



Webinar – PPP Loan Forgiveness: What You Need to Know

June 2020

Participating Panelists

BAKER DONELSON



REYNOLDS BONE & GRIESBECK PLC
CERTIFIED PUBLIC ACCOUNTANTS & ADVISORS

Welcome



Todd Jones

Executive Vice President, Wholesale Banking
First Horizon Bank



Meet your panelists



David Popwell

President
Banking



Todd Jones

Executive Vice President
Wholesale Banking



Adrienne Sipe

Director, Government
Guaranteed Lending



Darin Johnson

Credit Risk Manager
Gov't Guaranteed &
CRA Lending



D. Jeffrey Wagner

Attorney
Shareholder



Chad Boyd

CPA
Tax Partner



SBA PPP Loan Results



David Popwell
President, Banking
First Horizon Bank



Access to Funds: Paycheck Protection Program (PPP) by the numbers



Approved more than
14,500 loans
for small businesses
totaling
\$1.9B



20% of the PPP loans
went to women-owned and
minority-owned businesses as
well as businesses located in low-
to moderate-income tracts



Helped
sustain over
313,000
jobs across
our communities



SBA PPP Loan Forgiveness Overview



Adrienne Sipe

Director, Government Guaranteed Lending
First Horizon Bank



How long do I have to use my PPP funds?

24 weeks




The recently approved PPP Flexibility Act extends usage of PPP funds from 8 weeks to 24 weeks after loan origination or until 12/31/2020.



How can I use the PPP funds?

60%



To qualify for full forgiveness, at least 60 percent of the loan proceeds must have been used for Borrower's payroll costs.

IF	&	&	THEN
\$100,000	\$50,000	\$50,000	\$83,333
BORROWER LOAN AMOUNT	ACTUAL AMOUNT SPENT ON PAYROLL (Did not meet 60% minimum)	ELIGIBLE NON-PAYROLL SPENT	FORGIVENESS CALCULATION (\$50K / .60)



What is included in payroll?

► *Payroll costs include compensation to employees whose principal place of residence is the U.S.A. in the form of:*

Salary

including to furloughed employees. Annual salary capped at \$100k per person

Wages

including furloughed employees

Bonuses

or hazard pay

Commissions

or similar compensation

Cash Tips

or the equivalent

Leave

Payment for vacation, parental, family, medical or sick leave

Allowance

for separation or dismissal

Benefits

Payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums and retirement

Contractors

For independent contractor or sole proprietors, wages, commissions, income or net earnings from self-employment or similar compensation

Taxes

Payment of state and local taxes assessed on compensation of employees



Let's look at an example

\$100k+

Annual Salary

Calculation to
Determine Loan
Amount

$$\text{Average monthly salary} \times 2.5 = \$20,832$$

8-Week
Covered Period

$$\$1,923 \times 8 \text{ weeks} = \$15,384$$

24-Week
Covered Period

$$\underbrace{\$1,923}_{\text{Per week cap for purpose of forgiveness}} \times 24 \text{ weeks} = \underbrace{\$45,152}_{\text{Payment under new rule, if Borrower can cover 24 weeks}}$$



How can I use the other 40%?

Mortgage

Payments of interest on any business mortgage obligation for real or personal property incurred before 2/15/20



Rent or Lease

Business rent or lease payments pursuant to lease agreements for real or personal property in force before 2/15/20

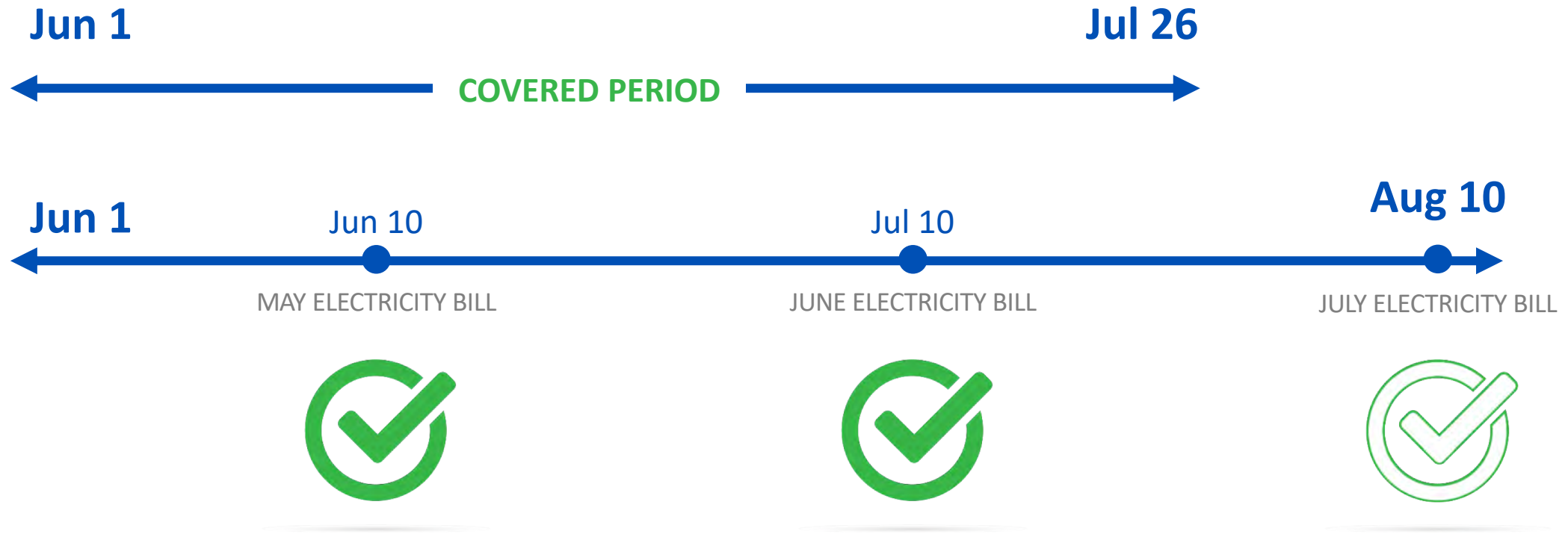


Utilities

Business utility payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before 2/15/2020



Let's look at an example



When can I apply for forgiveness?

6
months

Deferment period changed
from 6 months until the date the
forgiveness amount is determined

8
weeks

The earliest a Borrower can
apply for forgiveness is 8 weeks
after receiving their PPP funds


10
months

The latest a Borrower can apply
for forgiveness is 10 months
after their covered period ends



How do I calculate full-time employees?

FTE



In addition to how the funds are spent, a Borrower needs to also calculate reduction in wages and salaries, as well as full time equivalent employees (FTE).



How do I apply?

BORROWER

1. Receive Email

Borrower will receive an invitation to start the forgiveness application process via email.



2. Collect Documents

Borrower will collect and save documents from the Forgiveness Checklist in a single folder on their computer for ease.



3. Submit app

Borrower will submit the Loan Forgiveness Application with supporting documentation.

BANK

4. Review Material

First Horizon reviews and confirms documentation and calculations.



5. Determine Forgiveness Amount

First Horizon will then make a determination of what amount of the loan, if any, should be forgiven.



6. Confirmation Email

Borrower will receive an email with this decision. *The bank has up to 60 days after receipt of complete application package to notify borrower of decision and report it to SBA.*



Loan forgiveness by the numbers

100%

If the entire PPP Loan is forgiven, the Borrower will receive a statement/letter reflecting the balance has been paid in full.

Prior to notification, the SBA will pay First Horizon the principal balance plus all accrued interest.

<100%

If part of the Borrower's PPP Loan is not forgiven, the remaining balance will be amortized over the remaining term of the loan.

The borrower will receive monthly statements for the payment owed and begin remitting payment.

0%

If none of the Borrower's PPP Loan is forgiven, the remaining balance will be amortized over the remaining term of the loan.



Q&A



Todd Jones

Executive Vice President, Wholesale Banking
First Horizon Bank



Q: Are all funds used for payroll always forgiven, regardless of percentage used and regardless of the FTE count?

A: No, the maximum amount to be forgiven is based on the amount used for payroll costs – as a starting point, 60% of the forgiveness amount must be used for payroll. Stated another way, the maximum amount of forgiveness will be approximately 1.67 X the amount spent on payroll. However, the actual amount forgiven will be based on a number of different factors, including maintaining FTEs and wages.

A decrease in FTEs will result in a proportionate reduction in forgiveness amount. Likewise, a decrease in salaries or wages in excess of 25% for certain will result in a dollar-for-dollar reduction in the amount of forgiveness.



D. Jeffrey Wagner

BAKER DONELSON



Payroll Calculation + FTE Calculation = Maximum Forgiveness

PAYROLL CALCULATION

+

FTE CALCULATION

$$\begin{array}{rcl} \$100k & \text{Borrower Loan Amount} & \\ - \$50k & \text{Spent on Payroll} & \\ - \$0k & \text{Spent on Non-payroll} & \\ \hline \$50k & \text{Maximum Forgiveness based on payroll calculation only} & \end{array}$$

	12 FTEs during 2/15/19 to 6/30/19	9 FTEs Rehired	
	$\$50k$ Maximum Forgiveness Based on Payroll	$\times .75$ 25% reduction in sales force	$= \$37.5k$ New Maximum Forgiveness Based on Payroll + FTE
	<hr/>		
	10 FTEs during 1/1/20 to 2/29/20	9 FTEs Rehired	
	$\$50k$ Maximum Forgiveness Based on Payroll	$\times .90$ 10% reduction in sales force	$= \$45.0k$ New Maximum Forgiveness Based on Payroll + FTE



Q: If payroll and benefits costs over the 24-week period exhaust all of a Borrower's SBA PPP funds, does that mean the full amount of the loan would be forgiven? Are pre-level spends measured by just money, by headcount – *or both*?

A: If 100% of the PPP funds are used for qualified payroll costs, that means 100% of the PPP loan is forgivable – subject to reductions to such forgiveness based on FTE headcount and salary and wage reductions.

Which moves us into the second question. Pre-level spending **for which the maximum loan amount is determined** is based on money (which is driven by headcount and salary/wage levels). Once the money is spent (on qualifying costs) and you move into forgiveness and determining any reduction to such forgiveness, you are then comparing **separately** to both pre-level salaries & wages and pre-level headcount. The salary and wage reduction is a dollar-based reduction. The FTE headcount reduction is a percentage-based reduction.



Chad Boyd, CPA

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Q: Is the payroll calculation accrual or cash? If cash, do certain payments need to be timed?

A: Cash, with allowances at the end of the covered period for costs **incurred but not paid** until after the covered period (as part of an employer's normal payroll cycle). As an example (using calendar days), if an employee has earned 10 days of pay at the sunset of the covered period which, for this example is Monday, June 1st, but the pay period does not end until Friday, June 5th, such 10 days were “incurred” during the covered period and would be includible payroll costs despite being “paid” after the covered period ended.

Additionally, the SBA allows for the election of an “alternative payroll cycle” for recipients with bi-weekly or more frequent pay cycles. For those recipients, if the covered period begins in the middle of a pay cycle, at the recipient's election, it may choose to start its covered period (**for payroll costs only**) at the beginning of its next payroll cycle. Given the favorable guidance provided by the SBA regarding **incurred** costs (both payroll and non-payroll), any need to “time” regular payments should be eliminated; however, any off-cycle or “one time” incentive/hazard type payments should be “timed” within the covered period or alternative covered period (if elected).



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Q: If a borrower knows or does not think they can reach the 60% payroll requirement, should they repay the projected surplus or simply hang on to it and expect that portion not to be forgiven?

A: The answer to this question will be specific to each borrower. The amount forgivable is a function of the amount spent on payroll costs. As noted earlier, assuming other requirements are met, forgiveness will be equal to approximately 1.67 X the amount spent on payroll costs, so, although the borrower may not receive forgiveness of the full loan amount, it may still receive forgiveness of some amount. As to whether the excess funds should be returned, each borrower needs to remember that it certified in its loan application that it would use the loan proceeds for certain specified purposes, and just because the borrower is not eligible for or does not seek forgiveness of those does not release the borrower from those certifications. If a borrower does not anticipate using any of its “surplus” funds for payroll, rent, utilities or mortgage interest, it should consider returning the funds. First, a surplus of funds is reflective of whether the loan was “necessary to support ongoing operations” as the borrower certified in its application. Second, the government has reserved the right to pursue borrowers, including for civil or criminal fraud, for using loan proceeds for unauthorized purposes.



D. Jeffrey Wagner

BAKER DONELSON



Q: Does the deferral amount of an employee's 401(k) have to be backed out of wages for eligible forgiveness amounts?

A: No. Compensation includes gross wages paid to the employee. Any amount remitted to a qualified retirement account on the employee's behalf would not be excluded from such compensation.

Example

If employee 401(k) matches are accrued and paid out at year-end, can the “matches” accrued on the balance sheet as a payable be counted toward the compensation calculation even though they have not been paid yet technically?

The example presents a different issue. 401(k) matches are an employer cost and are not part of the normal pay cycle, especially if carried on the balance sheet until year-end with one lump-sum contribution to be paid at that time. Absent definitive guidance from the SBA on the topic, I would expect 401(k) matches would only be includible if contributed during the covered period.



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Q: Is a Borrower able to pay bonuses or vacation pay to “incentivize” employees to return to work and include these bonuses as payroll, thus helping the Borrower reach the 60% threshold?

A: Yes, subject to the \$100,000 annualized salary/wage limitation on an employee-by-employee basis.



Chad Boyd, CPA

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Q: How are expenses for withholdings like FICA, unemployment, federal and state taxes, etc. covered?

A: I think this is best communicated in two parts –

With the exception of state and local taxes (e.g. state unemployment taxes), the **employer** portion of FICA, federal unemployment, etc. **are not included in payroll costs**.

The employee portion of FICA, federal unemployment, and federal and state income tax withholding amounts **are not excluded from payroll costs**. Said differently, the employee's **gross wage** is includible in payroll costs.



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Q: What about future expenses? What are the cut-off times for expenses before and after the date of the loan?

A: The only explicit limitation on prepayments in the CARES Act and the regulations or other guidance issued by the SBA and Treasury is a prohibition on the prepayment of mortgage interest. As noted in my previous response, each borrower should keep the purpose of the PPP in mind. It was intended to help small businesses with certain identified types of costs during a limited period of time – namely the 8 weeks (now 24 weeks) following receipt of loan proceeds. With the longer period of time to spend loan proceeds on eligible costs, this should be less of a question for most borrowers since they are now able to spend the equivalent of 2-1/2 months of payroll costs over what now amounts to approximately 5-1/2 months. In the example given, paying a few weeks ahead may not raise concerns that paying several months ahead might. Again, though, prepayment of costs is not addressed other than for mortgage interest, so prepayments are at the borrower's risk.



D. Jeffrey Wagner

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Q: Is SBA PPP a taxable event?

A: By statute, no. The CARES Act specifically provided that the loan forgiveness was not a taxable event. However, the IRS determined that under current law **the expenses incurred** to effect PPP loan forgiveness are “expenses incurred in the production of tax-exempt income.” Internal Revenue Code Section 265 provides the such expenses are non-deductible which has the effect of making the loan forgiveness a taxable event.

I have seen various news flashes, tweets, etc. indicating that several law makers are pushing for and drafting a “PPP technical corrections” bill that may fix this taxation issue. We will continue to monitor legislative activity in that regard.



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Q: What is the process to repay a portion of the loan amount early if a Borrower wants to avoid interest and additional scrutiny?

A: You may repay all or a portion of your loan at any time for any reason. Since your loan payment is on deferment, you are not receiving a bill. Therefore, feel free to contact your banker to obtain your loan number and instructions on how to make a payment on your loan or to obtain a payoff quote. However we cannot advise that a pay-down or payoff after the safe harbor deadline will avoid any scrutiny by SBA.



Darin Johnson



Q: Can Emergency Disaster (EIDL) funds be used for different business expenses other than the payroll for which a Borrower has used the PPP funds?

A: If you received a PPP and an EIDL loan, you cannot use the proceeds for the same purpose. In addition to payroll, EIDL proceeds can be used to pay rent, accounts payable, bills that could have been paid had the pandemic not occurred. I would expect SBA may ask you to document how you spent your EIDL proceeds just like you will for PPP loans so be sure to keep these separate. If your EIDL loan was used for payroll, it was required to be refinanced with your PPP loan. My recommendation would be to use PPP for payroll and EIDL for all other eligible expenses if possible.

We also want to let our customers know that if you received an EIDL loan from SBA, SBA will email you directly to ask for additional information. If you are concerned about any email you receive asking for you to email confidential information you should call 800-659-2955 option 1 for COVID-19 to verify the sender of the email and find out how you can securely send your documents to them.



Darin Johnson



Q: Is forgiveness impacted if a Borrower's business never closed because it was considered essential, but employee attendance was impacted due to child care issues and/or illness?

A: No. All else being equal, it is immaterial whether the business closed. In addition, under the SBA's guidance, it is immaterial if the employee is actually working – what matters is that employees are getting paid. A borrower can use PPP loan proceeds to pay employees on sick or other leave without in anyway affecting forgiveness. Please note, however, if the borrower elects to use the tax credit for sick/family leave under the Families First Coronavirus Response Act, the pay does not count toward forgivable payroll costs under the PPP. In addition, every borrower should be aware if it does not pay the full wages while a person is on leave it may affect FTE or wage calculations. With the covered period extended to 24 weeks, borrowers have a little more flexibility and, certainly, a longer period to make sure their loan proceeds are spent in a way to help achieve full forgiveness.



D. Jeffrey Wagner

BAKER DONELSON



Q: How do I count employees on FMLA at the time of my PPP loan?

A: Employees on FMLA would be included EXCEPT to the extent the leave is COVID-19 related leave provided under Families First Coronavirus Response Act for which employers are allowed a tax credit. The Families First Act was passed March 18, 2020 (just ahead of the CARES Act). Simply stated, employers are not allowed to “double dip” those payroll costs – with PPP forgiveness and Families First credits.



Chad Boyd, CPA

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Q: If a borrower uses 60% of the loan for payroll but still has to let some employees go (reduce FTEs), is the portion of the non-payroll expenses that are forgivable reduced?

A: A reduction in FTEs by the employer (through furloughs, layoffs, etc.) affects forgiveness of all amounts, including the amount used for payroll costs. Remember, as in our earlier example, just because an employer expends 60% on payroll does not mean it will always be eligible for forgiveness of all payroll costs.



D. Jeffrey Wagner

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Let's look at an example

PAYROLL COST

If Borrower receives \$100k but only spends \$50k on payroll costs, then the maximum forgiveness amount is reduced to:

\$83,333
(*\$50k actually forgiven*)

PAYROLL + NON-PAY COST

If Borrower spends an additional \$20k on eligible non-payroll costs, or \$70k total, then the forgiveness amount is:

\$70k

PAYROLL + NON-PAY COST + FTE

If the same Borrower has a **reduction in staff** (*from 10 FTEs during covered period to 9 FTEs during the comparison period*) then the maximum forgiveness amount is 90% of \$70k or:

\$63k



Q: When rehiring, do the employees have to be the same people or can the Borrower hire anyone to reach the personnel number used in the application?

A: No, they do not have to be the same people. I would not suggest hiring lower wage people to replace furloughed higher wage individuals just to meet a specified FTE level. Although the reduction in forgiveness due to a reduction in wages is by specific employee, it is contrary to the spirit of the PPP.



D. Jeffrey Wagner

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Q: What if the Borrower has one or more employees that quit on their own accord during the 24-week period?

A: A borrower will not be penalized under the FTE or wage calculations for employees that voluntarily terminated employment or requested a reduction in hours or a change in schedule.

Q: Will forgiveness be impacted if the Borrower is unable to fill these positions, or is not able to fill them until near the end of the 24-week period?

A: There are exceptions to the forgiveness penalties for inability to meet FTE requirements under certain circumstances. As mentioned, there is an exception for voluntary quits and reductions in hours. There are also exceptions for terminations for cause, under certain circumstances when an employee refuses to return to work even after being offered his or her old job on the same terms and conditions and where the borrower has not been able to return to prior levels of employment due to compliance with government required or recommended pandemic response measures. All of these exceptions should be well documented in the employer's files. And note: the employer cannot just be nice and allow an employee to remain on unemployment because it is making more not working than it would returning to work due to the enhanced unemployment benefits under the CARES Act. The employer has to report those individuals to the state unemployment commission.

Finally, I would note that the safe-harbors for restoring FTE or wage reductions is measured at a point in time – either the end of 8-week covered period for those electing that period, the end of the 24-week period or, if it comes first, December 31, 2020. “Near” the deadline is good enough, as long as they are employed or have wages restored at the requisite point in time.



D. Jeffrey Wagner
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How do I stay up-to-date with additional guidance provided by the SBA?

firsthorizon.com/forgive or treasury.gov



Darin Johnson
 **FIRST HORIZON**



Closing Remarks



David Popwell
President, Banking
First Horizon Bank



Thank you for attending the First Horizon PPP Loan Forgiveness Webinar

The following information will be available at firsthorizon.com/forgive on June 13, 2020.

- Recording of this presentation
- First Horizon Forgiveness Documentation Checklist
- Interim Final Rule – Forgiveness
- Interim Final Rule – Flexibility Act
- Interim Rule – Original with Highlights of Forgiveness Text

If you have additional questions, please reach out to your banker or the following resources:

CONTACT INFO

For legal or tax assistance, consider engaging the services of our panelists:



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