ACCOUNTABLE
HEALTH PARTNERS

Paycheck Protection Program:

Ensuring Compliance and Maximizing Forgiveness

This reference was created to inform practices receiving Paycheck Protection Program (PPP) funding on how to properly spend the money to maximize forgiveness and avoid potential problems when disbursements under the program are eventually reviewed. Applicants should also seek legal guidance when necessary to ensure compliance and the appropriate use of program funds.

Proper use of PPP funds

It is essential that practices protect themselves from liability by ensuring PPP funds are used only for qualified expenses since you certified in good faith that "current economic uncertainty makes this loan request *necessary* to support the *ongoing operations* of the Applicant" and loan proceeds "will be used to retain workers and maintain payroll."

- PPP loan proceeds can only be used to cover the following "Qualified Expenses":
  - payroll costs
  - costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave, as well as insurance premiums
  - mortgage interest payments and/or rent payments
  - utility payments
  - interest payments on other debt obligations incurred before Feb. 15, 2020
  - refinancing a Small Business Administration (SBA) Economic Injury Disaster Loan made between Jan. 31 and April 3, 2020.
- If a borrower uses PPP funds for unauthorized purposes, the SBA will direct the borrower to repay those amounts.
- If a borrower knowingly uses the funds for unauthorized purposes, the borrower may be subject to additional liability charges for fraud, and the SBA will have recourse against the borrower's shareholders, members, or partner(s) for the unauthorized use.
- If a practice has received PPP funding and is now reconsidering their certification of "necessity" for the loan, funds may be returned under the Small Business Administration "safe harbor" rule until May 18, 2020. Additional "safe harbor" periods are expected to be announced.
- PPP proceeds can be used to cover qualified expenses during the "Covered Period"

Covered Period Definition

There is a standard covered period which is the time period during which all qualified expenses EXCEPT payroll should be paid for with the loan proceeds. The alternative covered period may be opted in to for the time period during which payroll expenses are compared to the base period.

- The standard covered period:
  - Starts on the PPP loan disbursement date and ends eight-weeks (56 days) afterward.
  - For example, if the borrower received its PPP loan proceeds on Monday, April 20, the first day of the covered period is April 20 and the last day of the covered period is Sunday, June 14.
- The alternative covered period:
  - Can start the eight weeks on the first day of the first pay period following the PPP loan Disbursement Date.
  - For example, if the borrower received its PPP loan proceeds on Monday, April 20, and the first day of its first pay period following its PPP loan disbursement is Sunday, April 26, the first day of the alternative payroll covered period is April 26 and the last day of the alternative payroll covered period is Saturday, June 20.

Eligible Expenses for PPP Forgiveness

Mortgage interest

- Any interest on indebtedness incurred in the ordinary course of business before Feb. 15 that is a mortgage on real or personal property.
- Principal payments or prepayments are excluded and therefore are not qualified expenses.

Rent payments

- Any payments of rent under a lease in force before February 15, 2020
- There is no current SBA guidance on late payments of past-due rent or prepayments of future rent.
- Practices should maintain adequate records of rental payments.

Utilities

- Includes electricity, gas, water, transportation, telephone or internet access for which service began before February 15, 2020.

Eligible Payroll Costs

The SBA has declared in its Interim Final Rule that 75% of the PPP loan proceeds must be spent on payroll costs. Per the CARES Act, payroll costs are payments made to employees that are:

- salary, wages, commissions, or similar compensation (up to an annualized $100,000)
- cash tips or equivalent
- vacation, parental, family medical, or sick leave (excluding payments for emergency paid sick leave or expanded family and medical leaves)
- separation or dismissal pay
- for group health insurance
- retirement benefits
- state or local payroll tax (but not federal payroll tax).

What about Payroll Costs for Working Partners or Working Members of an LLC?

Under most traditional definitions of "employee," owners of a business such as partners and members of an LLC are not considered "employees." However, the Treasury Department, in consultation with the SBA, issued guidance that payments to such individuals (up to an annualized $100,000) may be included in payroll costs, but additional guidance on this topic is anticipated. Practices should work closely with their accountants and legal counsel to properly calculate which such payments may be included.

What about Payroll Costs Related to Employee Bonuses and Raises?

The CARES Act and current SBA guidance remain unclear regarding employee bonuses and raises that would increase payroll costs that are not in the ordinary course of the business. If a practice wants to use PPP funds for this purpose, it should have and document a good reason as to why such expenditures are "necessary to support the ongoing operations" of the practice.

Optimizing Loan Forgiveness

PPP provides the opportunity for complete forgiveness of the PPP loan. Those portions of the loan that are not spent quickly enough or that are spent on purposes other than Qualified Expenses must be repaid over two years.

Practices will be eligible for loan forgiveness when PPP loan proceeds are spent on Qualified Expenses within the eight-week Covered Period and at least 75% of Qualified Expenses were payroll costs (75/25 Rule). The forgiven amount cannot exceed the principal amount of the PPP loan.

Forgiveness Reduction

PPP loan forgiveness will be reduced:

1. In proportion to the decrease in the average monthly full-time-equivalent employees ("FTEE") during the Covered Period as compared to a reference period AND
2. Dollar for dollar for the amount of reduction in excess of 25% of the total salary and wages of any employee during the Covered Period as compared to a reference period.

FTEE-Related Forgiveness Reduction

The biggest driver of forgiveness of PPP loans is maintaining or restoring your practice's workforce to pre-pandemic levels. The PPP compares the average number of FTEEs that the borrower has each month during the covered period to the average number of monthly FTEEs the borrower employed during one of two base periods:

- the period from Feb. 15, 2019, to June 30, 2019; OR
- the period from Jan. 1, 2020 until Feb. 29, 2020.

Best practice: practices should calculate the number of FTEEs employed during both these periods and choose the period with the lower number of FTEEs.

The SBA guidance has required the average number of hours per employee per week be tracked and that employees who work 40 or more hours per week will count as 1.0 FTE and the hours of employees who do not work 40 hours per week will be totaled and divided by 40 and rounded to the nearest tenth.

For example, assume the following:

- Employee A: 50 hours.
- Employee B: 40 hours.
- Employee C: 20 hours.
- Employee D: 30 hours.

Employee A and B would both count as 1.0 FTE and employee C and D would be equivalent to 1.3 (20+30/40), for a total FTE count of 3.3.

Alternatively, the SBA allows the borrower to elect a simplified method that would assign a 1.0 for employees who work 40 hours or more per week and 0.5 for employees who work fewer hours. In the previous example, that would create an FTE count of 3 (1+1+0.5+0.5).

Because the PPP deals with FTEEs rather than specific individuals, whether people are hired or fired or replaced is irrelevant to the calculation. The easiest way to satisfy the 75/25 Rule is to bring the workforce back to base period levels as quickly as possible. The CARES Act has a limited exception to the forgiveness reduction that accompanies a reduction in the workforce from pre-pandemic base levels:

- If all or part of your practice's reduction in FTEEs occurred between February 15 and April 26, 2020, but by June 30, 2020 your practice eliminated the reduction in FTEEs by adding staff back, then the amount of loan forgiveness shall be determined without regard to the reduction in FTEEs that occurred between February 15 and April 26.
- Satisfying the 75/25 Rule, however, will require that a lot of the workforce be active during the eight-week covered period.
- Complete guidance for this aspect of loan forgiveness is still forthcoming, but it is unlikely to allow for scenarios in which a practice rehires staff on June 28 only to lay them off again on July 2, for example.

Salary-Related Forgiveness Reduction

Forgiveness is reduced by the amount of any reduction in total salary or wages of any employee (except employees who made more than $100,000 in 2019) during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent quarter that the employee was employed before the covered period. Unlike the total number of employees, which is based on FTEEs, this reduction looks at individual employees for whom the borrower has reduced pay.

This section of the CARES Act makes it possible for businesses to reduce wages without having to report a salary reduction, but reducing salaries would make it harder for businesses to meet the 75/25 Rule required for loan forgiveness. Salary reductions can also be eliminated by June 30, 2020 which then eliminates this reduction from the forgiveness calculation.

Applying for PPP Loan Forgiveness

As soon as practical after the covered period, a borrower must submit to the lender that is servicing the PPP loan an application for loan forgiveness, which will include:

- documentation verifying the number of **FTEEs** on payroll and pay rates for the covered period and the applicable reference period, including:
  - payroll tax filings reported to the IRS
  - state income, payroll, and unemployment insurance filings
- documentation, including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments
- a certification from the borrower that:
  - the documentation presented is true and correct
  - the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments
- any other documentation the SBA determines necessary.

The lender will have up to 60 days to issue a decision on the loan forgiveness application.

The PPP Loan Forgiveness Application can be found here:
https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf