QUESTCO

COVID-19: News & Updates Webinar

April 24th, 2020

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Questions & Answers

I have a client who used a small bank for their PPP loan. They mailed a check to the client yesterday. What date will they consider as the "funding date"? The date the check was written or the date the check was deposited?

The SBA and the Treasury Department have defined the *loan origination date* as the date that the lender makes the first disbursement. Generally, the funding date is the date that the loan closes as that is when the lender releases the payment. Therefore, the date the check was written should be used to commence the 8-week covered period for purposes of computing the loan forgiveness amount.

We recommend that the borrower begin thinking about how they are going to apply the loan proceeds against actual expenses and make whatever changes in operations necessary to maximize the amount of the loan that is forgiven.

With regard to the 8-week period, is this based on pay date or payroll period? If the 8-week period falls within a payroll period, how do we identify the wages?

It is based on ***wages paid***. When you applied for the loan itself, the loan amount requested included wages and associated payroll costs paid/processed during the 12-month historical period, regardless of when the wages were earned. That same theory should be followed when computing the payroll costs to be included in the usage of the loan proceeds, which is any wages that you pay during that eight-week period. Therefore, if the loan was received on Tuesday and the company processed and ran a payroll during that week and issued paychecks on Friday, that payroll will count in the eight week period, even though the payroll issued covered wages earned last week and possibly the week before (i.e., prior to the date of the loan).

I was told by our bank that independent contractors cannot be included.

That is correct. Questco received additional clarifying information regarding the treatment of independent contractor and sole proprietor compensation for purposes of calculating both the amount of Paycheck Protection Program (PPP) loan proceeds and the loan forgiveness amount. Based on further clarification, **amounts paid to an independent contractor or sole proprietor should be excluded from the borrower's payroll costs.** This exclusion applies to compensation paid for services performed as a 1099 payment. If the compensation is paid to the independent contractor as W-2 wages, this compensation will be included in total wages paid and can be used in the calculation of total payroll costs for purposes of qualifying for and requesting forgiveness of a PPP loan.

Previously Questco communicated that certain independent contractor and sole proprietor costs could be included as a qualifying payroll cost for the PPP loan. We apologize for any inconvenience or disruption this clarification has caused our clients.

If you have already been approved for PPP, can you use that money for routine independent contractors that you employee monthly? The reoccurring independent contractor's wages were not included in the original PPP loan amount calc.

As indicated above, independent contractor and sole proprietor costs should not be included in either the PPP loan calculation or the qualifying payroll costs used to compute the loan forgiveness amount. Only W-2 wages paid are considered qualifying wages for purposes of PPP loan calculations.

What if those recurring independent contractor wages were not included when you apply for the loan? If you did not use that in your calculation?

Disregard independent contractor wages when computing payroll costs incurred during the 8-week covered period for purposes of computing the loan forgiveness amount.

If a new employee is hired and is paid a signing bonus, does that bonus count as wages that are forgivable?

Discretionary bonuses can be included in allowable payroll costs for purposes of computing the loan forgiveness amount.

Going back to the loan origination date, if the funding was received say on April 24th and the pay date was April 24th, would you use that as the start date for the 8-week covered period?

Your 8-week period begins on the date that the loan proceeds are issued. So, if your loan was received on April 24th, and you had a pay date on that same day, you would include that very first payday in your total payroll costs for purposes of the loan forgiveness calculation (all wages *paid* during the covered period should be included in the calculation). Depending on when you receive your loan proceeds and what your pay cycles are, it's very possible that you won't disburse 8 weeks of actual wages in that time period. We encourage clients to start thinking about that and if in fact you want to run a special off-cycle payroll, we can accommodate that. We would prefer that it not be done on the same day as your regular payroll. Let's say during the 8-week covered period, your normal payrolls include 7-weeks of paid wages and you wish to fund the remaining week of payroll costs through the loan proceeds received, you can schedule a special payroll to do that. And we definitely encourage you to do that. Please contact your payroll coordinator to request.

Is there a maximum amount for the discretionary bonus?

There are no guidelines that address the maximum amount of bonus that can be awarded You should be reasonable. We are unsure right now to what level the original applications and loan forgiveness requests will be audited. There will probably be certain flags the lenders and/or the SBA will look for. At the end of the day, you as the borrower sign a statement that attests that everything you've submitted is in compliance with the SBA requirements. As the borrower, you certify the accuracy of the amount that you submit to your lender, with the lender serving as the facilitator of the transaction between the SBA and the borrower. We don't anticipate that the lenders will be required to provide a great deal of oversight with regards to the validity of the submission you make for the forgiveness of the loan. If you get overly aggressive around bonus payments and your people normally made $10,000 and you threw in $300,000 of additional bonus payments, that might get questioned. What potentially could occur is that if you pay a large amount of bonus to your workforce without exceeding the total amount of the loan proceeds, you may not meet some of the other tests. In other words, this could mean that you aren't paying the same number of employees. That could result in a reduction to your forgiveness amount based on the headcount ratio. Or, if you made a significant salary reduction to certain employees and issued large bonus payments to others (as a "hazard pay" incentive), you may not meet the 25% or less salary reduction test for some of your employees. There's a lot to think about as you consider how to maximize the amount of forgiveness. We encourage you to schedule out what your wage payments are going to be over the 8-weeks. We would also encourage you to work with your financial advisor or your accountant or whomever assists you with your business finances to evaluate your options. To the extent that you are contemplating paying certain bonuses during the 8-week period, we recommend you consider what impact paying a bonus might have on wage calculations for nonexempt employees (determine what impact the bonus award will have on their premium rate for purposes of computing overtime pay should the bonus not be classified as "discretionary"). Questco can help clients with those considerations. However, determining whether your company should award a bonus is up to the client and not a decision can Questco can provide advice on for our clients. The objective of these programs is to keep as many people as possible employed during this economic downturn. Reducing the number of employees and paying that reduced number more in salary really wasn't the purpose for the program. The intent is to maintain headcount at pre-COVID levels and keep their salaries at the same amount. We do understand that there may be situations where, to maximize your loan forgiveness, you may decide to issue some type of bonus, particularly if you had to reduce hours or rates of pay in the weeks immediately preceding the receipt of your PPP loan and desire to replace those lost wages. Just make sure you also will be able to meet the headcount and salaries and wages retention calculations to ensure that there is no retention adjustment to your qualifying loan forgiveness amount. Ensure you are operating in good faith with the money that have borrowed and are using the proceeds for the intended purpose.

Should it be mentioned that the COVID wages are not included in calculating the payroll costs for PPP Loan forgiveness?

If you're referring to wages earned under the FFCRA, which is the extended sick and the extended FMLA pay, any paid leave should be excluded from the loan forgiveness calculation. In essence you didn't actually pay those wages since you received a credit from the government for the amount of those wages issued. As a result, the employer would be receiving credit twice if these wages were also included in the amount of loan forgiveness requested.

The PPP loan is for Payroll & Payroll costs, utilities and rent. I have the entire payroll invoice being paid out of the account where the PPP funds are. Do I need to be concerned about including those non-qualifying payroll costs on the Questco PR invoice disqualifying us for loan forgiveness? Do I need to reimburse the account for those non-qualifying costs?

We recommend that you first confirm whether your lender provided any specific instructions with regards to depositing the loan proceeds into a separate bank account and how the proceeds should be used. First and foremost, you should follow any lender requirements.

As noted, there will be some costs included on the invoice, such as workers compensation fees, certain non-qualifying reimbursement amounts, and the Questco administrative fee that cannot be applied against the loan proceeds for purposes of computing the loan forgiveness amount. If you have set up a separate bank account for your PPP loan proceeds, we would recommend that you split up your Questco invoice and pay only those qualifying payroll costs out of the separate account. The challenge will be that at the time you need to fund the payroll, you will not yet have a copy of the PPP loan report that provides the detail back-up for the portion of your payroll costs that can be used towards the loan proceeds for purposes of computing the loan forgiveness amount. You could keep a separate "ledger" of the qualifying costs and once you use up all of the funds in the bank account, replenish it for any non-qualifying disbursements that occurred during the 8-week period. A possible alternative would be to fund the entire payroll from this account at the time you process the Questco payroll and then compute the non-qualifying payroll costs paid on the invoice and "reimburse" the PPP loan bank account for the difference from your regular bank account as you go along.

Are those not sent over in the payroll reports at the end of the week?

Questco will provide the report outlining the all payroll costs eligible for loan forgiveness once the payroll has been processed; however, you won't have access to that report prior to approving and issuing the payment required to release the payroll.

Recently released clarification of employee count computation: To determine borrower eligibility under the 500-employee or other applicable threshold established by the CARES Act, must a borrower count all employees or only full-time equivalent employees?

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. For example, if a borrower has 200 full-time employees and 50 part-time employees each working 10 hours per week, the borrower has a total of 250 employees.

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.

***NOTE**: Information provided above in **teal** font are changes / clarifications to comments made during the April 24, 2020 client webinar.*