

SBA Paycheck Protection Program

Paycheck Protection Program (PPP)

- Establishes \$350 Billion for the provision of loans to small business
 - New type of SBA Section 7(a) loans
 - For loans made between February 20, 2020 and June 30, 2020
 - Only available to qualifying small employers
 - Certain of the loan amounts are eligible for forgiveness

**** SBA Regulations Clear that Section 7(a) Loans Apply at Client Employer Level – PEO Affiliation Disregarded ****

PPP Loans

PPP – Eligible Small Businesses

“Small Business Concern”	Other “Business Concerns”	- 501(c)(3) “Non-Profits” - 501(c)(19) Veterans Organizations - Tribal business concerns	Hospitality and Food Service Companies	Franchises (regardless of sector)
<ul style="list-style-type: none"> Meets the SBA’s existing definition of a “small business concern” Subject to affiliation rules 	<ul style="list-style-type: none"> Meets SBA’s existing definition of a “business concern” No more than 500 employees Affiliation rules expected to apply generally Exception from affiliation rules for “business concerns” receiving financial assistance under the Small Business Investment Act 	<ul style="list-style-type: none"> No more than 500 employees Affiliation rules expected to apply 	<ul style="list-style-type: none"> NAICS code must begin with “72” No more than 500 employees, but... 500 employee count determined by looking at each separate <u>physical location</u> (not total) Affiliation rules do not apply 	<ul style="list-style-type: none"> No more than 500 employees Affiliation rules do not apply

**** Note on SBA Affiliation Rules:** The SBA’s affiliation rules are complex. We would expect the SBA’s affiliation rules for Section 7(a) loans generally to apply in same manner and to the same extent to PPP loans.

What is a “small business concern?”

- For-profit organization
- Independently owned
- Has a place of business in the US, and operates primarily in the US or makes a significant contribution to the US economy
- Is “not dominant in its field of operation”
- That meets certain size standards
 - **The Small Business Administration has authority to determine exactly what size constraints apply on an industry-by-industry basis, based on NAICS codes**
- Affiliation rules apply

Affiliation Rules

What are the General Principles of Affiliation?

Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. SBA's regulations on affiliation are contained in 13 C.F.R. § 121.103 (available at www.sba.gov/size).

- Additional guidance available at:
<https://www.sba.gov/document/support--affiliation-guide-size-standards>

Affiliation Rules Regarding PEOs

“Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses or which enter into a co-employer arrangement with a Professional Employer Organization (PEO) **are not affiliated with the leasing company or PEO** solely on the basis of a leasing agreement.”

13 CFR §121.103(b)(4).

**** Determine Loan Eligibility at the Client Level****

PPP – Loan Characteristics

- Maximum loan amount is lesser of (a) 250% of average monthly payroll (based on 12-month look back) or (b) \$10 million
- Loans will be 100% guaranteed by the SBA
- Availability of credit from other sources does not disqualify eligibility
- No application fees allowed
- No closing costs allowed
- Nonrecourse; no collateral or personal guarantees allowed to be imposed
- Maximum interest rate is 4%
- Maximum loan term of 10 years
- First 6 months of payments (principal and interest) are automatically deferred- deferral can extend up to a year

PPP – Maximum Loan Amount

Average total monthly payments of “payroll costs” during the 1-year period before date the loan is made
(note: special rule for seasonal employers)



2.5



**Maximum
Loan
Amount**
(Capped at \$10 million)

PPP – Definition of “Payroll Costs” for Determining Maximum Loan Amount

- Salary, wage, commission or similar compensation (generally capped at \$100,000/employee)
- Cash tips or equivalent
- Payment for vacation, parental, family, medical or sick leave
- Allowance for dismissal or separation
- Group health care benefits “including insurance premiums”
- Retirement benefit
- State or local tax assessed on the compensation of employees
- Certain sole proprietor and independent contractor compensation

PPP – Permitted Uses for Loan Proceeds

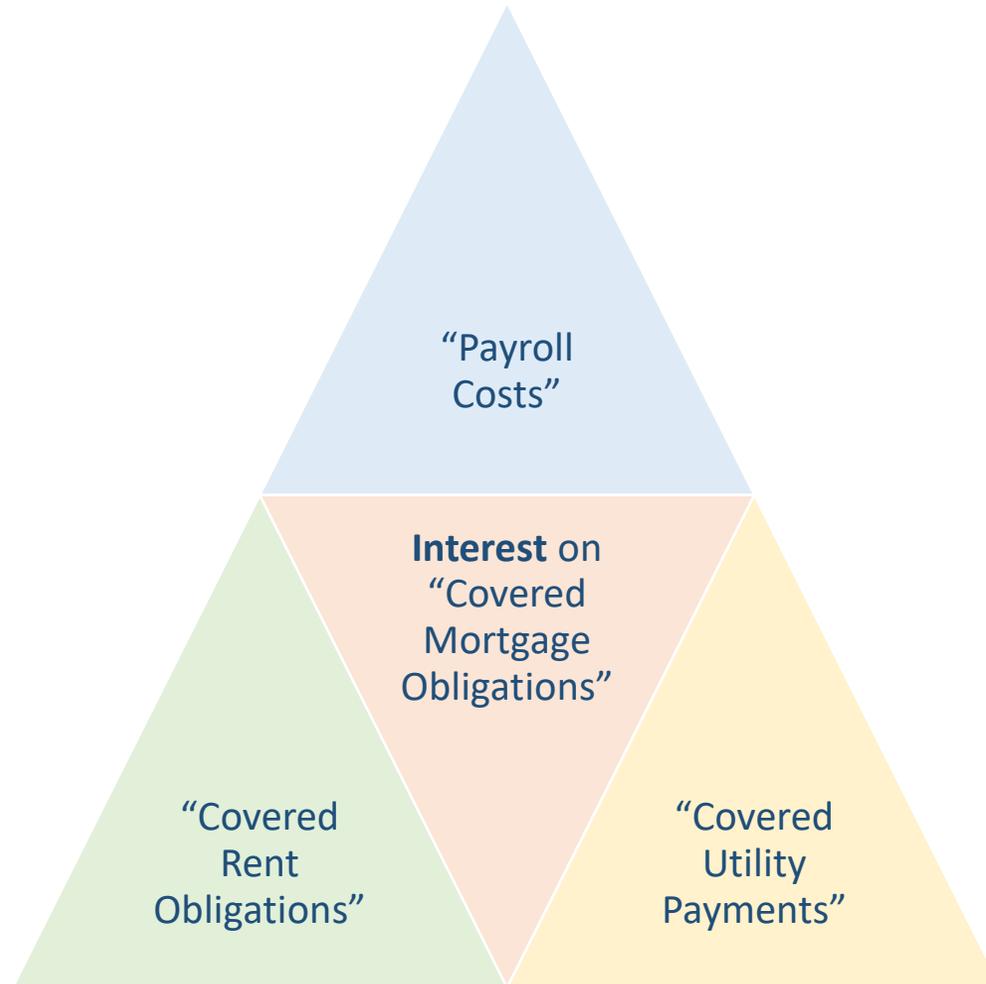
- **During the 8-week period that begins on the date of the origination of the PPP loan, proceeds can be used for:**
 - “Payroll costs” (includes everything on prior slide)
 - Costs related to continuation of group health care benefits during periods of paid sick, medical or family leave, “and insurance premiums”
 - Employee salaries, commissions or similar compensations
 - Payments of interest on any mortgage obligation (but not prepayments)
 - Rent or lease costs
 - Utility charges
 - Interest on other debt obligations assumed prior to February 15, 2020

PPP Loan Forgiveness

PPP Loan Forgiveness -- Generally

- Allows for some portion of the covered loan payments to be forgiven
- Generally, forgiven amounts are limited to payment of qualifying expenses
- Forgiven amounts are not taxable to the small business

PPP Loan Forgiveness – Eligible Amount



- “Payroll Costs” = As described earlier
- “Covered Mortgage Obligation” = generally debt incurred on real or personal property before February 15, 2020
- “Covered Utility Payments” = generally payment for utilities for services which began before February 15, 2020
- “Covered Rent Obligations” = rent obligated under a lease in effect before February 15, 2020

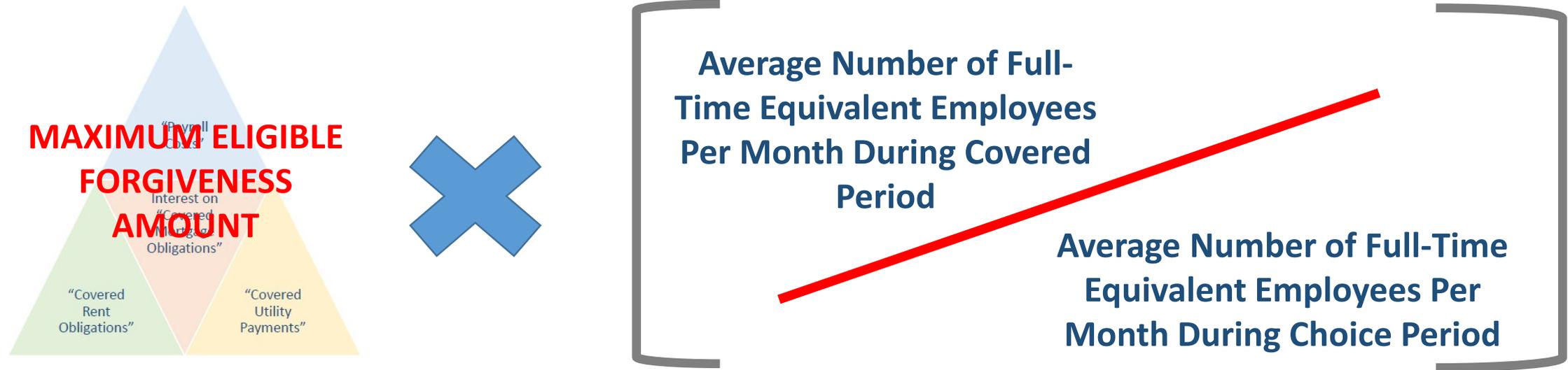
PPP Loan Forgiveness – Limits on Amount

- **Forgiveness amount REDUCED for the following reasons:**
 - Reducing the number of employees; and
 - Reducing salaries and wages



(A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

PPP Loan Forgiveness – Reduction # Employees



Covered Period = 8-week period beginning on origination date of PPP loan

Choice Period = At election of borrower, the period of either (a) February 15, 2019 to June 30, 2019, or (b) January 1, 2020 to February 29, 2020

PPP Loan Forgiveness – Reduction in Sal/Wages



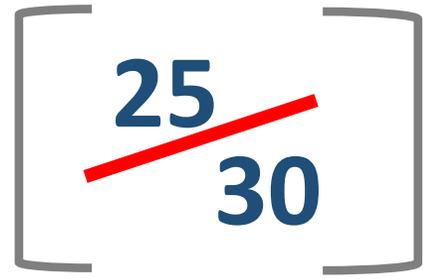
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Covered Period = 8-week period beginning on origination date of PPP loan



(A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

\$300k



\$10k

- Example: Joe’s Hardware has \$300k of eligible forgiveness amount (comprised of \$230k of payroll costs, \$50k of rent obligations, \$10k of utility obligations and \$10k of interest obligations. **Thus, Joe’s Hardware begins with a maximum eligible forgiveness amount of \$300k**

Example: Joe had on average 25 full-time equivalent employees during the covered period (i.e., the 8-week period beginning on the date of his PPP loan (e.g., April 1, 2020). Joe divides this number (i.e., 25) by 30, which is the average number of full-time equivalent employees he had during his Choice Period (e.g., January 1, 2020 to February 29, 2020). This results in a quotient of 0.833. Joe multiplies this 0.833 by \$300k, for a product of \$250k. **Thus, the maximum eligible forgiveness amount has been reduced by \$50k**

Example: All of Joe’s employees are paid the same average wage and salaries- except that he has decreased Suzie’s salary by 50% because he outsourced some of her work. So, Suzie’s salary goes from \$40k for the Covered Period to \$20k as measured during the most recent full quarter. Thus, the \$250k loan forgiveness amount is reduced by another \$10k. **Thus, the final resulting forgiveness amount is \$240k**