

# CARES Act

Paycheck Protection Program Follow-Up Webinar

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Benjamin T. Siracusa Hillman, Esq.  
(603) 225-7262  
[bsiracusahillman@shaheengordon.com](mailto:bsiracusahillman@shaheengordon.com)

# Topics Covered

- **Loan forgiveness:**
  - Which expenses qualify
  - Timing of expenses
  - Tips and reminders

# An Important Disclaimer

- **This presentation does not contain legal advice but general information.**
- Ambiguities remain in the rules and guidance that the federal government has provided to date, guidance has changed over time, and there is potential new legislation in the works.
- You should consult your own attorney or accountant with questions related to your business.

# Expenses Qualifying for Forgiveness

- **Eligible Payroll Costs**

- PAID during the 56 day covered period or 56 day “alternative payroll covered period” (discussed later), or INCURRED during the last pay cycle of the chosen period and paid on or before the next regular payroll date

- **Eligible Nonpayroll Costs**

- PAID during the 56 day covered period, or INCURRED during the covered period and paid on or before the next billing date
- At least 75% of the amount forgiven must be for payroll costs

# Eligible Payroll Costs

- **Cash Compensation: Salary, wages, commissions, tips, paid leave (vacation, parental, family, medical, or sick leave, except leave covered by the FFCRA), allowances for separation or dismissal, capped at \$15,385 per employee;**
  - For sole proprietors/independent contractors/partnerships: wages, commissions, income, or net earnings from self-employment, capped at \$15,385 per employee, and owners' compensation is also capped at 8/52 of 2019 net profit
- **Employee benefits, limited to the employer's share of payments for group health care benefits and employer's share of retirement benefit payments; and**
  - For sole proprietors/independent contractors/partnerships, benefits for owners are not eligible.
- **State and local taxes assessed on employee compensation**
  - For sole proprietors/independent contractors/partnerships, benefits for owners are not eligible.

# Eligible Nonpayroll Costs

- **Interest on mortgage obligations** (but not principal) on real or personal property, pursuant to an obligation in force on February 15, 2020;
  - Includes interest on mortgages on business real estate and secured loans on personal property (such as an auto loan on a company car)
- **Rent and lease obligations**, specifically business rent, or lease payments on leases for real or personal property, pursuant to an obligation in force on February 15, 2020;
  - Includes rent for office spaces and business equipment leases
- **Utility payments**, defined as payments for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020
  - Includes fuel expenses for company cars

# Timing of Expenses

- **Payroll Costs**

- For payroll costs only, you must elect ONE of the following:
  - The 56 day period that begins on the PPP loan disbursement date; or
  - A 56 day “alternative payroll covered period” that begins on the first day of the employer’s first pay period following the PPP loan disbursement date (only for employers who pay on a biweekly or more frequent basis)
    - The alternative payroll covered period makes the math easier, but may be financially disadvantageous

- **Eligible Nonpayroll Costs**

- For non-payroll costs, the 56 day period begins on the PPP loan disbursement date, regardless of the period that you choose for payroll costs

- **Payroll Costs**

- All eligible costs PAID during the chosen covered period are eligible;
  - Payroll costs are paid on the date an ACH is initiated or paychecks are distributed
- All eligible costs INCURRED during the covered period but paid on or before the next regular payroll date after the covered period are also eligible
  - Payroll costs are incurred on the day that the employee's pay is earned
- Count payroll costs that are both paid and incurred only once

# Timing is Everything

## • **Timing of Payroll Costs Paid and Incurred**

- Because of the borrower-friendly interpretation of the paid and incurred rule, more than 8 weeks of payroll may be eligible for forgiveness.
- In fact, an employer with a biweekly pay schedule and lucky timing could have forgiveness of 5 pay periods and part of a 6<sup>th</sup> one!
  - Note that cash compensation is subject to the \$15,385 per employee cap
  - Payments of group health plan benefits, retirement benefits, and state and local taxes assessed on compensation are not subject to the cap
    - For independent contractors/sole proprietors/general partners, owners are limited to 8/52 of 2019 net profit, and benefits for owners are not eligible

# Timing is Everything (continued)

- For example, take an employer whose loan was disbursed on Wednesday, April 22, 2020, and who does not choose the alternative period. The 56-day period ends on Tuesday, June 16.
- Assume biweekly pay periods run every 2 weeks and payday is ordinarily the Thursday following:
  - (1) April 6-17 (payday April 23); (2) April 20-May 1 (payday May 7);
  - (3) May 4-15 (payday May 21); (4) May 18-29 (payday June 4);
  - (5) June 1-12 (payday June 18, moved back to June 16); (6) June 15-June 26 (payday July 2)
- Include expenses PAID during the covered period: Cycle 1, 2, 3, 4, and 5 (Cycle 5 paid two days earlier than normal)
- Include expenses INCURRED during the last pay period of the covered period and paid on the next regular payroll date: payroll incurred for the first 2 days (June 15-16) of Cycle 6, and paid on or before July 2

# Nonpayroll Costs: Paid or Incurred

- **Nonpayroll Costs**

- All eligible costs PAID during the covered period are eligible;
- All eligible costs INCURRED during the covered period but paid on or before the next regular billing date are also eligible, even if the billing date is after the covered period
  - Count nonpayroll costs that are both paid and incurred only once
- For sole proprietorships/independent contractors/partnerships, you must have claimed or be entitled to claim a deduction for such expenses on 2019 Form 1040 Sch C – “new” expenses don’t count

## • **Timing of Nonpayroll Costs Paid and Incurred**

- Because of the borrower-friendly interpretation of the paid and incurred rule, as with payroll, and depending on timing, more than 8 weeks of nonpayroll costs may be eligible for forgiveness.
- As a practical matter, this “timing loophole” applies primarily to costs paid in arrears, such as utilities. E.g., covered period runs April 22-June 16:
  - Electric bill for April 1-30 is due and paid on May 15 (PAID during covered period);
  - Electric bill for May 1-31 is due and paid on June 15 (PAID during covered period);
  - Electric bill for June 1-30 is due and paid on July 15 (53.333% was INCURRED during the covered period, and is eligible for forgiveness)

# Tips and Reminders

- At least 75% of the amount forgiven must be for payroll costs
- Cash compensation is capped at \$15,385 per employee
- For sole proprietorships, independent contractors, and partnerships, for owners, cash compensation is also capped at 8/52 of 2019 compensation (defined as net profit on 2019 Form 1040 Sch C line 31), and for owners, retirement benefits, health benefits, and state taxes are not eligible
- Contributions by employees (e.g., to retirement, health benefits) don't count as an employer cost
- Count those costs both paid and incurred only once
- For those who choose the "alternative payroll covered period," nonpayroll costs will still use the regular covered period

**Shaheen  
& Gordon**  
ATTORNEYS AT LAW

Thank you & stay safe

Benjamin T. Siracusa Hillman, Esq.  
(603) 225-7262  
[bsiracusahillman@shaheengordon.com](mailto:bsiracusahillman@shaheengordon.com)