

Paycheck Protection Program Flexibility Act

AS Of 6/11/20



Canon Capital

Steven L. Moyer, CPA CGMA PFS CSEP
Brent C. Thompson, CPA CMA CGMA
Canon Capital Management Group
484 Harleysville Pike
Harleysville, PA 19438
215-723-4881
smoyer@canoncapital.com
bthompson@canoncapital.com

Steven Moyer

Owner & Director of Tax Services

Steve has been with Canon Capital since 1999 and has been practicing in public accounting for over 30 years. He received his BS in Accounting/Business Management with a minor in Psychology from Eastern Mennonite University. He is a member of the AICPA, the PICPA, the National College Advocacy Group and the AICPA Tax, Personal Financial Planning and the Forensic and Valuation Services sections. Steve specializes in tax, estates and trusts, personal financial and college planning services, and business tax planning. He also has significant experience in church, non-profit, and private foundation tax areas. In addition to being a CPA he also holds the Personal Financial Specialist (PFS) designation, the Chartered Global Management Accountant (CGMA) and the Certified Specialist in Estate Planning (CSEP) designation. Steve and his wife reside in Souderton. Steve has three children and enjoys traveling, playing sports, gardening, and bicycling.



Brent Thompson

Owner & Director

Brent joined Canon Capital in 1998 and is responsible for providing management advisory services, tax and general business planning, tax preparation, and financial statement preparation and review services for numerous businesses and their owners. In addition, he assists the firm directors with scheduling, staff development, and business development. He earned his Bachelor of Business Administration degree from Temple University. In addition to holding his CPA designation he also holds the Certified Management Accountant (CMA) designation and a Chartered Global Management Accountant (CGMA) designation. Brent is a member of the AICPA and the Institute of CMA's, and is a former instructor of business development courses at Montgomery County Community College. He has also served on the Economic Restructuring Committee for the Souderton/Telford downtown revitalization efforts and the Stewardship Committee for Keystone Fellowship. He currently serves as the treasurer of the Indian Valley Chamber of Commerce. Brent resides in Souderton with his wife and three children. He enjoys boating, water-skiing, and working on home improvement projects.



Memory Lane

- ▶ Public is getting to see the process it usually does not. They are literally building the bridge as we walk on it.....
 - Roll out
 - Guidance for self-employed issued late
 - Guidance for forgiveness issued three weeks late
 - Taxable vs. non-taxable
 - 75/25 ratio was never in the law

Since We Last Spoke

- ▶ Guidance released on 5/22
 - Bonuses and hazard pay are allowed
 - Owner's salary forgiveness capped at \$15,385 or 8/52 of 2019 compensation (see Flexibility Act)
 - Non-payroll costs can be paid OR incurred during 56-day (now 24 week) period
 - Amounts incurred during the period have to be paid by the next normal billing cycle
- ▶ Payroll Costs must be incurred OR paid during the covered period
- ▶ Borrowers will not be doubly penalized for reduction in FTE and compensation reduction for someone who had their hours reduced, but kept the same rate of pay

New Rules in the Flexibility Act

- ▶ Flexibility Bill is very short – total of 4 pages
- ▶ Everything, most likely, is very favorable to borrowers
- ▶ As you suspect, there are unanswered questions, and problems/omissions within the law itself

New Law Helps

- ▶ The deferral and maturity dates of the loans are, or can be, changed – loans made prior to June 5 are still 2 year loans.
- ▶ Forgiveness is MUCH easier to obtain (New and Pre-existing Loans)
 - Extension of the covered period to 24 weeks
 - 75/25 ratio test is changed to 60/40
 - Extension of time to replace or restore FTEs
 - New relief granted for businesses fully or partially closed through government orders
- ▶ All Borrowers are now eligible to participate in other programs/relief

Loan Deferral and Maturity Dates

- ▶ Originally a six-month deferral and two-year maturity at 1%
 - For every \$10K not forgiven, that would equate to \$560 monthly payment for 18 months
- ▶ New law allows for deferral until the date the lender receives the forgiveness amount from the SBA.
 - Can be up to 150 days after the application for forgiveness is filed (60 days bank, 90 days SBA).

Loan Deferral and Maturity Dates

- ▶ Now, there's a five-year maturity but the deferral period is not "certain"
 - Technically, the law is written for only loans made after the passage of the law.
 - However, the law expressly states immediately after that nothing in the law "shall be construed to prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan..."
 - Inherently, banks aren't going to want to switch to five-year amortization
 - Now, for every \$10K not forgiven, it would equate to approximately \$204 monthly for 50(ish) months.

Loan Deferral and Maturity Dates

- ▶ New law for a// loans – “If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period.....such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period”

Extension of Covered Period

- ▶ Covered period is now changed from 8 weeks to 24 weeks, or December 31, 2020, whichever comes earlier.
 - Everything else remains the same
 - Owners compensation capped at \$15,385, or 8/52 of 2019 compensation, which were both figured on 8 weeks.
 - Other employees are still capped at \$100K annualization as well
- ▶ Businesses receiving loans prior to this new law can still elect to use the 8-week period
- ▶ We believe guidance can change these

Payroll Ratio Test Changed to 60/40

- ▶ Changed from 75/25
 - Originally, the 75/25 was an SBA interpretation
 - Now, expressly stated in the law is “To receive loan forgiveness....an eligible recipient shall use at least 60 percent of the covered loan for payroll costs”
 - This created a “cliff” situation and not the partial forgiveness we had with the 75/25 test.
- ▶ Addressed with a joint statement by Treasury and SBA to allow partial forgiveness if payroll costs don't exceed 60%.

Longer Time to Replace FTEs

- ▶ Old law had tests:
 - 8-week covered period compared to one of two base periods, OR
 - an additional safe-harbor test if reduced FTEs from 2/15/20–4/26/20 and fully restored by 6/30 as compared to 2/15/20 individually.
- ▶ New law recognizes (safe harbor) that businesses may not be fully open or ramped up by 6/30.

Longer Time to Replace FTEs

- ▶ The June 30th date is now changed to December 31
 - If salary and FTEs are restored to 2/15 levels at (prior to?) December 31, there will be no reduction in forgiveness
 - Note – the change in date from June to December ONLY is for the FTE safe-harbor test. It does not include salary reduction tests, base periods etc.
- ▶ **MAJOR ISSUE**: The FTE calc during the 8-week covered period now has become the 24-week covered period. HOWEVER.....

The Most Important However.....

- ▶ On the application, the FTE reduction is applied to reducing COSTS vs. the forgivable amount based on loan value.
- ▶ Therefore – if you now have 24 weeks of costs based on roughly 10 weeks of borrowing capacity – it seems to reason you can now “afford” a significant FTE reduction
- ▶ Will the revised application keep the same structure?
 - Original CARES act has the FTE as a reduction on the loan forgivable value which is not consistent with the application as prepared.

The Most Important However

Forgiveness Amount Calculation:

Payroll and Nonpayroll Costs

Line 1. Payroll Costs (enter the amount from PPP Schedule A, line 10):

Line 2. Business Mortgage Interest Payments:

Line 3. Business Rent or Lease Payments:

Line 4. Business Utility Payments:

Adjustments for Full-Time Equivalency (FTE) and Salary/Hourly Wage Reductions

Line 5. Total Salary/Hourly Wage Reduction (enter the amount from PPP Schedule A, line 3):

Line 6. Add the amounts on lines 1, 2, 3, and 4, then subtract the amount entered in line 5:

Line 7. FTE Reduction Quotient (enter the number from PPP Schedule A, line 13):

Potential Forgiveness Amounts

Line 8. Modified Total (multiply line 6 by line 7):

Line 9. PPP Loan Amount:

Line 10. Payroll Cost 75% Requirement (divide line 1 by 0.75):

Forgiveness Amount

Line 11. Forgiveness Amount (enter the smallest of lines 8, 9, and 10):

New Relief for Fully or Partially Closed Businesses

- ▶ New law – during the period of 2/15/20 to 12/31/20, the amount of loan forgiveness will not be reduced when a borrower experiences a loss of FTEs if the borrower, in good faith, is able to document:
 - There was an inability to rehire individuals who were employees as of 2/15; AND
 - There was an inability to rehire similarly qualified employees for unfilled positions before 12/31/20; OR
 - There was an inability to return to the same level of business activity (2/15/20) due to compliance with government requirements and guidance
 - Right now, it does not list state requirements or guidance as an option – only federal agencies like HHS, CDC, and OSHA

Enhancement of Deferral of Payroll Taxes

- ▶ Old law – allowed for a deferral of the 6.2% employer share of social security taxes until the date of forgiveness
- ▶ New law – expressly allows the deferral through December 31, 2020 regardless of when forgiveness is granted
 - 50% of deferral is due 12/31/21
 - 50% of deferral is due 12/31/22

Omissions From Flexibility Act

- ▶ Deductibility of expenses paid with PPP loan funds
- ▶ Enhancement of Employer Retention Credit
- ▶ Miscellaneous items to help non-profits and businesses with fewer than 10 employees

Questions Remain After Flexibility Act

- ▶ Definition of an owner
 - Owners additional cap of 8/52 of 2019 compensation
- ▶ Employee compensation of \$100K or over capped at \$15,385 (8/52) or \$46,153 (24/52)?
- ▶ Self-employed individuals – if moved to 24/52 vs. 8/52 – then forgiveness is mathematically guaranteed
- ▶ Can borrowers apply for forgiveness at any point between weeks 8 and 24
- ▶ Can FTEs be restored at any point prior to 12/31?
- ▶ Logistics of applications, payments, current contracts

On The Horizon

▶ Legislation

- Expected late July or August
- Banks/Others are pushing to have loans of \$150K and under fully forgiven, vs. going through all the paperwork
- Deductibility of expenses

▶ Guidance

- “Substantial” quantity and quality FAQs being issued
- Revised forgiveness application

Planning

- ▶ Business Viability over Loan Forgiveness
- ▶ Consider immediately, stop paying employees if they are not working.
 - If the eight week period is an option, maintain FTEs through week 8
- ▶ Timing of forgiveness and tax years
- ▶ If expenses paid with the loan proceeds remain non-deductible, having the “taxable income” is still the best option in terms of cash flow
- ▶ It probably is best to move slowly for the forgiveness application

Thank You For Your Participation

- ▶ Here's the favor we are asking
 - Leave a Google Review
 - Like/Follow us on Facebook and a review
 - LinkedIn
- ▶ Links to the above three will be included in the email follow up. Or click on the buttons at the bottom of my email sent yesterday with the handouts for Facebook and LinkedIn

Questions

- ▶ Send a quick review comment to info@canoncapital.com
 - More of these will be necessary as further law and guidance is released as well on the revised application.
 - We'll be in touch