reduced for forgiveness.

14. *None of the examples applied the reduction of wages... Are you saying not to worry about that as long as wage rates are held steady? Only need to worry about FTEE?*

A. We believe so as long as hourly rates have not been reduced, this penalty will not apply as this reduction in hours will be picked up in the FTEE reduction factor. Subject to the SBA rules forthcoming.

15. *Can we seek forgiveness for rent paid on real estate owned by a related/affiliated entity?*

A. Yes, so long as the lease agreement was in place on February 15, 2020.

16. *What happens if you end up not using 75% of the loan proceeds on payroll?*

A. Less of your loan will be eligible for forgiveness.

17. *If we terminate an employee, that impacts the reduction in force calculation. Does it also impact the reduction in pay calculation for that same employee?*

A. It would impact your reduction in force calculation. We believe it would not impact your reduction in pay calculation, as that employee is no longer employed so no comparison exists.

18. *My PPP Loan funded Tuesday 4-14. My payroll funds on April 20. Is that amount classified in the first of the 8 week period?*

A. We believe the pay date of the payroll periods is what counts; however, it will be beneficial to compare the first payroll period to the last payroll period in the 8 weeks if significantly different as the last payroll period could be higher assuming operations are back to full capacity. Pending SBA instructions should clarify this.

19. *Are costs in the 8 weeks based on incurrence or based on actual cash paid?*

A. We believe cash paid as you will need to show the bank evidence of payments made.

20. *Your examples seemed to be based on one location. If our loan is for multiple locations will the formula be done per location or for all locations?*

A. The calculation should be done at the entity level that received the loan funding.

21. *On calculation 3, how is column 4 at 100% with 20 FTEEs?*

A. It assumes your FTEE calculation is back to 100% by June 30th to cure the penalty.

22. *Is there a distinction between earned and spent payroll? For example, we got money today and also paid payroll today (but for the last two weeks of work).*

A. We believe the pay date of the payroll periods is what counts; however, it will be beneficial to compare the first payroll period to the last payroll period in, the 8 weeks, if significantly different as the last payroll period could be higher assuming operations are back to full capacity. Pending SBA instructions should clarify this.

23. If a business used funds from a DLOC to make payroll can a portion of PPP funds be used to “replenish” those funds and still qualify for debt forgiveness? Important to note, the total funds required for this purpose are less than 25% of the PPP loan total.

A. We do not believe so. To be eligible for forgiveness, the money spent must be on those eligible items within the 8 week covered period.

24. If you own your real estate in an LLC and pay rent basically to yourself, does that count?

A. Yes, so long as the lease agreement is in place on February 15, 2020.

25. Do you recommend holding company FICA portion if planning on getting debt forgiveness?

A. It depends on your liquidity needs. It is only a deferral, so you will need to pay it at some point in time. If you need cash, you can defer it until such time as forgiveness is provided.

26. Will you explain the 6/30/2020 clause? We have not been able to find good direction on this.

A. Clarification by the SBA rules is needed. Based on what we interpret, so long as FTEEs and wages are back to 100% by June 30, 2020, those two penalties have been cured. There are questions on how to determine this based on a one-day measurement.

27. June 30 clause. Is there a period that we need to measure prior to June 30? We originally figured it during a period.

A. Clarification by the SBA rules is needed. Based on what we interpret, so long as FTEEs and wages are back to 100% by June 30, 2020, those two penalties have been cured. There are questions on how to determine this based on a one-day measurement.

28. Does water include sewer or is that separate?

A. We believe sewer is likely included. SBA rules may clarify this

29. Can property taxes be included in the expense list for forgiveness?

A. There is no mention of property taxes being eligible for forgiveness.

30. Can you pay employees more during the 8 week period than prior periods (e.g., an employee makes \$50k/year in 2019, during 8 week period they make \$80k/annualized)?

A. It is possible, but you may max out your forgiveness so long as the FTEE calculation remains the same. You can only be forgiven up to the loan principal balance.

31. To be forgiven, can 100% be spent on payroll expenses?

A. It is possible but you may not have enough payroll assuming your FTEEs and wages are comparable to the prior measurement period.

32. Is the amount used on payroll the only amount forgiven? Or are the funds used up to 25% also forgiven, based on the calculations?

A. Rent, utilities, and interest on mortgage debt is also eligible for forgiveness but subject to the 75/25 rules and actual amount spent.

GENERAL

33. *In California, we can only pay for hours worked. How can we get around this for people who did not actually clock in and work?*

A. I would recommend discussing it with a labor attorney.

34. *What if locations closed by government mandate (i.e. mall locations) are not reopened by June 30th?*

A. As of right now, those locations fall under the same rules.

35. *What happens when state ordinances require closures of full-service restaurants that limit our ability to open and ramp revenue/salaries/staff to pre-COVID-19 levels?*

A. As of right now, those locations fall under the same rules.

36. *Another way to say this is, if our current retail revenue is 20% of pre-COVID-19 amounts, there is no way for us to pretend that sales and staffing come even close to 60% pre-COVID-19 amounts by June 30th.*

A. As of right now, those locations fall under the same rules.

37. *What if employees refuse to come back due to unemployment being better?*

A. We understand this will be a problem. We recommend speaking to a labor attorney on your options.

38. *Can you receive both an SBA disaster loan and PPP?*

A. Yes; however, the use of proceeds must be for different purposes so you are not double-dipping.

39. *For the unemployment component, are companies paying the \$600 or is this a state-paid benefit?*

A. I would defer to your state unemployment agency. I believe this is a state-paid benefit though.

40. *Is EFMLA paid by the company?*

A. Company pays.

41. I had overpayments for unemployment which were paid off to the Ohio attorney general office. I was laid off due to COVID-19. I was allowed unemployment benefits but there were penalty weeks that had to be served first. If the waiting week was waived can the penalty weeks be as well?

A. Every state could be different but in Ohio, penalty weeks are not waived. Here is a link to Ohio's website.
(<http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm>) Please refer to your respective state's website.

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