



CARES ACT 101 FOR FISHERIES, AQUACULTURE, AND SEAFOOD BUSINESSES: PART 3

National Sea Grant Law Center
Informational Webinar
May 7, 2020



THE UNIVERSITY of
MISSISSIPPI
SCHOOL OF LAW

Webinar Overview

- Introduction & Background
- PPP Loan Forgiveness
- Employee Considerations re: Return to Work
- Tax Consequences
- Questions and Answers

Who We Are

- One of 34 Sea Grant Programs
- Based at the University of Mississippi School of Law
- Established to provide non-advocacy legal research, outreach, and education services to Sea Grant network.



The screenshot shows the website for The National Sea Grant Law Center. The header features the Sea Grant Law Center logo and the University of Mississippi School of Law logo. Below the header is a navigation menu with buttons for Home, About Us, Our Work, Advisory, Publications, Projects, Funding, Legal Network, Blog, News, and a Search bar. The main content area is titled "COVID-19 Resources" and includes a breadcrumb trail: Home > COVID-19 Resources. A large image of a coronavirus particle is displayed. To the right of the image is a "Contact Us" box with the text: "Have questions or comments about the National Sea Grant Law Center? Feel free to contact us!" and contact information: "Call or fax us at: 662-915-7775, 662-915-5267 (fax)". Below the image, there are two paragraphs of text. The first paragraph states: "The COVID-19 pandemic is disrupting our personal lives and businesses in unprecedented ways. The U.S. Congress responded by passing the CARES Act, a \$2 trillion economic stabilization package, to provide relief to affected individuals and businesses." The second paragraph states: "The National Sea Grant Law Center, in partnership with the Mississippi-Alabama Sea Grant Legal Program, created this webpage to serve as a clearinghouse of reliable information on CARES Act programs and other issues associated with COVID-19 for the fishing, aquaculture, and seafood industries. This page is updated frequently as questions are received and resources come online."

<http://nsglc.olemiss.edu/covid19>

General Updates

- PPP applications still being accepted according to SBA website.
- PPP safe harbor time period extended until May 14.
- SBA is accepting EIDL applications from eligible agricultural businesses with less than 500 employees. [Aquaculture included.](#)
- USDA announced plans to purchase \$470 million in food for distribution.
 - \$30 million for catfish; [\\$20 million for Alaska pollock; \\$20 million for Atlantic pollock, haddock, and redfish.](#)
 - Purchases made through RFP process from approved vendors.

PAYCHECK PROTECTION PROGRAM (PPP) LOANS

THINGS TO REMEMBER

- The loans are meant to keep businesses running and maintain payroll, not expand operations.
- The loans cover an 8-week period, known as the “covered loan period.”
- PPP loans have very favorable terms.
 - No payments for 6 months.
 - 1% interest rate. Interest will accrue during the deferment period.
 - Maturity date of 2 years.
- A recipient does not have to spend the entire loan.
- A loan recipient must make multiple certifications, including:
 - “The funds will be used to retain workers, maintain payroll, make mortgage interest payments, lease payments, and utility payments. I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.”
 - “Applicant will provide to the Lender documentation verifying” how loan was spent at the end of the covered loan period.

PPP LOAN FORGIVENESS

WHAT IMPACTS THE FORGIVENESS AMOUNT?

According to SBA guidance, the amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest.

- To maximize forgiveness, at least 75% must be spent on payroll costs.
 - No more than 25% of the forgivable loan amount can be spent on mortgage interest, rent, and utilities related to the business and entered into before February 15, 2020.
- Proceeds from any advance up to \$10,000 on an EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels.
 - Forgiveness will be reduced if **full-time** headcount declines.
 - Reminder: Independent Contractors do not count as employees.
 - Forgiveness will be reduced if salaries decrease by more than 25% for an employee.
 - Does not apply to employees who made more than a pro rata amount equal to \$100,000 in a single pay period.

PPP LOAN FORGIVENESS

SELF-EMPLOYED INDIVIDUALS

The SBA stated in an April 14 Interim Rule has stated that the following can be forgiven for self-employed individuals. *Note that mortgage interest, rent, and utility payments must all be eligible business expenses that are deductible on Form 1040 Schedule C in order to be forgiven.*

- Payroll costs including salary, wages, and tips (up to \$100,000 per employee), as well as covered benefits including health care expenses, retirement contributions, and state taxes imposed on employee payroll paid by the employer;
- Mortgage interest payments on real or personal property incurred before February 15, 2020;
- Owner compensation replacement, which is limited to 8 weeks of 2019 net profit (2019 IRS Form 1040 Schedule C line 31);
- Rent payments on any lease agreement entered into before February 15, 2020; and
- Utility payments under service agreements dated before February 15, 2020.

PPP LOAN FORGIVENESS DOCUMENTATION

After the 8-week covered loan period for its PPP loan, a business can submit an application with their lender for loan forgiveness. Required documents include:

- Documents verifying the # of full-time employees and their pay rates for applicable time period.
- Documents showing payments on allowable mortgage interest, leases and utilities.
- Certification from an authorized representative of the business that:
 - The documents are true and correct and
 - Amounts for which forgiveness is requested were used for payroll, mortgage interest, rental and utility payments.
- Other documentation determined by the SBA.
 - *May see things added here as SBA issues guidance.*

A Lender does not need to conduct any verification if the borrower submits documentation supporting its request for loan forgiveness and attests that it has accurately verified the payments for eligible costs.

- But, the SBA has decided that it will review all loans in excess of \$2 million, *in addition to other loans as appropriate*, when the lender submits the borrower's loan forgiveness application to SBA.

PPP LOAN FORGIVENESS

RELEVANT TIME PERIODS

The amount of forgiveness of a PPP loan depends on the borrower's payroll costs over an eight-week period.
When does that eight-week period begin?

- The eight-week period begins on the date the lender makes the first disbursement of the PPP loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

What time period is used to make the employee reduction calculations?

The pre-pandemic time period used to determine the number of full-time equivalent employees is either:

- January 1, 2020 to February 29, 2020, or
- February 15, 2019 to June 30, 2019.
 - *The business owner can choose either time period.*

For **Seasonal Employers**, the CARES Act specifies that the time period is February 15, 2019 to June 30, 2019.

- SBA Interim Rule allows seasonal employers to use any consecutive 12-week period between May 1, 2019 and September 15, 2019 to calculate their PPP loan amount.
- Need to stay tuned to see how the SBA will reconcile these two set of dates.

PPP LOAN FORGIVENESS

EMPLOYEE RETENTION HYPOTHETICAL

A small business receives a PPP loan of \$60,000. Prior to the pandemic, it had 10 full-time employees. During its 8-week covered loan period, the business only retained or brought back 7 employees.

75% Payroll Cost Rule (applies from PPP loan funding for 8 weeks)

Total PPP Loan = \$60,000

Amount spent on payroll costs = \$30,000

Amount spent on rent = \$4,000

Amount spent on utilities = \$2,000

Total Amount Spent = \$36,000

Payroll costs of \$30,000 represent 83% of the total qualifying expenses (\$36,000) to be requested.

- As a result, there is no need to reduce the forgiveness request based on the 75% payroll cost rule.

Non-payroll costs amount for 17% of the forgivable loan amount.

- If non-payroll costs exceeded 25%, then the forgiveness request is reduced until less than 25% of the forgivable amount is qualifying non-payroll costs.

PPP LOAN FORGIVENESS

EMPLOYEE RETENTION HYPOTHETICAL, CONT'D

Even though the small business had a PPP loan of \$60,000, they only spent \$36,000 on qualifying expenses. They met the 75% payroll cost rule and the entire \$36,000 is eligible for forgiveness.

- ***But we still need to apply the full-time equivalent employee rule!***

Full-time equivalent employees after PPP funding (8-week covered loan period) = 7

Full-time equivalent employees pre-pandemic = 10

Ratio of Employees Retained (amount eligible for forgiveness) = 7/10 or 70%

The \$36,000 eligible forgiveness amount must be multiplied by 70% due to the *full-time equivalent employee rule* - this gives us the the final amount eligible for forgiveness.

- $\$36,000 \times .70 = \$25,200$
- Eligible forgiveness amount is \$25,200
- Business must return \$34,800 to the lending institution. Amount must be repaid within 2 years at a 1% interest rate.

PPP LOAN FORGIVENESS

EMPLOYEE RETENTION HYPOTHETICAL, CONT'D

Before the pandemic, the small business had 10 employees. It laid-off 3 of those employees on February 20, 2020. The business's 8-week covered loan period ended on June 5. It hires 3 employees on June 15, bringing its number of employees back up to 10.

Is the business's PPP loan forgiveness amount still reduced?

No, due to an exception in the CARES Act.

- The exception applies to businesses that had reduced their workforce from February 15, 2020 to April 26, 2020 (30 days after passage of the CARES Act).
- Under this provision, a business can avoid the forgiveness reduction for having a reduced workforce over the eight week period so long as they have the same number of employees by June 30, 2020 that they had on February 15, 2020.

PPP LOAN FORGIVENESS

EMPLOYEE RETENTION HYPOTHETICAL, CONT'D

Before the pandemic, the small business had 10 employees. It laid-off 3 of those employees on February 20, 2020. The business's 8-week covered loan period ended on June 2. It tried to re-hire the 3 laid-off employees on April 8th when it gets its PPP, but they refused. Their number of employees remains at 7 for the duration of their covered loan period.

Is the business's PPP loan forgiveness amount reduced?

No. The CARES Act gave the SBA the authority to establish de minimis exceptions to the limits on loan forgiveness under the Act. On May 3 in its PPP FAQ document, the SBA indicated they would be issuing an interim rule using this provision to help businesses who attempt to rehire employees.

- The interim rule will exclude laid-off employees whom the borrower offered to rehire from the CARES Act's loan forgiveness reduction calculation.
- Offer must be for the same salary/wages and same number of hours.
- The business must have made a good faith, written offer to rehire, and the employee's rejection of that offer must be documented by the borrower.
- Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.

UNEMPLOYMENT BENEFITS & RETURNING TO WORK

If a workplace reopens following a COVID-19 shutdown, can employees continue to receive CARES Act benefits?

- As long as eligibility requirements under the CARES Act are met, employees may continue to receive unemployment benefits. These requirements may include:
 - If you have tested positive for COVID-19;
 - If a member of your household has been diagnosed with COVID-19;
 - If you are providing care for a member of your household who was diagnosed with COVID-19;
 - If you do not have childcare due to COVID-19;
 - If you are unable to reach your place of employment due to an imposed quarantine, or because advised by medical provider to self-quarantine due to COVID-19.
- States may have identified special return-to-work timelines for vulnerable individuals, such as those over the age of 65 or those with medical conditions. Check with your state labor department and EEOC guidance.
- Employers must meet Occupational Safety and Health Act (OSHA) requirements.

UNEMPLOYMENT BENEFITS & RETURNING TO WORK

What are potential repercussions for not returning to work if there are no COVID-19 related reasons?

- A state may consider that you have voluntarily quit your job and you will no longer be eligible for unemployment benefits.
- If you continue to collect unemployment benefits, the state may determine that you have made fraudulent unemployment claims. You will likely be required to pay back the benefits. You may be subject to criminal prosecution under federal law.

EMPLOYER CONSIDERATIONS FOR RETURNING EMPLOYEES

What steps should an employer take to ensure employee health and safety?

- Establish safety protocols to provide a safe working environment for employees returning to work. These may be related to social distancing, sanitation, temperature checks, personal protective equipment, and the promotion of healthy hygiene practices. Be sure to check:
 - State or local recommendations or laws regarding protocols, such as requirements for masks or face coverings.
 - OSHA's Guidance on Preparing Workplaces for COVID-19.
<https://www.osha.gov/Publications/OSHA3990.pdf>
 - CDC's recommendations for policies and practices for businesses and employers.
<https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>
 - EEOC's information on compliance on the ADA and other federal laws following COVID-19.
<https://www.eeoc.gov/coronavirus/>
- Be flexible with employees returning to work.

THE ADA & COVID-19

What steps can an employer take to ensure employee health and safety?

- Medical inquiries and testing
 - Employers may administer COVID-19 testing or screening to employees before they return to work. All medical information must remain confidential.
 - COVID-19 testing must be accurate and reliable under FDA, CDC, and other public health authority guidance.
 - Temperature screening is permissible.
 - You may ask screening questions, such as whether they have symptoms or have been tested.
 - For more information: <https://www.eeoc.gov/coronavirus/>
- Employers may exclude individuals with COVID-19 or COVID-19 symptoms, or those who refuse to answer health questions or submit to testing from the workplace.
- Reasonable accommodations for individuals with disabilities during a pandemic.

TAX CONSEQUENCES OF PPP LOANS

- CARES Act § 1106(i): Income associated with forgiveness of PPP loan is excluded from recipient's gross income
- Recipient of PPP loan may not claim deduction for payment of eligible expenses if loan is subsequently forgiven.
 - Businesses are normally allowed to deduct "ordinary and necessary" business expenses. Eligible expenses generally include employee wages, retirement plans, rent, interest, insurance.
- To learn more, visit <https://www.irs.gov/pub/irs-drop/n-20-32.pdf>

HYPOTHETICAL #1

Company A successfully obtained a PPP loan of \$100,000. It spends \$80,000 on salaries and wages, and the remaining \$20,000 on rent and utilities.

How much of the PPP loan must Company A include in its gross income on Company A's tax return? All expenses are forgivable, so \$0.

How much of the payments made for salaries/wage and utilities/mortgage may Company A claim as deductible? \$0, as those expenses were paid through the forgiven loan.

HYPOTHETICAL #2

Company B obtained a PPP loan of \$100,000. It spends \$75,000 on salaries and wages, \$15,000 on utilities and paying off the interest on its mortgage, and \$10,000 on paying back interest on a pre-existing debt obligation (which is allowable but not forgivable).

How much of the PPP loan must Company B include in its gross income on Company B's tax return? \$0. Loans are not taxable income, and the CARES Act excludes the amount forgiven.

How much of the payments made with the PPP loan money may Company B claim as deductions? \$10,000. Businesses can claim expenses paid with portion of PPP loan that is not forgiven.



Questions?

Please type your question into the Chat window.

Contact Us

sshowalt@olemiss.edu



THE UNIVERSITY of
MISSISSIPPI
SCHOOL OF LAW