



# Loan Forgiveness Under the Payroll Protection Program & FAQ's

Updated as of June 4th 2020

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The material appearing in this presentation is for informational purposes only and should not be construed as advice of any kind, including, without limitation, legal, accounting, or investment advice. This information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although this information may have been prepared by professionals, it should not be used as a substitute for professional services. If legal, accounting, investment, or other professional advice is required, the services of a professional should be sought.

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## Golden Valley Bank – Paycheck Protection Program

As of 06/10/2020:

- PPP loans originated – 454
- Total dollar amount - \$92,342,148.04
- Average loan amount - \$203,397

## Golden Valley Bank – Paycheck Protection Program

- Ongoing email communications have been sent regularly – if you are not receiving please email [Marketing@goldenvalley.bank](mailto:Marketing@goldenvalley.bank) or contact your Relationship Manager.
- We will continue to provide ongoing communication through the forgiveness process, including subsequent webinars.
- The PPP has changed frequently, and will continue to change as Congress, the US Treasury, or the SBA make changes to the program.

## Golden Valley Bank – Paycheck Protection Program

- We have not yet released our application for forgiveness, which had been delayed by the passage of the PPP Flexibility Act.
- We sent out a Forgiveness Documentation Checklist and recommend all borrowers work on gathering documentation that will be required to be submitted with the application of forgiveness.
- [A link to the Forgiveness Documentation Checklist can be found HERE.](#)

## Today's Webinar Schedule

- Moss Adams Presentation 11:00 – 12:00
- Q&A with all three presenters 12:00 – 12:15
- Q&A with Jocali Nakao – 12:15 – 1:00
- Q&A sessions are optional
- Session is being recorded and will be posted to the Golden Valley Bank PPP website within 24 hours of presentation.

## **Presenters and Contact Information – Moss Adams**

- Chris Bell, Partner
- Adam Hite, Senior Manager

## Presenters and Contact Information – Golden Valley Bank

- Jocali Nakao, CRCM, CAMS, EIA
- AVP – Compliance/Bank Secrecy Act Officer
- [JNakao@goldenvalley.bank](mailto:JNakao@goldenvalley.bank)

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# Agenda

Economic necessity

Qualifying expenses and spending timeframe

FTE limitation

Restoring FTE's

Wage limitation

Loan forgiveness application process

Tax and other considerations



# Economic Necessity

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“That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient.” *CARES Act §1102(a)(2)(G)(i)(I)*

Treasury Department has listed factors including (1) current business activity, and (2) ability to access other sources of liquidity which would not be significantly detrimental to the business (see question #31 from the Treasury Department PPP loan FAQ issued on May 6<sup>th</sup>, 2020)

How to document economic necessity

Questions that are often raised



# Qualifying Expenses: New Law Alert Included

- Payroll (must spend at least 60% on payroll in order to receive any forgiveness)
  - Wages, salaries, tips, commissions, bonuses, etc. with an annualized maximum of \$100k
  - Employer funding of health benefits
  - Employer retirement plan contributions
  - State and local employer payroll taxes
- Interest on mortgage indebtedness incurred prior to 2/15/2020, and connected to real or personal property in the business.
- Rent or lease obligations under contracts incurred prior to 2/15/2020
  - Self-rental best practices until further guidance is issued by the Treasury Department
- Utilities
  - Phone, internet, electricity, gas, water, transportation
  - Service must have begun prior to 2/15/2020
  - No distinction between cell and landline phone service in the guidance to-date



# Time Frame to Spend the Funds

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Originally: 8 weeks from the date the loan funded

New law: the earlier of (1) 24 weeks from the loan funding date, or (2) 12/31/2020

The new law will allow nearly all organizations to spend 100% of the loan funds for qualified purposes during the measurement window.



# Owner Compensation

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SBA published the loan forgiveness application and related instructions on May 15<sup>th</sup>.

Final regulations were issued on May 22<sup>nd</sup> by the Treasury Dept.

Wages for the owner-employees such as sole proprietors (i.e. schedule C business), or general partner are not to exceed 24-weeks' worth of their prorated 2019 compensation or \$100,000 prorated for 24 weeks, whichever is less.

The term 'general partners' is not well defined in the regs



# Accounting for the Funds

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Paid or incurred standards

Differences between 'incurred' as the SBA uses the term, and 'accrued' as a general accounting principle.

Alternative payroll covered period for businesses with bi-weekly or more frequent payroll.

Allows organizations to align the covered period beginning on the first payroll date following receipt of the funds.

Can you prepay expenses?

Can I count paid leave under the FFCRA as part of payroll costs? What if I don't claim the FFCRA tax credits?



# Paid and Incurred Example

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Loan origination date of June 1<sup>st</sup>

Covered period extends from June 1<sup>st</sup> through July 26<sup>th</sup>

Borrower pays their May and June utility during the covered period

Borrower pays their July utility bill on August 10<sup>th</sup>

The borrower may claim credit for the May and June bills paid during the covered period plus the prorated portion of the July bill during the covered period (i.e. 26/31)



# Other Accounting Questions

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What types of retirement plans are eligible?

Can I pay my 2019 retirement plan obligation during the measurement period?

Can I run a bonus?





# Small Business Considerations

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Some small businesses may find it helpful placing the funds in a separate bank account to ensure easier tracking.

Using a new 'PPP' class in the QuickBooks can be a helpful way of tracking the expenses.

No double dipping between loan and grant programs. Requires separate accounting and reporting for each.



# FTE Limitation on Loan Forgiveness

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Average FTE's for each payroll falling in the twenty four-week measurement period are compared with the lesser of:

The average FTE's for each payroll falling in the period 1/1/2020 through 2/29/2020, or

The average FTE's for each payroll falling in the period 2/15/2019 through 6/30/2019

Seasonal businesses have additional flexibility in selecting the comparison period

A reduction in the FTE levels will result in a prorata reduction in the loan forgiveness



# FTE Limitation FAQ's

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40 hour per week FTE standard measured at the employee level (not in aggregate).

Two methods:

1. Standard method: Hours for each individual employee divided by 40 and rounded to the nearest tenth (not to exceed 1.0 for any employee)
2. Simplified method allows all partial FTE's to be treated as 0.5 FTE's each.

Example: an individual working 36 hours in a week would be 0.9 FTE's under the standard method, and 0.5 FTE's under the simplified method



# SBA Loan Forgiveness Application

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**FTE Reduction Exceptions:** Indicate the FTE of (1) any positions for which the Borrower made a good-faith, written offer to rehire an employee during the Covered Period or the Alternative Payroll Covered Period which was rejected by the employee; and (2) any employees who during the Covered Period or the Alternative Payroll Covered Period (a) were fired for cause, (b) voluntarily resigned, or (c) voluntarily requested and received a reduction of their hours. In all of these cases, include these FTEs on this line only if the position was not filled by a new employee. Any FTE reductions in these cases do not reduce the Borrower's loan forgiveness.

If a former employee refuses a good faith offer to restore their wages and hours, the employer has an obligation to report that to the state unemployment agency within 30 days.



# New Law Exceptions

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The New Law (the Flex Act) has two new exceptions for the FTE levels:

1. Unable to rehire individuals employed on 2/15/2020 and unable to hire similarly qualified employees.
2. Unable to return to the same level of business activity that existed prior to 2/15/2020 due to governmental requirements, guidance, sanitation standards, social distancing, or other requirements related to COVID-19.
3. Must be able to document the two exceptions.



# Common FTE Questions

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Do temporary workers paid through payroll count?

Do temporary workers paid through a temp agency count?

What if someone doesn't come back to work because they don't feel safe?

Can family members be hired and count towards the FTE calculations?



# Restoring FTE's

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The CARES Act allows a company to not be penalized by the FTE limitation as long as they restore their (1) FTE **and** (2) pay levels by 12/31/2020.

Applies to businesses that saw their FTE's decline between 2/15/2020 and 4/26/2020.

Functional challenge of paying sufficient payroll costs during the eight week period if you wait until December 31<sup>st</sup> to bring employees back.



# Wage Limitation

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Forgiveness will be reduced when the wages of individual employees are reduced by more than 25%.

Only applies to non-highly-compensated employees.

Highly compensated employees received wages or salary at an annualized rate exceeding \$100,000 **for any pay period in 2019**.

What if an employee made \$120,000 in 2019 and their wages were reduced to \$60,000 in 2020. How will that impact the calculation?





# Application Process

The new Flex Act will change the terms of some loans, but many of these changes apply only to loans issued after the new Act goes into effect.

The CARES Act requires the borrower to complete the application

Will need to send summary calculations accounting for how the money was spent, as well as all of the forgiveness limitations. It requires reporting information on each individual employee.

Will need to send supporting documentation: payroll reports, hour reports, invoices, cancelled checks, etc.

Bank makes an initial determination as to forgiveness (not an audit)

SBA reviews the bank's determination (not an audit)

Will be subject to further review / audit. Limited SBA resources right now.



# Audit of PPP Loans

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All loans over \$2M combined across affiliated entities will be subject to audit as a matter of policy.

The primary focus point of these audits announced to-date is the economic necessity of the loan.

Smaller loans are subject to review.

Whistleblower complaints may be a driver of audits for smaller loans.



# Tax and Other Considerations

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Loan forgiveness is tax-exempt federally, but is currently taxable to California.

Related expenses are non-deductible federally, but are currently deductible for California.

The new Flex Act allows those receiving PPP loan forgiveness to participate in the employer payroll tax deferral through 12/31/2020 (old law only allowed it until they were notified of loan forgiveness).

Participation in the PPP loan means the employer may not participate in the employee retention tax credit.

May not be used for costs already covered by another program, loan, or grant.

The challenge of tracking multiple grants and how the funds are used.



# Questions?

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We're here to help.

Chris Bell, Partner

Adam Hite, Senior Manager

## **Q&A Session with Golden Valley Bank**

- If you would like to stay on for the 2<sup>nd</sup> Q&A session please allow us a moment to switch presenters.
- If you are not able to attend, the recording will be on our website within 24 hours.



## **Paycheck Protection Program Q&A**

**June 11, 2020**

## The Evolving PPP

Information contained in today's presentation is only accurate as of the date presented (June 11, 2020). The PPP is constantly evolving due to legislation or changes made by the SBA/Treasury.

If there is anything know with absolute certainty about the PPP, it's to expect changes ***frequently, and often.***

## Privacy Disclaimer

In an effort to maintain the privacy of all our customers, when asking questions, please:

- Do not write your last name; and
- Do not write the name of your company



## ***Obligatory Disclosure:***

*The material appearing in this presentation is for informational purposes only and should not be construed in any way, without limitation as legal, accounting, or investment advice. I am not an attorney and this information is not intended to create, and receipt does not constitute a legal relationship, or any type of professional relationship. Although this information was prepared by professionals, it should not be considered a substitute for professional services. If legal, accounting, investment, or other professional advice is required, please seek the services of a qualified professional.*

# Agenda

- Resources available to borrowers
- Explaining the Alternative Payroll Covered Period
- Review of questions received during webinar registration (registrant names or identifying information omitted)
- Open Q&A
- Please note – I will try to focus on questions that may apply to all participants over hyper-specific questions.
- As a reminder, the PPP is continuously evolving

## Resources:

- [US Treasury CARES Act Page](#)
- [US Treasury PPP FAQ's](#)
- [SBA PPP Page](#)
- [Paycheck Protection Program Loan Forgiveness Application \(May 15, 2020\)](#) (Do not fill out or submit this version – we will provide an updated version once the new application is released!)

## Golden Valley Bank Resources:

- Your Relationship Manager (who can forward questions to me if needed)
- [Golden Valley Bank PPP Page](#)
- [Forgiveness Information & FAQ's](#)
- [PPP Flexibility Act Summary](#)
- [Forgiveness Documentation Checklist](#)

# The Alternative Payroll Covered Period (“APCP”)

- The SBA added an option for borrowers with a biweekly (or more frequent) payroll to use an “Alternative Payroll Covered Period” that begins on the first day of their first pay period following the PPP loan disbursement date.
- **Example:** A borrower received its PPP loan funds on Monday, April 20. The *first* day of their *first* pay period following disbursement was Sunday April 26<sup>th</sup>. If the borrower elected to use the Alternative Payroll Covered Period – their eight week period for payroll costs would start on April, 26<sup>th</sup>, and would end on Saturday, June 20 (55 days later).

<b>Example</b>	
Alternative Payroll Covered Period	
Monday, April 20	PPP Disbursement Date Borrower receives PPP loan proceeds. (Starts covered period for NON-payroll expenses)
Sunday, April 26	(Day 1 of eight week lookback) First day of Borrower’s first pay period following its PPP loan disbursement.  First day of the <b>Alternative Payroll Covered Period</b> for Borrower’s forgiveness calculation.
Sunday, June 14	(Day 56 of standard eight week lookback) Last day of standard Covered Period for non-payroll expenses.
Saturday, June 20	(Day 56 of eight week lookback) Last day of borrower’s <b>Alternative Payroll Covered Period</b> .

Sun	Mon	Tue	Wed	Thu	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	PPP Loan Disbursement – Start Covered Period (56 days)					
Start of Borrower’s next pay period (Alternative Covered Period – 56 days)	27	28	29	30		

## MAY 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
Start pay period 2					Payday 1	
17	18	19	20	21	22	23
24	25	26	27	28	29	30
Start pay period 3				Payday 2		
31						

## JUNE 2020

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
Start pay period 4				Payday 3		
14	15	16	17	18	19	20
End of Standard Covered Period (56 <sup>th</sup> day)						End of Alternative Covered Period (56 <sup>th</sup> Day)
21	22	23	24	25	26	27
					Payday 4 – Next "Regular" Payroll Date – Last date of forgivable	

## Questioned received during registration

- Certain aspects have been removed to maintain privacy.
- If a question was previously discussed in the webinar I will not spend much time on it.
- Please be aware that for questions that are extremely specific, the answer is often “The SBA has not provided formal guidance in this area”.

## Question received during registration

- **Question:** When loan is forgiven, are expenses it covered deductible?

- **Answer:** On 04/30/2020 the IRS issued Notice 2020-32 which stated that no deduction will be allowed for an expense if the payment of the expense results in forgiveness of a covered loan under the CARES Act. In summation, No - expenses paid with forgiven loan funds will not be deductible. Many industry groups are lobbying to change this but unless Congress, the SBA, or Treasury state otherwise, the IRS Notice will stand.



## Question received during registration

- **Question:** Is worker's compensation an allowable expense for the PPP?

- **Answer:** No, workers compensation is not considered an eligible payroll expense, and is therefore not forgivable.

## Question received during registration

- **Question:** Do you have to wait for the new 24 week period to end before you apply for forgiveness?

- **Answer:** This will need to be clarified by the SBA. All we know at this point is that there is an 8 week and a 24 week covered period. A borrower with an existing loan can elect to use either, but we do not know what will happen if a borrower elects to use the 24 week covered period and wants to submit early (such as week 16). We hope the SBA will cover this scenario and provide guidance in the pending Interim Final Rule(s) implementing the PPP Flexibility Act.

# Question received during registration

- **Question:** How will the FTE work now?

- **Answer:** I cannot determine whether you are asking about FTE calculations or the FTE reductions in forgiveness. I will answer both.
- The FTE calculation will work the same - employees at 40 hours or more per week are considered an FTE of 1.0. Employees under 40 hours, you would divide their hours worked by 40 to obtain their FTE (i.e., a 30 hour employee would be  $30/40 = 0.75$  FTE. Alternatively, the borrower may elect to consider all employees under full time as 0.5 FTE.
- As far as the comparison of FTE during the covered period to a prior period, this will essentially stay the same. The borrower must still select one of three period for comparison, and can rehire FTE to prevent reduction. If the borrower elects to keep the 8 week period they have until June 30, 2020 to rehire and eliminate any reduction in FTE. If a borrower elects to use the 24 week period - they have until the end of their covered period or December 31, 2020, whichever comes first. This will need to be clarified in the new rule which has not been released by the SBA.

## Question received during registration

- **Question:** If you had some part-time temporary employees during February through April but they are no longer employed due to the nature of their work, how will this impact the FTE computation for loan forgiveness?

NOTE – This was asked in a couple of different ways, so I have combined the questions.

- All borrowers must calculate the FTE during the covered period and compare it to one of three time periods to determine if there is a reduction in forgiveness due to FTE:
- The average number of Full-time Employees (FTE) between 02/15/2019 through 06/30/2019; OR
- The average number of Full-time Employees (FTE) between 01/01/2020 and 02/29/2020.
- In the case of a seasonal employer, the average number of FTE employees on payroll per month employed by the Borrower in the other two options, or any consecutive twelve-week period between May 1, 2019 and September 15, 2019.
- **NOTE:** It is to the borrower's benefit to select the time period with the LOWEST FTE for comparison purposes.
- If you have any additional questions please contact any of the presenters after the webinar.

## Question received during registration

• **Question:** As a SELF-EMPLOYED, I'm wondering what expenses are forgivable, specifically our E&O (errors and omissions) insurance, my phone bill, my PGE (from home as we were shelter at home), my individual health insurance premium, my office rent, our dues, quarterly tax payments, etc. including any other expenses I'm not thinking of...

• **Answer:** There are a lot of questions within your question, so please forgive the long answer.

• E&O Insurance is NOT forgivable --- Phone bill IS forgivable if it is a business phone ---- PGE at your house MAY be forgivable - a sole proprietors health insurance is NOT forgivable - your office rent IS forgivable - dues are NOT forgivable, and quarterly tax payments are NOT forgivable. Any qualifying nonpayroll expenses paid must be a bona fide business expense AND listed as a deduction on your schedule C to qualify. Please see the text below and our FAQ for additional information. Please reach out to me or your loan officer if you would like to talk about this.

## Question received during registration

- **Question:** I'd love clarification on forgiveness calculations for Self employees/Partners since we can't use the calculations for wages/FTEs

- **Answer:** We will be discussing some of these during the presentation. If you have additional questions please email any of the presenters. Sole proprietors, self-employed individuals, and Partners are based on 8/52 of their 2019 net income:
- From the IFR on Forgiveness: "The amount of loan forgiveness requested for owner-employees and self-employed individuals' payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual in total across all businesses. See 85 FR 21747, 21750. No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income."

## Question received during registration

- **Question:** Are there unique considerations for non-profits? If you have had attrition in the payroll and FTE's due to employee decisions, how should that be documented to ensure that forgiveness can be achieved?

- **Answer:** There are not any unique considerations for non-profits relating to a reduction in FTE.
- There will not be any penalty for reduction in FTE, if the reduction was due to the following:
  - a. Were offered to be rehired and refused the offer (subject to documentation and notification to state unemployment office).
  - b. Were terminated for cause, or
  - c. Voluntarily resigned, or
  - d. Voluntarily requested and received a reduction of their hours, and
  - e. The position was not filled by a new employee.

## Question received during registration

- **Question:** Does the recent flexibility bill increase the time to pay employees over 100k, including owner-employees and partners? Specifically, has the \$15,384 cap been raised?

- **Answer:** No, there are no changes in the PPP Flexibility Act increasing this amount. Regardless of whether the borrower elects to use an 8 or 24 week covered period, the cap for individual compensation remains as follows:
- Individual payroll compensation can be no more than the lesser of 8/52 of 2019 compensation (i.e., approximately 15.38 percent of 2019 compensation) or \$15,385 per individual in total across all businesses. See 85 FR 21747, 21750. No additional forgiveness is provided for retirement or health insurance contributions for self-employed individuals, including Schedule C filers and general partners, as such expenses are paid out of their net self-employment income." For employees only, health and retirement benefits can be in addition to the \$100k annual cap.



## Question received during registration

- **Question:** What forms need to be completed, by when, and where are they sent? If you can show that you used the money only for payroll, do you still need to send in paperwork?

- **Answer:** A forgiveness application will need to be completed, and sent in with all other required documentation. The bank has not released our version of the forgiveness application yet and are waiting on the changes to be made by the SBA after the PPP Flexibility Act. Once they release their rule(s) and updated application we will send out our version shortly thereafter. To determine whether all costs were for payroll, we will need to obtain the payroll documentation. If you are not submitting any nonpayroll expenses we will not need documentation for rent, utilities, mortgage insurance, etc. Please refer to our Forgiveness Documentation Checklist on our PPP webpage.

## Question received during registration

• **Question:** Would deferred payroll paid during the covered period qualify for forgiveness? For example, a charter school pays employees that work 10 months over a 12 month period. The amounts that were earned during the school year are paid out over the summer to keep their pay consistent. The payroll during the covered period relates primarily to this deferred pay.

• **Answer:** Forgivable payroll costs include any payroll costs incurred OR paid during the covered period (or alternative payroll covered period). There is nothing in the rule that specifically addresses this scenario. Based on the current rules, not including any potential changes made within the PPP Flexibility Act rules yet to be released, it would appear that any costs paid during the 56 day period would be considered forgivable. The only difference may be that payments made on the first paycheck AFTER the last day of the 56 day covered period would not be included, since it would have to be for costs incurred during the 56 days. Again, this is not explicitly clear one way or the other, just my interpretation.

## Open Q&A

- Please type your questions in the chat box
- Any questions we cannot answer today will be answered later by email (sent to all participants)
- Please do not use your name or company name