CEF Q&A on Maximizing PPP Loan Forgiveness

These questions were submitted on 5/27/20 during the CEF Webinar on "How to Prepare Now for Maximum PPP Loan Forgiveness". Please note that CEF's BAS advisors provide helpful suggestions of an educational nature that are not intended to mandate or supersede the business practices or decisions of the Company, its owners, or managers.

1) We are hoping you can shed some light on businesses where the only employees are the owners, so they are paid via owner draws AND a W2 salary. If the entire amount of the PPP funds are used for the owner draw pay and W2 salary, would it be forgiven?

The Treasury guidance is that for individuals with self-employment income who file a Schedule C, the Administrator, in consultation with the Secretary, has determined that it is appropriate to limit loan forgiveness to a proportionate eight-week share of 2019 net profit, as reflected in the individual's 2019 Form 1040 Schedule C. This is because many self-employed individuals have few of the overhead expenses that qualify for forgiveness under the Act.

For example, many such individuals operate out of either their homes, vehicles, or sheds and thus do not incur qualifying mortgage interest, rent, or utility payments. As a result, most of their receipts will constitute net income. Allowing such a self-employed individual to treat the full amount of a PPP loan as net income would result in a windfall. The entire amount of the PPP loan (a maximum of 2.5 times monthly payroll costs) would be forgiven even though Congress designed this program to limit forgiveness to certain eligible expenses incurred in an eight-week covered period. Limiting forgiveness to eight weeks of net profit from the owner's 2019 Form 1040 Schedule C is consistent with the structure of the Act, which provides for loan forgiveness based on eight weeks of expenditures. This limitation will also help to ensure that the finite appropriations are directed toward payroll protection, consistent with the Act's central objective.

Source:
https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf

2) Question: If you had to furlough an employee and then offered their job back to them....and they are not trying to "quickly" come back as fast as they should... what are our options?

a. Will a borrower's loan forgiveness amount be reduced if the borrower laid-off or reduced the hours of an employee, then offered to rehire the same employee for the same salary and same number of hours, or restore the reduction in hours, but the employee declined the offer? No. Employees whom the borrower offered to rehire are generally exempt from the CARES Act's loan forgiveness reduction calculation. This exemption is also available if a borrower previously reduced the hours of an employee and offered to restore the employee's hours at the same salary or wages. Specifically, in calculating the loan forgiveness amount, a borrower may exclude any reduction in full-time equivalent employee headcount that is attributable to an individual employee if: i. the borrower made a good faith, written offer to rehire such employee (or, if applicable, restore the reduced hours of such employee) during the covered period or the alternative payroll covered period; ii. the offer was for the same salary or wages and same number of hours as earned by such employee in the last pay period prior to the separation or reduction in hours; iii. the offer was rejected by such employee; iv. the borrower has maintained records documenting the offer and its rejection; and v. the borrower informed the applicable state unemployment insurance office of such employee's rejected offer of reemployment within 30 days of the employee's rejection of the offer.

Source: https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf

3) Q: Please be as specific as possible as what is considered a payroll cost.

f. What qualifies as ''payroll costs?'' Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wages, commissions, income, or net earnings from self-employment, or similar compensation.

g. Is there anything that is expressly excluded from the definition of payroll costs? Yes. The Act expressly excludes the following:

i. Any compensation of an employee whose principal place of residence is outside of the United States;
ii. The compensation of an individual employee in excess of an annual salary of $100,000, prorated as necessary;
iii. Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees; and
iv. iv. Qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (Pub. L. 116–127).

Source: https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf

4) Q - Our payroll last year included vacation and bonus pay that got calculated into our two months of PPP. If we pay those with PPP is it limited to 2/12 of our total last year amounts for those or could it be more than that?

Please see question #1 regarding the limitation on individuals who file Schedule C with self-employment income. For business owners who have employees other than themselves, here are the guiding principals:

However, at least 75 percent of the PPP loan proceeds shall be used for payroll costs. And,

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. SBA will issue additional guidance on loan forgiveness.

Question #4 confirms the circumstances within which bonuses may be categorized as payroll for PPP loan forgiveness purposes

Source: https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf

5) Q - Is the working owner included in the FTE calculation?

Treasury has not provided guidance on this topic. For practical purposes, there would be little difference, as the working business owner would likely count as a 1.0 FTE during both the lookback period and the covered 8 week period, as well as the Safe Harbor date of 6/30/20

Here is the guidance from the Paycheck Protection Program Loan Forgiveness Application:

Average FTE: This calculates the average full-time equivalency (FTE) during the Covered Period or the Alternative Payroll Covered Period. For each employee, enter the average number of hours paid per week, divide by 40, and round the total to the nearest tenth. The maximum for each employee is capped at 1.0. A simplified method that assigns a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours may be used at the election of the Borrower.

6) If we do payroll on the 15th and last day of the month, am I allowed to align my 8 weeks to follow my pay periods (so I can cover 4 pay periods instead of 3)? My disbursement was on May 7th (halfway between pay periods) :-(

The Administrator of the Small Business Administration (Administrator), in consultation with the Secretary of the Treasury (Secretary), recognizes that the eight-week covered period will not always align with a borrower’s payroll cycle. For administrative convenience of the borrower, a borrower with a bi-weekly (or more frequent) payroll cycle may elect to use an alternative payroll covered period that begins on the first day of the first payroll cycle in the covered period and continues for the following eight weeks.

In general, payroll costs paid or incurred during the eight consecutive week (56 days) covered period are eligible for forgiveness. Borrowers may seek forgiveness for payroll costs for the eight weeks beginning on either:

i. the date of disbursement of the borrower's PPP loan proceeds from the Lender (i.e., the start of the covered period); or
ii. ii. the first day of the first payroll cycle in the covered period (the "alternative payroll covered period"). Payroll costs are considered paid on the day that paychecks are distributed or the borrower originates an ACH credit transaction.

Payroll costs incurred during the borrower's last pay period of the covered period or the alternative payroll covered period are eligible for forgiveness if paid on or before the next regular payroll date; otherwise, payroll costs must be paid during the covered period (or alternative payroll covered period) to be eligible for forgiveness. Payroll costs are generally incurred on the day the employee's pay is earned (i.e., on the day the employee worked). For employees who are not performing work but are still on the borrower's payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day that the employee would have performed work).

Source: https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf

7) Modifying question about including vacation and bonus. If those weren't paid during the lookback periods, (ours were paid in December) can they be paid using PPP funds.

Are salary, wages, or commission payments to furloughed employees; bonuses; or hazard pay during the covered period eligible for loan forgiveness?

Yes. The CARES Act defines the term "payroll costs" broadly to include compensation in the form of salary, wages, commissions, or similar compensation. If a borrower pays furloughed employees their salary, wages, or commissions during the covered period, those payments are eligible for forgiveness as long as they do not exceed an annual salary of $100,000, as prorated for the covered period. The Administrator, in consultation with the Secretary, has determined that this interpretation is consistent with the text of the statute and advances the paycheck protection purposes of the statute by enabling borrowers to continue paying their employees even if those employees are not able to perform their day-to-day duties, whether due to lack of economic demand or public health considerations. This intent is reflected throughout the statute, including in section 1106(d)(4) of the Act, which provides that additional wages paid to tipped employees are eligible for forgiveness. The Administrator, in consultation with the Secretary, has also determined that, if an employee's total compensation does not exceed $100,000 on an annualized basis, the employee's hazard pay and bonuses are eligible for loan forgiveness because they constitute a supplement to salary or wages, and are thus a similar form of compensation.

Source: https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf

8) Q Please clarify if $48K includes other payroll expenses like group health insurance & retirements. These increase the 75% payroll cost base.

Please see question 3, which outlines the categories of employee benefits that are considered "payroll" for PPP loan forgiveness purposes.
Please see question 4, which summarizes the 75% rule.

9) How are raises, bonuses, or phone/internet reimbursements (for remote employees) factored into the forgivable amount?

Please see question 4 regarding the criteria for bonus payments to be factored into the forgivable amount.
Section 1106(b) of the CARES Act provides that, subject to several important limitations, borrowers shall be eligible for forgiveness of their PPP loan in an amount equal to the sum of the following costs incurred and payments made during the covered period (as described in section III.3. below):

(1) Payroll costs;
(2) Interest payments on any business mortgage obligation on real or personal property that was incurred before February 15, 2020 (but not any prepayment or payment of principal);
(3) Payments on business rent obligations on real or personal property under a lease agreement in force before February 15, 2020; and
(4) Business utility payments for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

This interim final rule uses the term "nonpayroll costs" to refer to the payments described in (2), (3), and (4). As set forth in the First Interim Final Rule (85 FR 20811), eligible nonpayroll costs cannot exceed 25 percent of the loan forgiveness amount.

Source: https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf

10) And does the max allowable forgiveness per employee factor in employment taxes, employer-paid health insurance premiums, etc. over and above their base? Or is $100k the limit for all expenses related to any particular employee, all inclusive?

Question: The CARES Act excludes from the definition of payroll costs any employee compensation in excess of an annual salary of $100,000. Does that exclusion apply to all employee benefits of monetary value?

Answer: No. The exclusion of compensation in excess of $100,000 annually applies only to cash compensation, not to non-cash benefits, including:

- employer contributions to defined-benefit or defined-contribution retirement plans;
- payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
- payment of state and local taxes assessed on compensation of employees.

Source: https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf

11) What can we do if my furlough employee does not want to come back to work? Shall we hire new employees to keep the FTE than back in February?

Please see question 2 as it relates to how to calculate FTE if an employee refuses to come back to work.

12) To prove what I paid myself for PPP forgiveness, as a single member S.Corp with no employees, do I NEED to use a Payroll service to pay myself from my biz bank account or can I simply write myself checks?

Please see the following documents that each borrower must submit with its PPP Loan Forgiveness Application:

Payroll: Documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period consisting of each of the following:

a) Bank account statements or third-party payroll service provider reports documenting the amount of cash compensation paid to employees.
b) Tax forms (or equivalent third-party payroll service provider reports) for the periods that overlap with the Covered Period or the Alternative Payroll Covered Period:
    i. Payroll tax filings reported, or that will be reported, to the IRS (typically, Form 941); and
    ii. State quarterly business and individual employee wage reporting and unemployment insurance tax filings reported, or that will be reported, to the relevant state. c. Payment receipts, cancelled checks, or account statements documenting the amount of any employer contributions to employee health insurance and retirement plans that the Borrower included in the forgiveness amount (PPP Schedule A, lines (6) and (7))

Source: https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf

13) If utilities are paid automatically via credit card (i.e. not taken directly from checking account) do they still count, as long as we can show that the credit card paid that expense?

Please see the following documents that each borrower must submit with its PPP Loan Forgiveness Application:

Nonpayroll: Documentation verifying existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.

a. Business mortgage interest payments: Copy of lender amortization schedule and receipts or cancelled checks verifying eligible payments from the Covered Period; or lender account statements from February 2020 and the months of the Covered Period through one month after the end of the Covered Period verifying interest amounts and eligible payments.
b. Business rent or lease payments: Copy of current lease agreement and receipts or cancelled checks verifying eligible payments from the Covered Period; or lessor account statements from February 2020 and from the Covered Period through one month after the end of the Covered Period verifying eligible payments.
c. Business utility payments: Copy of invoices from February 2020 and those paid during the Covered Period and receipts, cancelled checks, or account statements verifying those eligible payments.

Source: https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf

14) To add to Blake's question what are appropriate forms of payroll evidence in the case of owner LLC for owner AND employees.

Please see question 12

15) How do raises in salary figure into the PPP loan forgiveness?

Please see question 9

16) What if you ADD employees during the 7 weeks?

The PPP application and CARES Act are structured to encourage business owners to retain or re-hire their employees as quickly as possible. There are negative incentives built into the PPP Loan Forgiveness Application calculations if a business retains/re-hires less employee work as measured by number of FTE relative to that business' lookback period or Safe Harbor date of June 30, 2020, subject to certain exceptions. There are similar negative incentives for business owners who decrease their employees' pay by more than 25% during the Covered Period or Safe Harbor date of June 30, 2020. If you add employees during the Covered Period or Alternative Covered Period relative to the lookback period, you will not be subject to these downward adjustments of the forgiven loan amount.