



# COVID-19 WEBINAR SERIES:

## PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

National Sea Grant Law Center  
Informational Webinar  
July 22, 2020



THE UNIVERSITY of  
**MISSISSIPPI**  
SCHOOL OF LAW

# Webinar Overview

- Introduction & Background
  - Review of May PPP webinar
- General Updates
- PPP Loan Forgiveness
  - Changes since May 27<sup>th</sup> webinar
  - Calculating Loan Forgiveness
  - Documentation
- SBA 7(a) Loans
- Q&A

# 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.

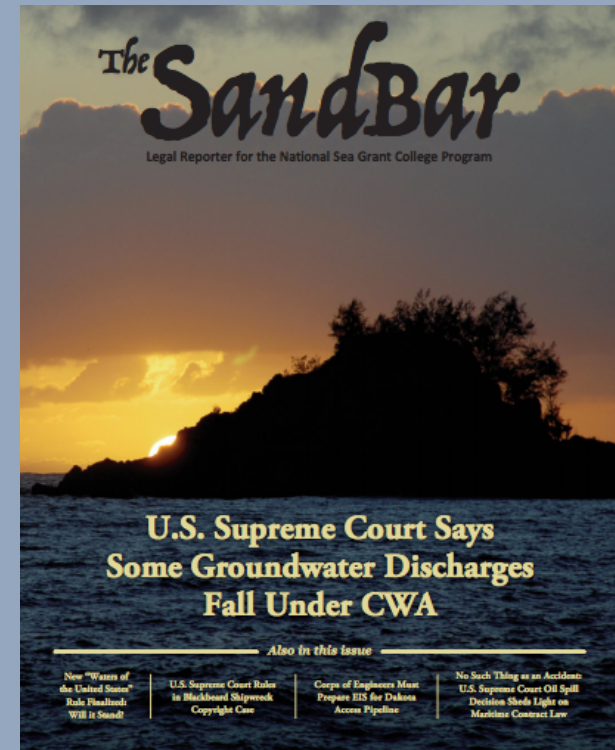


The screenshot shows the website for The National Sea Grant Law Center. The header features the Sea Grant Law Center logo and the University of Mississippi School of Law logo. Below the header is a navigation menu with buttons for Home, About Us, Our Work, Advisory, Publications, Projects, Funding, Legal 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>

# NSGLC Updates

- Hired COVID-19 Content Manager and Research Assistants.
  - 20 new blog posts on variety of topics: PPP, workplace safety, insurance, evictions.
- Don't forgot to follow us on Twitter and Facebook!
  - @SGLawCenter // facebook.com/nsglc
- New information on COVID-19 Resources webpage:
  - Workplace Safety webinar video added
- New July 2020 Publications:
  - The Sandbar
    - Quarterly newsletter
  - Ocean and Coastal Case Alert
    - Brief case summaries organized state/court district. Released on the 15<sup>th</sup> of each month.



# PPP Updates (since May 27)

NSGLC's May 27<sup>th</sup> webinar on the CARES Act:  
<http://nsglc.olemiss.edu/covid19/files/caresact-updates.pdf>

- June 5 passage of the PPP Flexibility Act
- June 16 new loan forgiveness applications released, including EZ loan forgiveness application
- July 4 reauthorization and extension of the PPP Act
  - Applications accepted until August 8, 2020.
- SBA Rule clarification for fishing boat captains using independent contractor crew.

# PPP Loans - Changes for Fishing Captains

- Generally, employers cannot include payments to independent contractors in their PPP loan applications or forgiveness amounts.
- New SBA Rule: Captains can include independent contractors if:
  - paid the crew a share of the proceeds of the catch,
  - employ no more than 10 crew, and
  - reported the salaries to the IRS for tax purposes.
- If an independent contractor crew member also received a PPP loan, the captain cannot seek loan forgiveness for payments to the independent contractor.
  - **Burden on boat captain to know what crew members received PPP loans.**
  - Because of this, SBA has indicated PPP loans to fishing boat owners are more likely to be subject to an SBA loan review.

# PAYCHECK PROTECTION PROGRAM (PPP) FLEXIBILITY ACT

- Changes the covered loan period for businesses from 8 weeks to the earlier of:
  - 24 weeks *or* Dec. 31, 2020.
  - *Borrowers who already have loans can choose to retain their 8-week covered loan period.*
- Changes the 75% payroll requirement to 60%.
  - In order to maximize forgiveness, a business must spend at least 60% of loan on payroll costs.
  - *Eligible and forgivable expenses are not changed by the Act.*
  - Non-payroll business costs which began before Feb. 15, 2020 cannot exceed 40% of forgivable amount: Mortgage interest payments (not pre-payments), Lease payments & Utility bills
- Loans disbursed after June 5, 2020 will have a 5 year maturity date.
  - Act allows lender and borrower to extend the loan's 2-year terms for loans disbursed before this date.
- Employee retention and salary reduction safe harbor provisions extended from June 30, 2020 to Dec. 31, 2020.
  - Provides new safe harbor for businesses who are unable to return to their Feb. 15, 2020 level of business activity due to compliance with federal guidance on worker/customer safety related to COVID-19.

# PAYCHECK PROTECTION PROGRAM (PPP) OVERVIEW

## (AS OF JULY 22, 2020)

- Applications will be accepted until August 8, 2020.
- Business must have been operating on 2/15/2020, have <500 employees, and been affected by COVID-19. Includes small non-profits, sole proprietors, independent contractors, eligible self-employed individuals.
- Loans made before June 5, 2020 are for 2 years with a 1% interest rate. Borrowers can choose between an 8 or 24-week covered loan period.
- Loans made after June 5, 2020 are for 5 years with a 1% interest rate. Covered loan period is 24-weeks.
- Loan Forgiveness – After the covered loan period, a business can request for all or part of the loan to be forgiven.
  - Forgiveness will be reduced if full-time employees or salary and wages decrease during covered loan period.
  - Up to 40% of the forgiven amount can be for non-payroll costs.



# PPP Loan Forgiveness Review FAQ

How does a borrower get their loan forgiven?

- Borrowers must submit a loan forgiveness application to their lender within 10 months of the end of their loan, or Dec. 31, 2020 (whichever is earlier)
- Borrowers must calculate the loan forgiveness amount and provide documentation (on SBA website, discussed below)
- Payments on loan deferred until decision on loan forgiveness is made.

What happens if a business does not submit an application?

- If a business does not submit a loan forgiveness application within 10 months after the end of its loan covered period, it must begin paying principal and interest after that 10-month period.

# PPP EZ Loan Forgiveness Application

## What is the EZ Loan Forgiveness Application?

- The EZ Loan Forgiveness Application is a shortened application form with fewer calculations and documentation requirements that is only available to certain borrowers.

## Who is eligible for EZ Loan Forgiveness?

- Borrowers who are self-employed and have no employees;
- Borrowers did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; or
- Borrowers who experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

# PPP Loan Forgiveness Review Process

## What is the review process?

- Lenders have 60 days to review an application for forgiveness.
- Once it receives an application, the SBA has 90 days to review the application.
- *Borrowers may not know for 5 months if their loan is forgiven.*
  - However, businesses will not have to make any payments of principal or interest until SBA responds.

## What happens if forgiveness is denied?

- Loans must be repaid within 2 or 5 years at a 1% interest rate.

# PPP Loan Forgiveness:

## What Impacts the Forgiveness Amount?

- To maximize forgiveness, at least 60% must be spent on payroll costs.
  - No more than 40% 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.
    - 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.

# Payroll Costs: FTE

- How does a business calculate its number of full-time employees (FTE)?
  - SBA has determined that an FTE is an employee who works 40 hours a week.
- The CARES Act directs that FTE employees should be averaged for each pay period falling within a month.
- A borrower must calculate the average weekly FTE employees it had during the covered period or alternative payroll covered period as compared to a reference period.
  - Reference Periods can be:
    - February 15, 2019 through June 30, 2019; or
    - January 1, 2020 through February 29, 2020.
    - Seasonal employers can use any consecutive 12-week period between May 1, 2019 and September 15, 2019.

# Payroll Costs: Calculating FTE

- How do businesses calculate part-time employee hours?
  - Method 1: Divide the average number of hours paid for each employee per week during the covered period by 40, capping this quotient at 1.0.
  - Method 2: Use 1.0 for all employees who work 40 hours or more per week. Use 0.5 for all employees who work less than 40 hours per week.

# Payroll Costs: Calculating FTE

- Example: Coastal Company has 3 employees, and it is trying to determine what FTE calculation method to use.
  - Employee #1 works 48 hours per week.
  - Employee #2 works 30 hours per week,
  - Employee #3 works 5 hours per week.

- Method 1: Total FTE = 1.875.
- Employee #1 works 48 hours:  $48/40 = 1.2$ , capped at 1.0 FTE
- Employee #2 works 30 hours:  $30/40 = .75$  FTE
- Employee #3 works 5 hours:  $5/40 = .125$  FTE

Method 2: Total FTE = 2.

- Employee #1 works 40 hours or more = 1.0 FTE
- Employee #2 works less than 40 hours = .5 FTE
- Employee #3 works less than 40 hours = .5 FTE

# Payroll Costs: FTE Reductions

- What happens if a business has less FTE during the covered period than the reference period?
  - The loan forgiveness amount will be reduced proportionally with this formula:
    - $\text{Loan forgiveness amount} \times (\text{Avg. FTE per month loan period} / \text{Avg. FTE per month reference period})$
- **Example:** Coastal Company has a loan forgiveness amount of \$36,000. It had 4 employees during reference period, but during the covered period, only has 2 employees.
  - $\$36,000 \times (2/4) = \$18,000$  new loan forgiveness amount
- **Exception:** The CARES Act includes a safe harbor provision that allows a business to avoid the forgiveness reduction for layoffs between Feb. 15, 2020 and April 26, 2020 so long as the business has the same number of employees by December 31, 2020 that they had on February 15, 2020.
  - *The same employees do not need to be hired back.*



# Payroll Costs: Wage Reductions

- The CARES Act requires loan forgiveness amounts to be reduced if the salary or wages of employees have been reduced by more than 25%. The purpose of this provision is to keep people at pre- pandemic wages.
- Applies on a per employee basis and to two categories of employees:
  - New employees hired in 2020; and
  - Existing employees who were not paid more than the annualized equivalent of \$100,000 in any 2019 pay period.
- *Does not apply to employees who made more than a pro rata amount equal to \$100,000 in a single pay period.*
- If the 25% limit is exceeded for an applicable employee, loan forgiveness amount will be reduced by the total dollar amount of the salary or wage reductions that exceed 25% of base salary or wages during the reference period: January 1, 2020 and March 31, 2020.
- The Loan Forgiveness Safe Harbor Provision also applies to reductions in salary if a business reduced salaries or wages from February 15, 2020 to April 26, 2020. A business can avoid the forgiveness reduction so long as the business restores salary or wage amounts by December 31, 2020 to the amounts in existence on February 15, 2020.

# Payroll Costs: Wage Reductions

- **Example:** During its reference period of January 1, 2020 and March 31, 2020, the Coastal Company paid Employee #1 (Sally) \$1,200 per week. Due to COVID-19, the Coastal Company had to reduce Sally's wages to \$800 per week during its alternative payroll covered period. Her hours remained the same and she still qualified as a 1.0 FTE. 25% of Sally's reference period wages is \$300. Sally's wages were reduced \$400 per week from the reference period to the cover period ( $\$1,200 - \$800 = \$400$ ).
  - This reduction exceeds the 25% threshold.
  - Coastal Company must reduce its loan forgiveness amount by \$100 - the amount of the reduction over the 25% threshold ( $\$400 - \$300 = \$100$ ) - for 8 weeks.
  - The total loan forgiveness reduction due to the reduction of Sally's wages = \$800.
- **Exception:** The Loan Forgiveness Safe Harbor Provision also applies to reductions in salary if a business reduced salaries or wages from February 15, 2020 to April 26, 2020 (30 days after passage of the CARES Act).
  - A business can avoid the forgiveness reduction so long as the business restores salary or wage amounts by December 31, 2020 to the amounts in existence on February 15, 2020.

# Payroll Costs: Reductions

- How do the FTE and salary/wage loan forgiveness reductions work together?
  - The SBA has determined that the salary/wage loan forgiveness reduction will only apply to reductions that are not attributable to FTE reductions in order to not doubly penalize small businesses.
  - **Example:**
    - Sally works 48 hours and makes \$1,200 a week during the Coastal Company's reference period. This makes her a 1.0 FTE employee. On April 1, 2020, the company reduces her hours and salary to 40 hours and \$800 a week. Her FTE remains 1.0.
      - *The FTE reduction does not apply, meaning the \$800 salary reduction would apply.*
    - However, if the Coastal Company reduced Sally's hours and salary to 35 hours and \$800 a week, the calculation would change. Sally is now a FTE 0.5 under Method #2.
      - The change in FTE status under Method #2 changes the reduction formula:
        - [Forgiveness amount] x [Current FTE / FTE during reference period]
        - $\$36,000 \times (1.5/4) = \$13,500$  loan forgiveness amount

# Employee Retention Safe Harbors

- There are certain safe harbors available to businesses related to their FTE calculations. These include:
  - Laid-off employees whom the borrower offered to rehire;
  - Employees who were fired for cause, voluntarily resign, or voluntarily request a schedule reduction.
  - Businesses who are unable to return to their Feb. 15, 2020 level of business activity due to compliance with federal guidance on worker and customer safety related to COVID-19 by the HHS, CDC Disease and OSHA are exempt from a loan forgiveness reduction based on a reduction in FTE employees.

# PPP Documentation

- What documents does a business need to submit if it uses the standard loan forgiveness application?
  - At a minimum, a borrower will need to provide:
    - Payroll documentation verifying the eligible cash compensation and non-cash benefit payments from the Covered Period or the Alternative Payroll Covered Period;
    - FTE employee documentation, including documentation evidencing the average number of FTE employees for specified periods of time; and
    - Non-payroll costs documentation verifying the existence of the obligations/services prior to February 15, 2020 and eligible payments from the Covered Period.
- What is different with the EZ Application?
  - EZ Applicants are not required to submit documentation related to FTE employees.
- What are the retention requirements?
  - Applicants must retain records related to their loan forgiveness applications for 6 years.

# Non-PPP SBA Loan Programs

## 7(a) Loans

- 6 months of payments covered by the SBA for all 7(a) Loans disbursed by September 27, 2020.
- Standard 7(a) Loan
  - Maximum Amount- \$5 million
  - SBA mandated interest rate max.; no collateral for loans up to \$25,000.
  - Decision from SBA in 5-10 days.
- Small 7(a) Loan
  - Maximum Amount- \$350,000
  - SBA mandated interest rate max.; no collateral for loans up to \$25,000.
  - Decision from SBA in 5-10 days.
- SBA Express Loan
  - Maximum Amount- \$350,000
  - SBA mandated interest rate max.; no collateral for loans up to \$25,000.
  - Decision from SBA in 36 hours.
- To contact your local SBA office: <https://www.sba.gov/local-assistance>

# Non-PPP SBA Loan Programs

## 7(a) Loans (Cont.)

- Export Working Capital Loan: Maximum Amount- \$5 million
  - NO SBA mandated interest rate max.; personal guarantees from owners with 20% or more ownership.
  - Decision from SBA in 5-10 days.
- Export Express Loan: Maximum Amount- \$500,000
  - SBA mandated interest rate max.
  - Decision from SBA in 24 hours.
- International Trade Loan: Maximum Amount- \$5 million
  - SBA mandated interest rate max.
  - Decision from SBA in 5-10 days.
  - Loan Maturity: 10 yrs for working capital OR machinery and equipment; up to 25 yrs for real estate
- To contact your local SBA office: <https://www.sba.gov/local-assistance>

# Non-PPP SBA Loan Programs

## 7(a) Loans (Cont.)

- Veterans Advantage Loan
  - Reduced Fees
  - Available for honorably discharged veterans, disabled veterans, active duty service members, reservists, and spouse or widows of those veterans.
- CAPLines- short-term and cyclical working-capital needs, similar to lines of credit
  - Seasonal – financing seasonal increases of accounts receivable and inventory
  - Contract – financing direct labor and material costs associated with performing assignable contracts
  - Builders – financing direct labor and material costs for general contractors or builder construction or renovation; the building project serves as the collateral.
  - Working – financing for cyclical growth, recurring, short-term needs; repayment comes from converting short-term assets into cash; generally used by businesses that provide credit to other businesses
- To contact your local SBA office: <https://www.sba.gov/local-assistance>





# Questions?

Please type your question into the Chat window.

## Contact Us

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