



LOAN FORGIVENESS & PAYMENT DEFERRALS UNDER THE PAYCHECK PROTECTION PROGRAM

GNYADA DEALER WEBINARS

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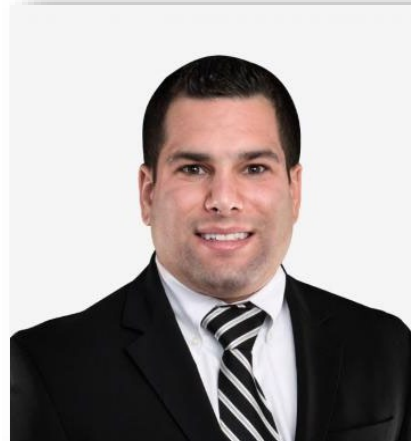
**Greater New York
Automobile Dealers
Association**

WITH US TODAY



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Disclaimer

–This presentation is provided for informational purposes only and is not intended as legal advice. Dealers should contact their lawyers and professional advisors for details about federal, state, or local laws.

PPP Forgiveness: Nuts and Bolts

- This webinar will cover:
 - Key features of the PPP Flexibility Act signed into law 6-5-2020.
 - The basics of loan forgiveness and payment deferrals
 - A variety of Questions and Answers regarding
 - Rehiring
 - Covered payroll and non-payroll expenses
 - Applying for forgiveness

PART 1

Key features of the PPP Flexibility Act

Key Features of the PPP Flexibility Act

- 1. It extends the PPP Covered Period for spending loan proceeds from June 30, 2020 to December 31, 2020.
 - NOTE:
 - For dealers that have not yet received PPP loan proceeds, the Flexibility Act does NOT extend the June 30th date for the funding PPP loans.
 - Potential Borrowers interested in receiving PPP loans, must have their applications submitted and approved before June 30th.

Key Features of the PPP Flexibility Act

- **2. It extends the Rehire/Salary Restoration Date from June 30, 2020 to December 31, 2020.**
 - Loan forgiveness is reduced if the Borrower reduces FTEs and/or the salary/wages of certain employees during the forgiveness period.
 - Such forgiveness reductions are subject to several safe-harbors, including that:
 - Borrowers can avoid forgiveness reductions if the reduction in FTEs and/or salary/wages are eliminated by the rehire/salary restoration date - December 31, 2020.
 - The Flexibility Act allows Borrowers to better manage spending/rehiring as businesses reopen after COVID-19 public health restrictions loosen.

Key Features of the PPP Flexibility Act

- **3. It extends the Forgiveness Period from 8 to 24 Weeks.**
 - The Flexibility Act extends the forgiveness period to the earlier of:
 - (i) 24 weeks after the loan disbursement date; or
 - (ii) December 31, 2020.
 - This change also allows Borrowers gradually reopening over an extended time period to have more of their loan eligible for maximum forgiveness.

Key Features of the PPP Flexibility Act

- **4. There is an option to Retain the 8 Week Forgiveness Period.**
 - Borrowers with existing PPP loans at the time of the passage of the Flexibility Act (June 5, 2020) can opt-out of the extended forgiveness period.
 - Borrowers may instead elect the original 8-week covered period from loan disbursement.
 - This flexibility was added to ensure that Borrowers are not prejudiced by the longer forgiveness period if they:
 - Maintained FTEs and salary/wage levels and spent loan proceeds over the original 8-week forgiveness period, but
 - Are not able to reopen or fully reopen, and
 - Need to reduce headcount or wages following expenditure of PPP loan funds.

Key Features of the PPP Flexibility Act

- 5. There is a new additional safe harbor exception to the FTE-based reductions in forgiveness.
 - Forgiveness will not be reduced due to a reduction in FTE headcount, if the Borrower can document in good faith that it was **EITHER**:
 - Unable to rehire those who had been employees as of 2/15/2020, and unable to hire similarly qualified employees for unfilled positions on or before 12/31/2020; **OR**
 - Unable to return to the same level of business activity that existed on 2/15/2020 due to compliance with HHS, CDC, or OSHA requirements or guidelines in effect between 3/1/2020 through 12/31/2020.

Key Features of the PPP Flexibility Act

- 6. To qualify for maximum loan forgiveness, it reduces the minimum amount that must be spent on payroll from 75% to 60% during the covered period.
 - The remaining 40% of PPP loan proceeds spent during the forgiveness period may be spent on any combination of eligible payroll and/or eligible non-payroll expenses (*i.e.*, mortgage interest, rent, or utility payments).
 - Failure to spend at least 60% of PPP loan proceeds on eligible payroll costs may result in a complete bar to forgiveness.

Key Features of the PPP Flexibility Act

– NOTE:

- The 60/40% split is being broadly interpreted as a modification to the SBA's requirement that 75% of loan proceeds be used for payroll costs.
- In addition, due to the PPP Forgiveness Application, the SBA may allow Borrowers to reduce the non-payroll costs eligible for forgiveness, in order to get to the 60% threshold (similar to how SBA handled the 75% threshold previously).

Key Features of the PPP Flexibility Act

- **7. It extends the end of the 6 month deferral period for payment of loan interest, principal and fees to the date on which the amount of forgiveness is remitted to the lender.**
 - Since this process could take 150 days from the date the Borrower applies for forgiveness, this could be a significant extension of the deferral period.
 - Despite the extended period, Borrowers will be required to begin paying principal, interest, and fees on their loans 10 months after the end of the forgiveness covered period if they fail to apply for forgiveness.

Key Features of the PPP Flexibility Act

- 8. It sets the minimum maturity date for unforgiven portions of loans issued after the enactment of the Act at 5 years.
 - Only applicable to loans made on or after the enactment of the Flexibility Act
 - Existing Borrowers can agree with their lenders to a longer maturity date.
 - This is unlike the other provisions of the Flexibility Act that apply to all PPP loans, whether made before or after the enactment of the Flexibility Act.

Key Features of the PPP Flexibility Act

- 9. It deletes the provision of the CARES Act that disallowed employers who obtain forgiveness of a PPP loan from deferring the employer portion of Social Security taxes until December 31, 2021 (for the first half) and December 31, 2022 (for the remaining half).
 - Recipients of PPP loans will be able to defer such taxes in the same manner as other businesses that do not receive PPP loans.
 - The change is effective as if included in the CARES Act.
- ***Bottom line:*** This allows for the delayed payment of employer payroll taxes.

Key Features of the PPP Flexibility Act

- **A FINAL NOTE: Additional guidance is likely forthcoming.**
 - As these provisions of the Flexibility Act directly affect existing SBA regulations, we expect that additional guidance will be forthcoming.
 - Borrowers should stay tuned, as these regulations and FAQs will continue to influence their forgiveness calculations.

PART 2

The basics of loan forgiveness and payment deferrals

Payment Forgiveness - Basics

- Principal amounts on PPP loans for the covered period from when the loan is made will be forgiven if appropriate documentation is submitted to show that the funds were expended during this period for eligible uses.
- The amount that may be forgiven cannot exceed the principal amount of the loan

Payment Forgiveness - Basics

Payroll costs include:

- Salary, wages, commissions, or tips, bonuses, hazard pay, severance allowances.
 - Capped at \$100,000 on an annualized basis for each employee (\$15,385).
- Employee benefits including those for health, retirement, and vacation.
- State and local taxes assessed on compensation (*e.g.*, state unemployment insurance tax).

Payment Forgiveness - Basics

Non-payroll costs include:

- Interest on mortgage obligations incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

Payment Forgiveness - Basics

Factors That Independently Reduce Payment Forgiveness

Any of the following three factors can impact the amount of loan forgiveness:

- 1) Reduction in the number of employees;
- 2) Reduction in employee salary for those employees that made under \$100,000 annualized for each pay period in 2019 or were hired in 2020; and/or
- 3) Failure to spend at least 60% of PPP loan proceeds on eligible payroll costs.

Payment Forgiveness - Basics

- The amount forgiven will be pro-rated if the average number of FTEs during the forgiveness period is less than the average number of FTE's during either of the following periods (the employer chooses which period to compare):
 - February 15, 2019 through June 30, 2019; or
 - January 1, 2020 to February 29, 2020.
- FTE = average number of employees you have over a given period who work at least 40 hours per week.

Payment Forgiveness - Basics

- To the extent possible, a dealer should try to have on payroll the same number of FTE's (full-time employees) during the 8- or 24-week period, as they did during whichever measuring period they choose.
- This could involve rehiring employees that have previously been let go or furloughed.
- It is permissible to hire new employees to get to the FTE number.

Payment Forgiveness

Forgiveness Reduction Based on Decrease in Salary Paid to Employees

- The amount of forgiveness will *also* be reduced by the amount of reduction in salary of any employee who earned under \$100,000 annualized for each pay period in 2019 or an employee hired in 2020, to the extent such reduction *exceeds 25%* of the employee's salary during the most recent full quarter preceding the forgiveness period.

Payment Forgiveness

Reduction in Forgiveness Based on Amount of \$\$ Spent on Non-Payroll Costs

- Payroll costs must account for at least 60% of the loan forgiveness.

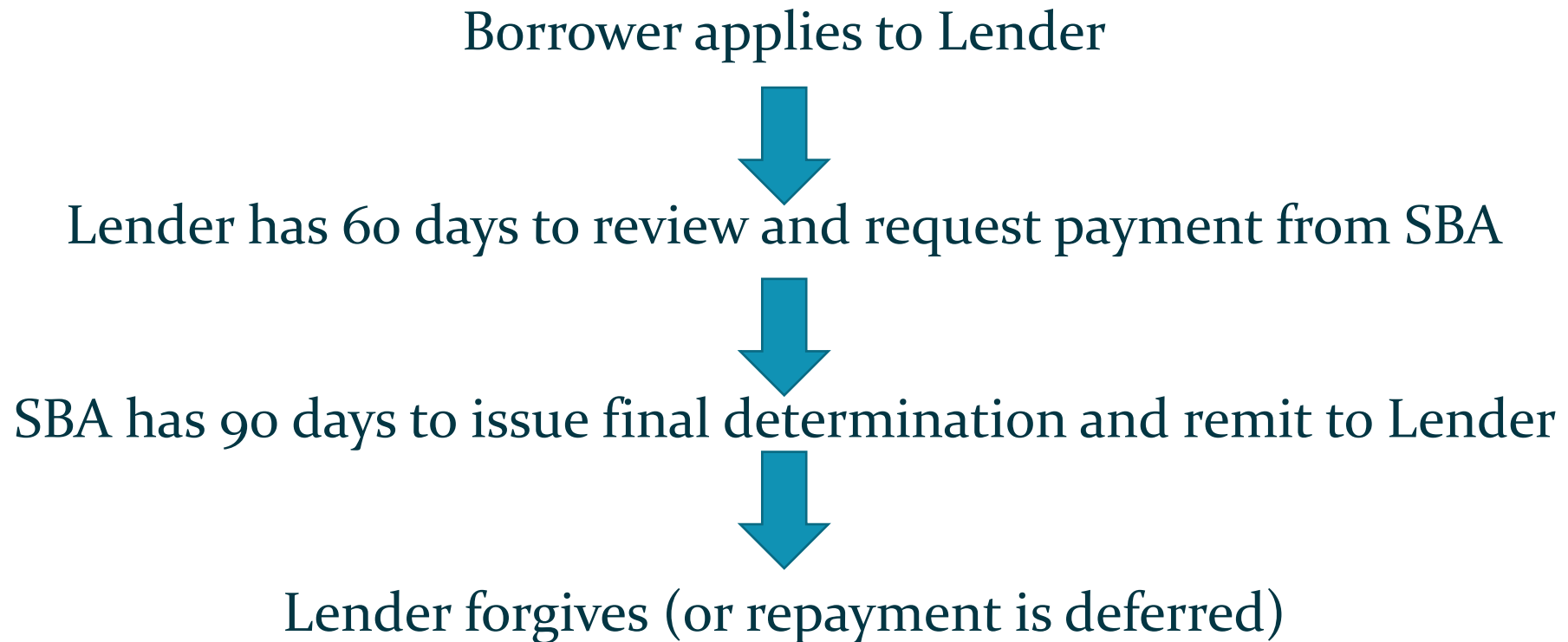
Payment Forgiveness

Businesses must apply for forgiveness

- After the forgiveness period, a business may apply for forgiveness by submitting:
 - documentation regarding the eligible uses of loan funds (federal payroll tax filings, state income, payroll and unemployment insurance filings, cancelled checks or other documents verifying payment of mortgage interest, utilities, etc.)
 - a certification that such documents are true and correct, as well the amount to be forgiven, and
 - any other documentation the SBA Administrator deems necessary
- The SBA is requiring lenders make a forgiveness determination within 60 days of submission, based primarily on the documents submitted by the borrower

Payment Forgiveness

Timeframe



Payment Deferral

- After any loan forgiveness, small businesses may defer payment of remaining principal, interest, and fee balances until the date on which the amount of forgiveness determined.
- Per the prior regulations, all payments were deferred for six months; with interest accruing during this period (this regulation was superseded by the Flexibility Act).
- The Flexibility Act sets the minimum maturity date for unforgiven portions of loans issued after the enactment of the Flexibility Act at 5 years.
- Existing borrowers can agree with their lenders to a longer maturity date which is in conformance with the Flexibility Act.

PART 3

Questions and Answers regarding:

- Rehiring
- Covered Payroll and Non-Payroll Expenses
- Applying for Forgiveness

Rehiring

- **Question:** When rehiring people, will they need to physically come to work at the dealership?
- **Answer:** No. The idea of PPP is to return people to payroll. In other words, PPP isn't really about work, it's about payroll.
 - This means employees will not have to physically return to work.
 - In fact, they do not have to perform any work at all.
 - It's contemplated that borrowers will be paying people to sit at home and do nothing.

Rehiring

- **Question:** I'm still confused. Why in the world am I rehiring people and paying them when they won't be coming to work?
- **Answer:** Think of it this way: The loan proceeds were not yours to begin with. Your dealership is acting as a pass-through for money that Congress has decided to give:
 - Primarily to your employees, and
 - Secondarily to your dealership to cover expenses.
- As long as you satisfy the requirements for forgiveness, the loan is 100% forgivable.

Rehiring

- **Question:** When my covered period ends, can I reduce salary or terminate employees without repercussion?
- **Answer:** Yes and yes. A reduction in the loan forgiveness can be avoided if reductions to employee salary or wages or FTE employees are restored by December 31, 2020. There is no prohibition, currently, on doing anything outside of the forgiveness period (either 8 or 24 weeks, respectively).

Rehiring

- **Question:** How should a dealership document rehiring an employee previously furloughed?
- **Answer:**
 1. Make all offers to rehire laid-off employees in writing;
 2. Ensure that all rehire offers be for the same salary/wages and hours previously worked;
 3. Establish a process to document acceptance or rejection of an offer to rehire; and
 4. Inform each employee that receives a rehire offer, specifically “that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.”
 5. Inform the state unemployment insurance office within 30 days of any rejection by an employee of a written offer to rehire.

Rehiring

- **Question:** If a laid off employee who is offered reemployment declines the offer, will the loan forgiveness be reduced?
- **Answer:** No, but the borrower's good faith written offer to rehire the employee must be documented, along with the employee's rejection of the offer.
 - Note that this also means the employee may be forfeiting unemployment compensation eligibility and the Borrower will have to inform the state unemployment insurance office within 30 days of such rejection.
- **KEY POINT:** Document, document, document.

Rehiring

- **Question:** I rehired an employee who I found out was sitting at home and sending out emails and posting on social internet degrading statements about the dealership. What can I do?
- **Answer:** You have every right to discipline and terminate employees as you see fit. It should be done following normal progressive discipline procedures with warnings that conduct may lead to termination.

Rehiring

- **Question:** Can a rehired employee be fired for cause during the covered period without affecting the borrower's loan forgiveness amount?
- **Answer:** Yes, but the reason for the termination should be accurately documented, no different than normal.
 - Loan forgiveness will similarly not be affected for employees who voluntarily resign or request a reduced schedule during the covered period.

Covered Payroll Expenses

- **Question:** Could a dealership pay out “Paid Leave” for the time that an employee was furloughed up until they are put back on the payroll?
- **Answer:** This could be problematic since employees have already filed unemployment applications and may have already received unemployment benefit disbursement.
 - Don’t file documents with the SBA that would contradict the existing unemployment insurance records.
 - Use PPP loan money to pay employees for their time worked from the date of employee rehire to the present, and to provide evidence to SBA of the same.

Covered Payroll Expenses

- **Question:** If a dealer previously did not cover employee health care premiums but wishes to do so during the covered period, will that count as forgivable payroll expense?
- **Answer:** Question 7 of the FAQ states that “The exclusion of compensation in excess of \$100,000 annually applies only to cash compensation, not to non-cash benefits, including:
 - “payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums” is a non-cash benefit included in the definition of “payroll costs.”

Covered Non-Payroll Expenses

- **Question:** Can PPP loan proceeds be used for floorplan?
- **Answer:** Possibly, for vehicles on floorplan prior to Feb 15th. For those vehicles floored after that date, since the definition of a “covered mortgage obligation” in the CARES Act explicitly states that debt instrument must have been incurred before February 15, 2020, it is unlikely floorplan interest can meet this definition.
- The FAQs, the application, and the Regulations do not provide any clarity on this topic and we await further guidance on this issue.

Applying for Forgiveness

- **Question:** What can reduce the amount of forgiveness?
- **Answer:** During the 8-week or 24-week period:
 - 1. The employee head count is reduced;
 - 2. Employee pay is reduced; and/or
 - 3. More than 60% of the loan proceeds are used for expenses unrelated to payroll costs.

Applying for Forgiveness

- **Question:** What if I apply for loan forgiveness and I'm not approved?
- **Answer:** Then you will have to repay the loan. Your outstanding balance will continue to accrue interest at 1⁰% for the remainder of the two-year period.
 - Note: Current Borrowers can agree with their lender to extend the maturity of their loan to 5 years following the passage of the Flexibility Act.

Applying for Forgiveness

- **Question:** What is the covered period for a loan?
- **Answer:** For payroll expenses, a borrower can choose either the:
 - Covered Period: The earlier of 24 weeks (168 days) from the day the PPP loan proceeds were received or December 31, 2020, whichever is earlier.
 - e.g. Loan disbursed Monday, April 20. Last day of CP is deemed Monday, October 5.
 - Alternative Covered Period: For borrowers with weekly or biweekly payroll, 24 weeks can begin on “the first day of its first pay period following its PPP loan disbursement.”
 - e.g. Loan disbursed Monday, April 20.
 - First day of weekly pay period is Sunday, April 26, which can be considered 1st day.
 - Last day of ACP is deemed Sunday, October 11.
 - NOTE: Borrowers can still choose either the 8-week Covered Period or Alternative Covered Period.

Applying for Forgiveness

Excerpt from page 3/11 of the forgiveness application:

Payroll Schedule: The frequency with which payroll is paid to employees is:

☐ **Weekly** ☐ **Biweekly** (every other week) ☐ **Twice a month** ☐ **Monthly** ☐ **Other**

Covered Period: _____ to _____

Alternative Payroll Covered Period, if applicable: _____ to _____

NOTE: This eliminates the difference between cash basis and accrual basis accounting.

Applying for Forgiveness

- **Question:** Does the Alternative Covered Period apply to forgivable non-payroll expenses?
- **Answer:** No. Non-payroll costs such as covered mortgage obligations, rent obligations, and utility payments must be paid either:
 - During the Covered Period; or
 - Incurred during the Covered Period and paid on or before the next regular billing date (even if that date is after the Covered Period).

***NOTE:** This means there will be two measurement periods when Alternative Covered Period is chosen by the borrower for payroll.*

Applying for Forgiveness

- **Question:** Does choosing the Alternative Covered Period change the payroll costs that can be included?
- **Answer:** No. Either choice does not change what was stated in the CARES Act, namely that the following payroll costs are forgivable; again, namely:
 - Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee).
 - Employee benefits including those for health, retirement, and vacation.
 - State and local taxes assessed on compensations.

Applying for Forgiveness

- **Question:** Do payroll costs have to be paid by the last day of the Covered Period or Alternative Covered Period?
- **Answer:** No. Payroll costs incurred but not paid during a borrower's last pay period of the Covered Period or the Alternative Covered Period are eligible for forgiveness, if paid on or before the next regular payroll date.



Applying for Forgiveness

- **Question:** Can or should payroll expenses be voluntarily prepaid?
- **Answer:** Expenses should not be prepaid.
 - Maintain normal payroll periods.
 - Remember, there is flexibility for the payment of expenses incurred within the covered period – they can be paid at the next pay date.

Applying for Forgiveness

- **Question:** Should dealers try to use as much of the forgiveness money as possible for payroll costs?
- **Answer:** Absolutely. The more spent on payroll above and beyond the 60% payroll costs the better as it's easier to obtain forgiveness. Remember, the focus on PPP is payroll.

Applying for Forgiveness

- **Question:** Is there a cash cap on compensation paid to an employee?
- **Answer:** Under the CARES act there is cap of \$100,000 of compensation paid to an employee during the (former, now optional) 8-week forgiveness period (\$15,385). The SBA FAQ specifies, and the Forgiveness Application ratifies, that the cap only applies to a subset of payroll costs:
 - Gross salary, gross wages, gross tips, gross commissions
 - Paid leave such as vacation, family medical or sick leave
 - Allowance for dismissal and separation.
- The cap does not apply to:
 - Employer contributions to health insurance and retirement plans
 - Employer state & local taxes on employee compensation (e.g. state unemployment ins. tax).

Applying for Forgiveness

- **Question:** Is there a cap on the amount of forgiveness for owner-employees?
- **Answer:** Yes. For those individuals, “payroll compensation can be no more than the lesser of:”
 - 8/52 of compensation in 2019 (roughly 15.38%) or
 - \$15,385, which must be “per individual in total across all businesses.”

Applying for Forgiveness

- **Question:** With the PPP program essentially rewarding employees for not coming to work, is there any restriction on paying bonuses to employees who actually have been doing work? Will using PPP money for this purpose affect forgiveness, and can using non-PPP money to pay the bonus impact forgiveness?
- **Answer:** Section 3b of the Regulations confirms that “Salary, wages, or commission payments to furloughed workers; bonuses; or hazard pay during the covered period” are eligible for loan forgiveness.
 - If paid to employees during the covered period, they are eligible for forgiveness “as long as they do not exceed an annual salary of \$100,000, as prorated for the covered period.”

Applying for Forgiveness

- **Question:** How does the application define a FTE?
- **Answer:** Under the application, it is any employee working a minimum of 40 hours per week or a group of employees who accumulate 40 hours.
 - **NOTE:** This is a change from the Affordable Care Act, which classifies an FTE as working 30 hours.

Applying for Forgiveness

- **Question:** Is there guidance for calculating the number of employees?
- **Answer:** Yes. The regulations specify the following:
 - For FTEs, divide the average number of hours paid for each employee per week by 40, capping this quotient at 1.0.
 - For part-time employees, select one of two methods to count all such employees and apply it consistently:
 - Use their actual hours worked based on the foregoing formula and round to the nearest tenth (capped at 1.0); or
 - Count each employee working 40 hours or greater as 1.0, and each employee working fewer than 40 hours as 0.5.

Applying for Forgiveness

- **Question:** What are the rules for rehiring and restoration of salary exemption?
- **Answer:** Rehire and restore salary from Q1 prior to December 31, 2020 (formerly June 30).
 - Rehiring is not tethered to the forgiveness covered period so long as other FTE requirements are met. If a dealer's forgiveness period ends prior to December 31, there would be no forgiveness reduction as long as employees are rehired by December 31.
 - Note: If a Borrower sticks with their original 8-week forgiveness period and hires back by June 30, 2020, they would still meet this safe harbor.

Applying for Forgiveness

- **Question:** Does hiring new employees during the covered period have an impact on the salary reduction exemption and how is the exemption calculated?
- **Answer:** Yes. For new employees hired in 2020 and existing employees not paid more than the annualized equivalent of \$100,000 in any pay period in 2019, perform the following reduction calculation per employee (not in the aggregate):
 - For wages paid January 1, 2020 through March 31, 2020, “reduce the total forgiveness amount by the total dollar amount of the salary or wage reductions that are in excess of 25 percent of base salary or wages.”

NOTE: This is “subject to exceptions for borrowers who restore reduced wages or salaries.”

Applying for Forgiveness

- **Question:** To be clear, which employees cannot be considered for the salary reduction rules to reduce loan forgiveness?
- **Answer:** Any employee except:
 - Owner-employees, self-employed individuals and partners; and
 - Employees whose annualized salaries for any 2019 pay period were > \$100,000.00.

Applying for Forgiveness

- **Question:** Are there any provisions to reduce or eliminate the impact of the FTE calculation?
- **Answer:** Yes, there are three safe harbors.
 - One which removes from the calculation any employee who refused a qualified offer of employment for the same hours and pay, and no replacement employee was hired.
 - Employer had reduced FTEs for period 2/15/2020 to 4/26/2020 compared to FTEs on 2/15/2020 and then restores FTE level back to 2/15/2020 by 12/31/2020.
 - Lastly, employees who are fired for cause, voluntarily resign, or voluntarily request and receive a reduction in hours, are exempt from the FTE calculation.

Applying for Forgiveness

- **Question:** What documentation is required to be submitted for payroll?
- **Answer:** The application contains a list of documents that should be submitted and kept for 6 years for audit purposes. For payroll, this includes “Documents verifying the eligible cash compensation and non-cash benefit payments” during the CP or the ACP including:
 - Bank account statements / payroll provider info documenting payments
 - Tax forms from timeframes that overlap with the CP or the ACP
 - Form 941, and state quarterly business and individual employee wage reporting as well as unemployment insurance tax filings
 - Payment receipts, cancelled checks, or statements that document employer contributions to employee health insurance and retirement plans included in the forgiveness amount.

Applying for Forgiveness

- **Question:** Is there specific documentation that should be kept for the FTE calculation?
- **Answer:** Yes. Documentation showing:
 - Average number of FTEs on payroll per month employed between 2/15/2019 and 6/30/2019; or
 - Average number of FTEs on payroll per month between 1/1/2020 and 2/29/2020.

Applying for Forgiveness

- **Question:** What documents should be kept for non-payroll?
- **Answer:** For non-payroll expenses, “Documentation verifying the existence of the obligations/services prior to 2/15/2020 and eligible payments” from the CP:
 - Business mortgage interest payments
 - Business rent or lease payments
 - Business utility payments.

Audience Q & A

Questions?

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