

Legislative Update

What We Know Now

May 1, 2020

PPP Loans – New FAQs

- Before submitting a PPP application, all borrowers should review carefully the required certification that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
- Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity to support their ongoing operations
- Any borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020. will be deemed by SBA to have made the required certification in good faith



The Road to Forgiveness

The SBA has been clear that no supporting documentation equals no loan forgiveness.

Until full official guidance is released, we recommend creating a detailed, itemized schedule of all possible expenditures that may fall within the following definition of “covered expenses.”

Good recordkeeping and bookkeeping will be critical for getting your loan forgiven—you’ll need to keep track of eligible expenses and their accompanying documentation over the eight weeks. Your lender will likely require these documents in digital format, so take the time to scan any paper documents and keep backups of your digital records.



PPP Loan-401k Company Match

Payroll costs under the program also include employer matching contributions on employee deferrals to certain defined contribution plans. Many employers wait until the end of the year to pay their 401(k) matching contributions for the entire year. It is currently unclear whether any portion of matching contributions made at year-end can be included as payroll costs under the PPP. **Therefore, employers may want to consider front-loading matching contributions for at least the 8-week covered period by paying those matching contributions to the plan during the covered period**



PPP Loan-401k Company Match

The portion of the matching contributions *allocable to and paid during* the covered period seem to be included as a forgivable payroll cost. It is also possible the matching contributions allocable to the portion of 2020 *before* the covered period but *paid during* the covered period may be treated as such payroll costs.

However, prepaying matching contributions for the portion of 2020 *after* the end of the covered period would seem to likely *not* be an allowable payroll cost. Additional guidance from the Treasury Department concerning the inclusion of matching contributions allocable to periods prior to the covered period as payroll costs would be helpful in clarifying this issue.



PPP Loan Forgiveness

• Eligibility - employees Forgiveness - FTEs

- For purposes of loan eligibility, the CARES Act defines the term employee to include “individuals employed on a full-time, part-time, or other basis.” A borrower must therefore calculate the total number of employees, including part-time employees, when determining their employee headcount for purposes of the eligibility threshold.
- By contrast, for purposes of loan forgiveness, the CARES Act uses the standard of “full-time equivalent employees” to determine the extent to which the loan forgiveness amount will be reduced in the event of workforce reductions
- <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>



PPP Loan Forgiveness

How to calculate FTEs

- Any employee who works more than 30 hours/week = 1 Full Time Employee
- Add up all part-time hours in a week $\div 30 = \#$ of Full Time Equivalents
- Example: Employer has 3 employees receiving salary based on 40 hours/week, 4 employees who work 35 hours/week, and 9 part-time employees who work a combined total of 127 hours/week.
- $127 \div 30 = 4.23$ FTE
- $4.23 + 3 + 4 = 11.23$ FTE

*The average number of FTEs shall be determined by calculating the average number of FTEs for each pay period falling within a month – SEC. 1106. LOAN FORGIVENESS



PPP Loan Forgiveness

The maximum forgiveness of the loan is reduced based on employee retention and average pay

The maximum loan forgiveness amount is multiplied by a fraction that measures employee retention based on the average number of FTEs. The borrower chooses which fraction to use. The numerator of both fractions is the average number of FTEs employed during the 8 week period. The denominator is either:

- The average number of FTEs for February 15, 2019 to June 30, 2019;
or
- The average number of FTEs for January 1, 2020 to February 29, 2020.



PPP Loan Forgiveness

In addition, the maximum loan forgiveness amount is further reduced if any employee's pay has declined by more than 25% during the 8 week period, relative to the most recent completed quarter (this should be the first quarter of 2020). Employees earning above \$100K are excluded from this computation

Reductions in workforce, salaries and wages that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020.



PPP Loan Forgiveness

Please note that while a delayed rehire date won't cause issues with the employee retention fraction, it may cause you to spend less than the required 75% threshold on payroll costs, and therefore would result in a reduction in the amount of loan forgiven

As of Tuesday, 5/5, any PPP loans that are funded, the 8 week period will end on or after June 30th, so FTE levels and rehiring efforts need to begin in earnest.



Are Forgiven PPP Loans Taxable?

- In short, the answer is “no”
- Loans will not be taxed by IRS or federal government
- Up to states how they will handle taxes on these loans.
Typically, states would follow what federal government does in a situation like this. However, it is dependent on whether a state “conforms” to most recent version of Internal Revenue Code IRC



Conformity Guide

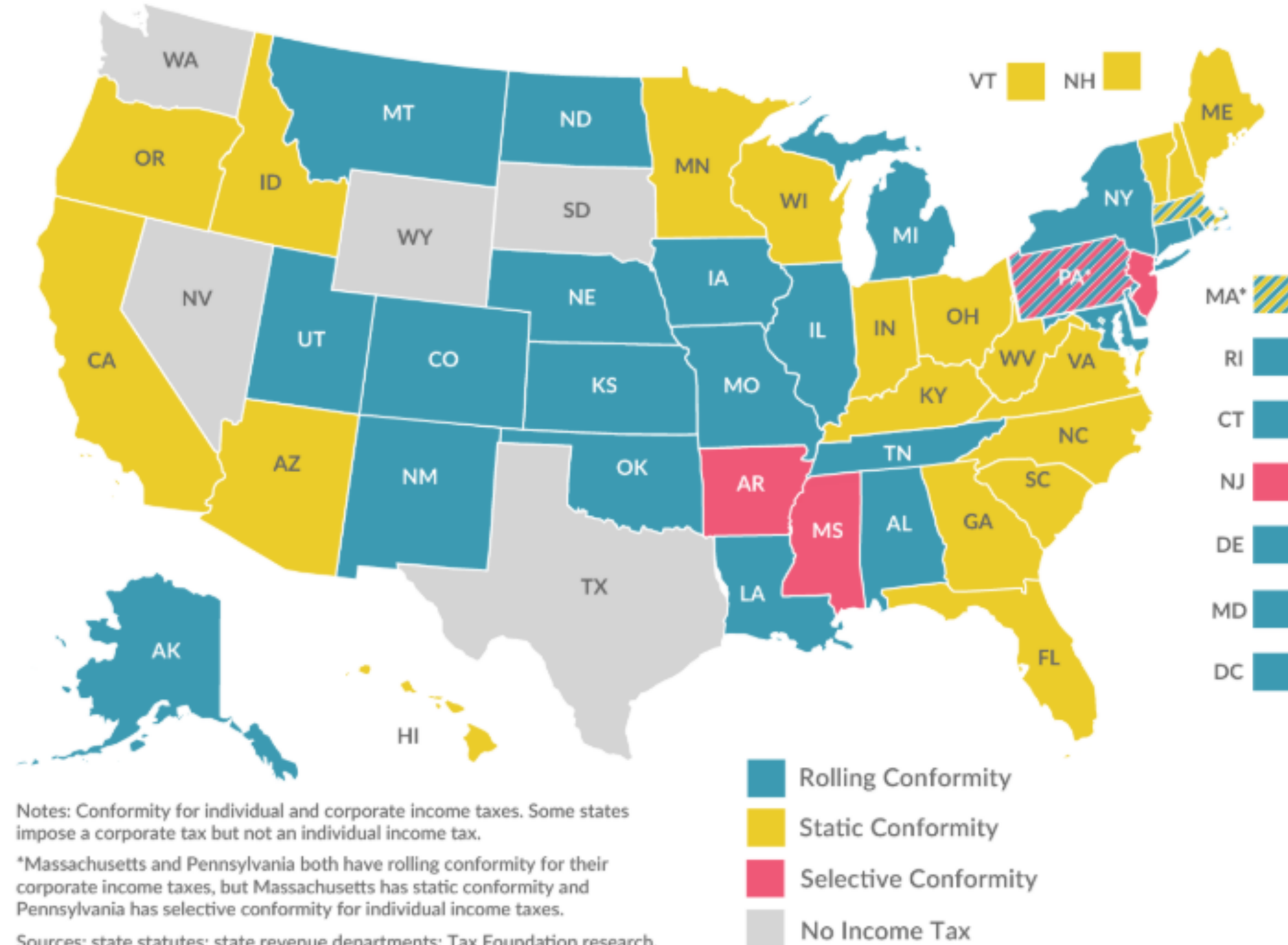
- Rolling: states automatically adopt provisions of IRC
- Fixed: states follow IRC as of a specified date
- Selective: states only adopt certain IRC provisions, certain provisions as of specified date, or make certain changes to IRC provisions



Map of State's Conformity

Income Tax Conformity

As of January 1, 2020



CARES/FFCRA Clarification

- Group Health Plans

- The CARES Act uses the term “Group Health Plan” which generally includes any Pre-Tax Medical, Dental and Vision coverage
- A “Group Health Plan”, under Section 5000(b)(1) of the Internal Revenue Code includes all plans that are subject to the continuation of coverage requirements under COBRA

(3) HEALTH INSURANCE TERMS.—In this section, the terms “group health plan”, “health insurance issuer”, “group health insurance coverage”, and “individual health insurance coverage” have the meanings given such terms in section 2791 of the Public Health Service Act ([42 U.S.C. 300gg-91](#)).



We are answering your questions live on the air right now.

Please submit questions through the **Q&A function**,
not the chat option at the bottom of your screen.



Questions?

Please email:

questions@dominionpayroll.com

For resources, updates, webinar schedule, and FAQ's, please visit our

[COVID-19 Updates & Resources page](#)



As requirements change and laws are passed, we will update you as soon as possible.

Don't forget to wash your hands!

