

BKD COVID-19 Weekly Webinar Series
SPECIAL BROADCAST

BKD
CPAs & Advisors

**COVID-19 PPP Loan
Forgiveness: What We
Know**

May 18, 2020



WELCOME TO

**BKD COVID-19
Weekly Webinar
Series**

To Receive CPE Credit

› Individuals

- Participate in entire webinar
- Answer polls when they are provided

› Groups

- Group leader is the person who registered & logged on to the webinar
 - Answer polls when they are provided
 - Complete group attendance form
 - Group leader sign bottom of form
 - Submit group attendance form to training@bkd.com within 24 hours of webinar
- › If all eligibility requirements are met, each participant will be emailed their CPE certificate within 15 business days of webinar

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Presenters



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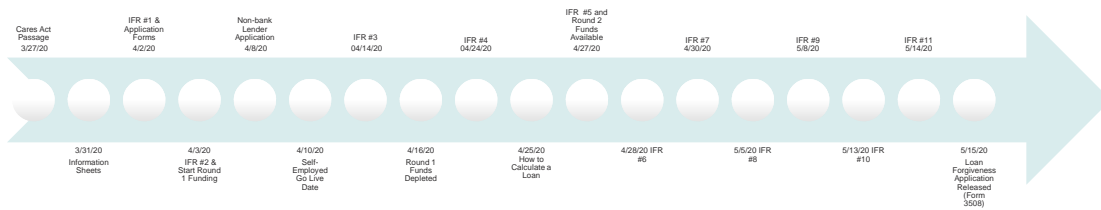


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PPP Timeline



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... Do As I Say, Not As I Do

- › **BKD Partner to Staff Person:** “What was the source of your research that allowed you to conclude as you have?”
- › **Staff Person to BKD Partner:** “I looked at the instructions to the Form that your question related to”
- › **Sanctimonious BKD Partner to Staff Person:** “Let this be a lesson & learning experience to you, instructions to a Form are not the law nor regulation”
- › **Request to webinar attendees, please don’t tell our staff that 85% of our discussion today is based on instructions to a form, thank you**

Sincerely,

That BKD Partner (Goodenbour)

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Agenda

- › PPP Loan Forgiveness Application & Rules
 - Significant concepts & certifications
 - Detailed explanation of eligible costs “paid &/or incurred”
 - Limitations placed on amount of eligible loan forgiveness
 - Examples, key takeaways & unanswered questions
 - Q&A with audience

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Loan Amount in Excess of \$2 Million?

- Form 3508 Question: If Borrower (together with affiliates, if applicable) received PPP loans in excess of \$2 million, check here
 - › \$2 million is important because of guidance contained in FAQ 46
 - Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning necessity of the loan in good faith
 - Borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification & SBA guidance
 - Loans in excess of \$2 million will be reviewed by SBA. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning necessity of the loan request

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New Borrower Certifications

- › Funds were used to pay costs that are eligible for forgiveness
- › Any FTE or salary/wage reductions were reflected
- › Nonpayroll costs are limited to 25% of the amount requested
- › Owner-employee or self-employed compensation limited to lesser of \$15,385 or 2019 equivalent (prevents artificial increases)
- › General certifications related to fraud, accuracy, false statements, required documentation, cooperation with SBA & lender

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Significant Concepts & Provisions

- › Lender must make first disbursement within 10 days of loan approval
- › Borrower is eligible for loan forgiveness for the following costs
 - Eligible payroll costs
 - Eligible nonpayroll costs
- › Amount of forgiveness may be subject to reductions for
 - FTE reductions
 - Salary/Hourly wage reductions
 - 75% payroll costs requirement

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Significant Concepts & Provisions

- › Loan disbursement starts an eight-week (or 56-day) Covered Period (CP) for purposes of measuring payroll & nonpayroll costs eligible for loan forgiveness
 - Example: Loan proceeds were received on Monday, April 20. The CP runs from Monday, April 20 to Sunday, June 14.
- › For purposes of eligible *payroll* costs only, the forgiveness application introduces a new alternative testing period

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Alternative Payroll Covered Period (APCP)

- › New concept with the 5/15 SBA release of Form 3508. Adds flexibility & avoids some administrative hoops to maximize payroll costs during the eight weeks
- › Only available for biweekly or more frequent payrolls
 - For some unstated reason, this would seem to exclude semimonthly & monthly payrolls
- › APCP not allowed for nonpayroll costs (rent, utilities, interest)
- › If elected, must use for same period for FTE calcs as well & the salary/hourly wage reduction

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APCP

- › For payroll costs only, borrower can elect for the eight-week period to begin on the first day of the first pay period after the disbursement of the loan proceeds
 - Example: Loan proceeds received on Monday, April 20. The first day of the first pay period after 4/20 is Sunday, 4/26. The first day of the APCP is Sunday, 4/26 & the last day of the APCP is Saturday, June 20. This becomes the eight-week period for payroll costs only
- › When combined with paid & incurred language, allows use of normal pay periods & pay dates resulting in eight weeks of payroll. **No supplemental payrolls are necessary**

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Eligible Payroll Costs

- › IFR #3 uses starting point of Medicare wages & adds pre-tax employee contributions for health insurance & other fringes excluded from Medicare wages
 - Loan forgiveness application instead simply says start with cash compensation which includes gross pay, paid leave (not including leave covered by FFCRA) & allowances for dismissal or separation
- › Employer contributions to health plans
- › Employer contributions to retirement plans
- › SUTA

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Eligible Nonpayroll Costs

- › Governing document (lease, loan, service start date) must be prior to 2/15/20
- › Eligible for loan forgiveness
 - Real or personal property mortgage interest
 - Real or personal property rents
 - Utilities – payments for a service for the distribution of electricity, gas, water, transportation, telephone or internet access
 - › Fuel for business vehicles was added by the IFR #3 on 4/15/20, related to self employed
- › Eligible use of PPP loan proceeds, but not eligible for loan forgiveness
 - Interest expense not considered real or personal property mortgage interest

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Paid & Incurred – General

- › Section 1106(b) of CARES Act says costs eligible for forgiveness are “... the following costs incurred & payments made during the covered period ...”
- › There was considerable debate as to whether incurred & paid was one item or two items. Common thinking until Friday, May 15, was both tests had to be met, & this was one of the most significant areas in which further guidance was needed
- › The language in the forgiveness application is favorable for both payroll & nonpayroll costs

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Paid & Incurred – Payroll Costs

- › With the guidance, forgiveness applies generally to “payroll costs paid & payroll costs incurred” during either the CP or APCP
 - This allows the first payroll to be fully eligible for forgiveness for borrowers using CP instead of APCP, even though the payroll period began before the CP
- › Payroll costs are considered paid when checks are distributed, or when an ACH transaction is originated
- › Payroll costs are incurred on the day the pay is earned
- › Any payroll incurred but not paid at the end of the CP or APCP are eligible for forgiveness if paid on or before the next regular pay date

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Paid & Incurred – Payroll Costs

- › Reminder that eligible payroll costs also includes employer paid health insurance (including self-funded plans) & employer paid retirement plan contributions & SUTA
 - If electing APCP, must use that same eight-week period for these costs as well
- › For payroll costs other than compensation, allowable for potential forgiveness are amounts paid during the CP or APCP on a cash basis. There is no provision indicating they must be incurred during the CP or APCP
- › Potentially very good news. Payroll costs are only limited by the loan amount (prior to reduction provisions) & cash basis allows for prepayments. (Consider the age-old advice of pigs get fat & hogs get slaughtered)
- › Double good news that incurred is not requirement if you are self insured. Although there are likely less new health claims being generated due to closure of non-essential medical providers, prior claims in process can be paid & count toward forgivable payroll costs. Watch for large claims
 - See FAQ 68 on IRS website for Employee Retention Credit. Provides a mechanism for pro-rating the annual amount per employee for self-insured plans. Just pointing out this is out there

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Paid & Incurred – Nonpayroll Costs

- › Nonpayroll costs fared even better than payroll costs
- › Nonpayroll costs must be either paid during the CP **OR** incurred during the CP & paid on or before the next regular billing date for that particular bill
 - Example, assume CP ends on June 9. Utilities are billed on the 10th of the month. If the May billing is paid on or before July 10, it can be included in nonpayroll costs eligible for forgiveness. While not totally clear, the June bill would be received July 10 & if paid by August 10, all of that bill is likely eligible for forgiveness
 - Would allow for some limited rent prepayment. In above example, the June rent is paid on June 1, all would be included as a forgivable nonpayroll cost as was paid in the CP. Will not help you if the rent for the month of loan receipt has been paid prior to the receipt of the loan proceeds
 - While this provides flexibility & allows for more nonpayroll costs than originally anticipated, there is a practical limit as nonpayroll cannot exceed 25% of the total forgivable amount or stated another way, cannot exceed more than 1/3 of the payroll costs

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Guardrails & Restrictions

- › Full-Time Equivalent (FTE) Reduction Factor
 - 5/15 Form 3508 made clear the calculation. For either the CP or APCP & the chosen base period described below, calculation is as follows (Example on next page)
 - › For each employee, calculate the average number of hours worked per week during the respective period & divide by 40 & round to the nearest tenth with a maximum of one. Add the total for each employee during the respective period & that is total FTE for that period
 - › At borrower election, a simplified method. During the respective period, any employee with 40 or more hours is one FTE & any employee with under 40 average hours per week is .50 FTE. Must use in all FTE calculations if elected

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Guardrails & Restrictions

BKD LOAN FORGIVENESS WEBINAR FTE CALCULATION EXAMPLE

	CP or ACP Week Number								Reg.	Simplified	
	1	2	3	4	5	6	7	8	Weekly Avg	Method FTE	Method FTE
Employee A	30.0	35.0	40.0	40.0	60.0	30.0	30.0	35.0	37.5	0.9	0.5
Employee B	60.0	50.0	40.0	45.0	50.0	40.0	35.0	40.0	45.0	1.0	1.0
Employee C	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	0.5	0.5
Employee D	15.0	20.0	15.0	0.0	20.0	20.0	15.0	20.0	15.6	0.4	0.5
Employee E	60.0	60.0	50.0	40.0	50.0	45.0	50.0	50.0	50.6	1.0	1.0
Employee F	10.0	10.0	15.0	10.0	20.0	15.0	10.0	10.0	12.5	0.3	0.5
	FTE's									4.1	4.0

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Guardrails & Restrictions

› Full-Time Equivalent (FTE) Reduction Factor

- Concept is to maintain same number of average weekly FTEs during the CP or ACP as during one of two base periods, 2/15/19 to 6/30/19 or 1/1/20 to 2/29/20
- If borrower does not, forgivable amount is reduced by multiplying by the FTE Reduction Quotient
 - › The FTE Reduction Quotient is the percentage of FTEs in CP or ACP as compared to the selected base period FTEs. See example calculation

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**BKD LOAN FORGIVENESS WEBINAR
FTE REDUCTION QUOTIENT CALCULATION**

Guardrails & Restrictions

-Full-Time Equivalent (FTE) Reduction Factor

	CP or ACP Week Number								Weekly Avg	Reg. Method		Simplified Method	
	1	2	3	4	5	6	7	8		FTE	FTE	FTE	FTE
	Hours Worked												
Employee A	30.0	35.0	40.0	40.0	60.0	30.0	30.0	35.0	37.5	0.9	0.5	0.5	
Employee B	60.0	50.0	40.0	45.0	50.0	40.0	35.0	40.0	45.0	1.0	1.0	1.0	
Employee C	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	0.5	0.5	0.5	
Employee D	15.0	20.0	15.0	0.0	20.0	20.0	15.0	20.0	15.6	0.4	0.5	0.5	
Employee E	60.0	60.0	50.0	40.0	50.0	45.0	50.0	50.0	50.6	1.0	1.0	1.0	
Employee F	10.0	10.0	15.0	10.0	20.0	15.0	10.0	10.0	12.5	0.3	0.5	0.5	
FTE's										4.1		4.0	
For Selected Base Period										Reg. Method		Simplified Method	
									Weekly Avg	FTE	FTE	FTE	FTE
Employee A									40.0	1.0	1.0	1.0	
Employee B									45.0	1.0	1.0	1.0	
Employee C									40.0	1.0	1.0	1.0	
Employee D									40.0	1.0	1.0	1.0	
Employee E									45.0	1.0	1.0	1.0	
Employee F									25.0	0.6	0.5	0.5	
Employee G									40.0	1.0	1.0	1.0	
Employee H									40.0	1.0	1.0	1.0	
Employee I									30.0	0.8	0.5	0.5	
Employee J									35.0	0.9	0.5	0.5	
FTE's										9.3		8.5	
FTE Reduction Quotient										44.09%		47.06%	
Use Higher of Two										47.06%			

Guardrails & Restrictions

› Full-Time Equivalent (FTE) Reduction Factor

- FTE Reduction Exception added by the 5/15 release. Gives four situations that you do not have to reduce your FTEs during the CP or ACP
 - › You make an employee a good-faith written offer to re-hire & it is rejected (FAQ 40)
 - › You fire an employee for cause
 - › An employee requests & receives a reduction in hours
 - › The employee voluntarily terminates employment
- The FTE Reduction Exception applies only if you do not replace that employee. Fungible?

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Guardrails & Restrictions

› Full-Time Equivalent (FTE) Reduction Factor

- Seems as though a flaw in the calculation prescribed
 - › Table 1 of Form 3508 has a line called FTE Reduction Exception, instructions say to include the FTEs on this line for any employee that meets one of the four exceptions
 - Those employees & their reduced FTEs are already included within Table 1
 - If there is to be no reduction in borrower's forgiveness due to the reduced FTEs during the CP or APCP for each of these employees, seems we should be restoring to what the FTE would have been for those employees had they continued on as normal
 - What would the restoration be to? A full FTE of 1? Can we take their average weekly hours for the weeks they worked before the triggering event & assume those hours for each week subsequent to the triggering. See example

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FTE REDUCTION EXCEPTION ILLUSTRATION

	CP or APCP Week Number								Weekly Avg	Reg. Method FTE	Simplified Method FTE
	1	2	3	4	5	6	7	8			
	Hours Worked										
Employee A	30.0	35.0	40.0	40.0	60.0	30.0	30.0	35.0	37.5	0.9	0.5
Employee B	60.0	50.0	40.0	45.0	50.0	40.0	35.0	40.0	45.0	1.0	1.0
Employee C	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	0.5	0.5
Employee D	15.0	20.0	15.0	0.0	20.0	20.0	15.0	20.0	15.6	0.4	0.5
Employee E	60.0	60.0	50.0	40.0	0.0	0.0	0.0	0.0	26.3	0.7	0.5
Employee F	30.0	10.0	15.0	0.0	20.0	10.0	0.0	10.0	11.9	0.3	0.5
FTE's									3.8	3.5	

Employee E was terminated for cause at the end of week 4. Not replaced

Employee F requested to have hours reduced to 20 or less after and week 1 and that request was granted. Hours were not replaced

Had Employee E not been fired, she would have had an FTE of 1. Since she had no hours in each of the last four weeks of the CP or APCP, her weekly average was only 26.3 and depending on the method used, her FTE was .7 or .5. To prevent a reduction in the borrower's forgiveness amount, this FTE would need to be increased to 1, the amount it would have been had she not been fired.

Employee F was part time even before he was granted the reduced hours. So what should the restoration be to in order to not have a reduction. If we took the weekly average of the one week prior to the triggering event, the FTE would have been:

Employee F	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	30.0	0.8	0.5
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In that case, the FTE's for the CP or APCP would be increased by .5 (under the Regular Method) in order to prevent an increase in the reduction in forgiveness. Note if using the Simplified Method, there would be no change

Guardrails & Restrictions

› The FTE Reduction Safe Harbor

- There is no loan forgiveness reduction based on FTE employee levels if
 - › A Borrower's total average FTE for the period 2/15/2020 to 4/26/20 (calculated in the same manner as for the FTE Reduction Quotient) is less than the total FTE for the pay period that includes 2/15/20, & the borrower restores its total FTEs as of June 30, 2020, to the total FTE level for the pay period that includes 2/15/20
 - › See next page for another way to state the FTE Reduction Safe Harbor
 - › In anticipation of the question, the answer is "I don't know"
 - › Will 6/30/2020 date get pushed back? Sec. Mnuchin's comments. Last day to have received loan proceeds (or first pay period if APCP) & June 30 be outside is 5/5/20
- This only eliminates the FTE forgiveness reduction, it has no effect on what was paid & no requirement that you restore the pay

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FAQ – FTE Reduction Safe Harbor

› Question: When does a PPP borrower need to measure FTEs or Average FTEs?

› Answer:

1. The eight-week CP or APCP;
2. a. February 15–June 30, 2019 or 2b. January 1 – February 29, 2020;
3. Payroll that includes February 15, 2020;
4. Avg FTE for Feb 15–April 26, 2020;
5. June 30, 2020

If 1 is less than the lower of 2a or 2b you have a reduction in forgiveness. However, if 4 is less than date 3 & date 5 is greater than or equal to date 3, you meet the FTE Reduction Safe Harbor. (See steps 1–5 on page 9 of Form 3508)

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**BKD, LLP
FTE REDUCTION SAFE HARBOR CALCULATION**

FTE Reduction Quotient (Assumptions)

1	Average FTE for CP or APCP	6.0
2	Average FTE for selected base period	<u>10.0</u>
	FTE Reduction Quotient	<u><u>60%</u></u>

FTE Reduction Safe Harbor

4	Average FTE's of period 2/15 to 4/26/20	4.5 Next slide
3	Total FTE's for the pay period that includes 2/15/20	7.0 Assumed

If 4 is greater than 3, stop, there is no FTE Reduction Safe Harbor available

5	Borrower's FTE's at 6/30/20	8.0 Assumed
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If 5 is equal to or greater than 3, Borrower meets the FTE Reduction Safe Harbor and there is no reduction in the loan forgiveness related to FTE reductions.

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FTE REDUCTION SAFE HARBOR CALCULATION**

		For The Period 2/15/20 to 4/26/20										Weekly	Simplified
		<u>WEEK ENDED</u>										<u>Avg</u>	<u>Method</u>
		<u>2/21</u>	<u>2/28</u>	<u>3/6</u>	<u>3/13</u>	<u>3/20</u>	<u>3/27</u>	<u>4/3</u>	<u>4/10</u>	<u>4/17</u>	<u>4/24</u>		<u>FTE</u>
Employee A Employee B Employee C Employee D Employee E Employee F Employee G Employee H	Hours Worked	40.0	30.0	30.0	35.0	20.0	30.0	40.0	40.0	40.0	50.0	35.5	0.5
		50.0	40.0	30.0	30.0	25.0	25.0	25.0	40.0	40.0	40.0	34.5	0.5
		20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	20.0	0.5
		15.0	10.0	10.0	15.0	10.0	10.0	5.0	10.0	5.0	5.0	9.5	0.5
		50.0	60.0	50.0	50.0	40.0	55.0	50.0	60.0	50.0	50.0	51.5	1.0
		10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	10.0	0.5
		30.0	35.0	40.0	25.0	30.0	40.0	30.0	30.0	30.0	30.0	32.0	0.5
		25.0	40.0	25.0	25.0	30.0	10.0	15.0	10.0	20.0	20.0	22.0	0.5
												Average FTE, 2/15/20 to 4/26/20	<u><u>4.5</u></u>

Guardrails & Restrictions

› Salary/Hourly Wage Reduction

- Amount of loan forgiveness is reduced to extent any employee employed during the CP or APCP has a more than 25% reduction in average annual salary or hourly rate as compared to the period 1/1 to 3/31/2020
- Can exclude from this analysis any employee that during ANY single pay period in 2019 was paid salary or wages in excess of \$100,000 annualized
 - › If on 24-pay period (15th & 30th), \$4,167 gross pay for any 2019 pay period
 - › If on 26-pay period (every two weeks) \$3,847 gross pay for any 2019 pay period
 - › If on weekly pay period, \$1,924 gross pay for any 2019 pay period

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Guardrails & Restrictions

› Salary/Hourly Wage Reduction

- Speculation was all over on this. The 5/15 Form 3508 release took this into a very mechanical calculation. Entirely based on annual salary & hourly pay rate, not total compensation paid
- The calculation must be done on an employee by employee basis
- Three step process, very suitable for an Excel template, see attached
 - › Determine if pay rate was reduced more than 25%
 - › Determine if the Salary/Hourly Wage Reduction Safe Harbor (SHWRSH) applies
 - › Calculate the amount of the Salary/Hourly Wage Reduction

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Guardrails & Restrictions

› Salary/Hourly Wage Reduction

- Salary/Hourly Wage Reduction Safe Harbor (SHWRSH)

- › For any employee employed during the CP or APCP, if the average annual salary or average hourly rate for the period from 2/15 to 4/26/20 is less than the same item at 2/15/20, there will be no Salary/Hourly Wage Reduction for that employee in the loan forgiveness amount if

- The employee’s annual salary or hourly rate at 6/30/20 is at least equal to the same item on 2/15/20
- Again, in anticipation of the question, the answer is “I don’t know”

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XYZ, Inc.
FORM 3508, SCHEDULE A WORKSHEET
TABLE 1
SALARY/HOURLY WAGE REDUCTION CALCULATION

Manual Input	
From Other Input	
Computed	
Employee Name	John Doe
Employee ID	123456
Average hourly pay rate 6/30/20	19.00
Salary (S) or Hourly (H)	h

Determination if Pay Was Reduced Greater Than 25%	
Average hourly rate for CP or APCP	12.00
Average hourly rate 1/1 to 3/31/20	20.00
Percentage	60.00%

Determine If Salary/Hourly Wage Reduction Is Met	
Hourly pay rate on 2/15/20	20.00
Average hourly pay rate 2/15 to 4/26/20	16.00 ***
Average hourly pay rate 6/30/20	19.00
Meet SHWRSH?	No

*** - If hourly, total paid 2/15 to 4/26 divided by total hours represented by those payments
If salary, total paid multiplied by 365 then divided by 72

Determine Salary/Hourly Wage Reduction Amount	
Salary Hourly Wage Reduction For This Employee	960 Input In Salary/Hourly Wage Reduction Column For This Employee

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XYZ, Inc.
 FORM 3508, SCHEDULE A WORKSHEET
 TABLE 1
 SALARY/HOURLY WAGE REDUCTION CALCULATION

Employee Name: John Doe
 Employee ID: 123456
 Salary (S) or Hourly (H): H

Calculation For Hourly Employee			
	1/1/20 to 3/31/20	CP or APCP	
Total Pay	10,400	3,840	
Hours Worked	520.00	320.00	
Average Rate Per Hour	20	12	60% Percentage
75% of 1/1 To 3/31/2020 And 100% of CP or APCP	15	12	3 Excess over 75%
Average Hours Per Week, 1/1 To 3/31/20		40	If Hourly
Weeks worked in CP or APCP		8	320
Reduction in forgiveness attributable to this employee			960

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XYZ, Inc.
 FORM 3508, SCHEDULE A WORKSHEET
 TABLE 1
 SALARY/HOURLY WAGE REDUCTION CALCULATION

Manual Input
 From Other Input
 Computed

Employee Name: Janice Doe
 Employee ID: 246800
 Average annual salary on 6/30/20: 75,000.00
 Salary (S) or Hourly (H): S

Determination if Pay Was Reduced Greater Than 25%
 Average annual salary for CP or APCP: 50,048.75
 Average annual salary for 1/1 to 3/31/20: 70,000.00
 Percentage: 71.50%

Determine If Salary/Hourly Wage Reduction Is Met
 Annual salary on 2/15/20: 70,000.00
 Average annual salary 2/15 to 4/26/20: 50,000.00 ***
 Average annual salary on 6/30/20: 75,000.00
 Meet SHWRSH?: Yes

*** - if hourly, total paid 2/15 to 4/26 divided by total hours represented by those payments
 If salary, total paid multiplied by 365 then divided by 72

Salary/Hourly Wage Reduction Does Not Apply, Enter 0 In Salary/Hourly Wage Reduction For This Employee: 0

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XYZ, Inc.
FORM 3508, SCHEDULE A WORKSHEET
TABLE 1
SALARY/HOURLY WAGE REDUCTION CALCULATION

Employee Name Janice Doe
Employee ID 246800
Salary (\$) or Hourly (H) s

Calculation For Salaried Employee			
	1/1/20 to 3/31/20	CP or APCP	
Gross Salary	17,500	7,700	
Annualization Factor	0.25	0.15385	
Average Annualized Salary	70,000	50,049	71% Percentage
75% of 1/1 To 3/31/2020 And 100% of CP or APCP	52,500	50,049	2,451 Excess over 75%
Weeks worked in CP or APCP		8	
Divided by weeks in year		52	15.385%
Reduction in forgiveness attributable to this employee			377

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Guardrails & Restrictions: 75/25 Rule

- › 75/25 rule, SBA adopted this by administrative authority, it is not in the text of the law
 - Not more than 25% of the loan forgiveness can be on nonpayroll cost items
 - Stated another way, nonpayroll costs cannot be more than one-third of payroll costs
 - Search hard for these costs if under one-third, it can be found money depending on FTE fraction
 - Remember, "other interest" cannot be forgiven even though good use of proceeds, automatic two-year loan
- › Congress or Treasury may modify to 50/50, or eliminate altogether, but nothing is finalized

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Guardrails & Restrictions: Ordering

- › Before release of Form 3508, there was uncertainty as to which limitation comes first, the 75/25 limit or the FTE reduction
 - Uncertainty was caused by the 75/25 limit not being part of CARES Act. The FTE limit is specifically applied to the **total** of payroll costs & qualifying nonpayroll costs during the CP or APCP, this is in the CARES Act, while the 75/25 rule was applied to the undefined “forgivable amount”
- › Form 3508 confirms the forgiveness amount is the lesser of three amounts
 - › Modified total costs (defined on next slide)
 - › The PPP loan amount
 - › Total eligible payroll costs divided by 75%

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Guardrails & Restrictions: Ordering

- › Modified total costs are computed as follows
 - Add all eligible payroll & nonpayroll costs
 - Reduce the total above by any salary/hourly wage reduction (if applicable)
 - Multiply the result above by the FTE reduction quotient (if applicable)
- › End result is any limitation by FTE or salary/wage reductions does not stack on top of the 75/25 rule

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Line 1	Payroll Costs	2,300,000	Line 1	Payroll Costs	2,000,000
Line 2	Business Mortgage Payments	350,000	Line 2	Business Mortgage Payments	400,000
Line 3	Business Rent or Lease Payments	300,000	Line 3	Business Rent or Lease Payments	400,000
Line 4	Business Utility Payments	50,000	Line 4	Business Utility Payments	200,000
Line 5	Salary/Hourly Wage Reduction	-	Line 5	Salary/Hourly Wage Reduction	-
Line 6	Pre-FTE Reduction Totals	3,000,000	Line 6	Pre-FTE Reduction Totals	3,000,000
Line 7	FTE Reduction Quotient (below)	100%	Line 7	FTE Reduction Quotient (below)	100%
Line 8	Modified Total	3,000,000	Line 8	Modified Total	3,000,000
Line 9	PPP Loan Amount	3,000,000	Line 9	PPP Loan Amount	3,000,000
Line 10	75-25 Rule	3,066,667	Line 10	75-25 Rule	2,666,667
Line 11	Final Forgiveness Amount	3,000,000	Line 11	Final Forgiveness Amount	2,666,667
		77% Payroll			75% Payroll
FTE Reduction Quotient			FTE Reduction Quotient		
FTE Reduction	15%		FTE Reduction	15%	
Safe Harbor Amount	25%		Safe Harbor Amount	25%	
Net Reduction	0%		Net Reduction	0%	
FTE Reduction Quotient	100%		FTE Reduction Quotient	100%	

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Line 1	Payroll Costs	2,300,000	Line 1	Payroll Costs	2,000,000
Line 2	Business Mortgage Payments	350,000	Line 2	Business Mortgage Payments	350,000
Line 3	Business Rent or Lease Payments	300,000	Line 3	Business Rent or Lease Payments	300,000
Line 4	Business Utility Payments	50,000	Line 4	Business Utility Payments	50,000
Line 5	Salary/Hourly Wage Reduction	50,000	Line 5	Salary/Hourly Wage Reduction	-
Line 6	Pre-FTE Reduction Totals	2,950,000	Line 6	Pre-FTE Reduction Totals	2,700,000
Line 7	FTE Reduction Quotient (below)	95%	Line 7	FTE Reduction Quotient (below)	100%
Line 8	Modified Total	2,802,500	Line 8	Modified Total	2,700,000
Line 9	PPP Loan Amount	3,000,000	Line 9	PPP Loan Amount	3,000,000
Line 10	75-25 Rule	3,066,667	Line 10	75-25 Rule	2,666,667
Line 11	Final Forgiveness Amount	2,802,500	Line 11	Final Forgiveness Amount	2,666,667
		82% Payroll			75% Payroll
FTE Reduction Quotient			FTE Reduction Quotient		
FTE Reduction	30%		FTE Reduction	25%	
Safe Harbor Amount	25%		Safe Harbor Amount	25%	
Net Reduction	5%		Net Reduction	0%	
FTE Reduction Quotient	95%		FTE Reduction Quotient	100%	

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Self-Employed Individual

- › Forgiveness of payroll costs attributable to self-employed owner's contribution is limited to lesser of
 - Line 31 of the individual's 2019 Schedule C multiplied by 8/52, or
 - \$15,385
- › Compensation for owner-employees & service partners is limited to lesser of
 - Eligible comp during CP or APCP
 - \$15,385
 - Eight weeks' worth of 2019 compensation (capped at \$15,385)

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Interaction with Payroll Tax Deferral

- › Payroll Tax Deferral Provisions
 - Section 2302 of the CARES Act allows a deferral to 12/31/2021 & 12/31/2022 of the employer's share of FICA taxes for period 3/27/2020 through & including 12/31/2020
 - IRS, in a FAQ, addressed the ability of a PPP loan recipient to take advantage of the deferral. In short, they authorized the deferral up to the date the lender issues its decision to forgive any of the PPP loan under Section 1106 of the CARES Act. Specifically the FAQ stated
 - › Employers who have received a PPP loan, but whose loan has not yet been forgiven, may defer deposit & payment of the employer's share of Social Security tax that otherwise would be required to be made beginning on March 27, 2020, through the date the lender issues a decision to forgive the loan in accordance with paragraph (g) of Section 1106 of the CARES Act, without incurring failure to deposit & failure to pay penalties
 - › Once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer deposit & payment of the employer's share of Social Security tax due after that date

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Interaction w/Employee Retention Credit

› Employee Retention Credit (ERC)

- In general & subject to further rules & restrictions, Section 2301 of the CARES Act allows eligible employers to claim a credit against applicable employment taxes of up to 50% of qualified wages with respect to each employee (subject to \$5,000 employee cap)
- Section 2301(j) of the CARES Act specifics that if a business receives a PPP loan, such business shall not be eligible for the employee retention credit
- SBA FAQ 47 (5/13/20) gives a borrower until May 18 (today!) to repay the loan in full, making them eligible for the ERC via FAQ 45

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Forgiveness Is Tax Free, Right?

- › The CARES Act excludes PPP loan forgiveness from gross income subject to tax
- › Recent IRS guidance applies principle that expenses allocable to tax-exempt income are not deductible. Therefore, expenses covered by a PPP loan that is forgiven will not be deductible by the borrower
- › Many in Congress are not happy with the IRS interpretation, but allowing the relevant expenses to be deductible would require a change to the tax law to specifically permit a deduction

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Documentation for Forgiveness

- › Who makes the final determination on whether all or apportion of my PPP loan will be forgiven?
- › The lender makes this decision not later than 60 days after the date on which a lender receives an application for loan forgiveness from the borrower. See page 10 of Loan Forgiveness Application for documents each borrow must submit with their application
 - › Broad Categories of documentation include
 - › Payroll
 - › FTE
 - › Nonpayroll
- › Page 10 of Application also includes documents borrower must maintain & not submit

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BKD Forgiveness Calc Template

- › BKD has created a calculator for PPP loan forgiveness
 - › The calculator is based on existing PPP guidance from Treasury & SBA & is currently being updated by our National Office to incorporate the information in the SBA forgiveness application
 - › We are consulting with our clients on the inputs for this calculator
 - › Contact your BKD Advisor if you would like to schedule a demonstration of this tool

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Key Takeaways & Remaining Questions

- › Interim Final Rule on Loan forgiveness could trump instructions to forgiveness application thus causing need for application v2
- › Payroll costs
 - Do bonuses paid to employees during CP or ACP count?
 - Would my eligible payroll be higher using the CP because “paid or incurred” rule?
 - Will there be any special rules for self-insured plans?
 - Will the rehire safe harbor for the FTE quotient be extended beyond June 30, 2020?
- › Nonpayroll costs
 - Does related party rent paid during coverage period count?

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Questions?

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BKD COVID-19 Tax & Accounting Resource Center

- › BKD has created a resource center to help disseminate important tax & accounting information for our clients & friends as we evaluate ways to mitigate the inevitable financial effects of the SARS-CoV-2 virus & the incidence of COVID-19 (Coronavirus)
- › <https://www.bkd.com/covid-19-resource-center>



COVID-19 Resource Center

CLICK TO SEE RESOURCES NOW

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Continuing Professional Education (CPE) Credit



BKD, LLP is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.nasbaregistry.org

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CPE Credit

- › CPE credit may be awarded upon verification of participant attendance
- › For questions, concerns or comments regarding CPE credit, please email the BKD Learning & Development Department at training@bkd.com

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Thank You!

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The discussions and conclusions included with this letter are based on the facts as stated and existing authorities as of the date of this April 24, 2020 presentation. Our advice could change as a result of changes in the applicable laws and regulations. We are under no obligation to update this content if such changes occur.

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