



## Paycheck Protection Program - Devilish Details - Some Uncertainty

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There's two trillion dollars out there. How are you going to get your share? Well if you are in business or run a 501(c)(3), the first place to look is the Paycheck Protection Program whether you have been cutting paychecks or not. I have already [done one piece on the plan](#) that was deliberately superficial, for a reason.

### Why A Lot Is Not Known

The Paycheck Protection Program is an extension of the Small Business Administration 7(a) program. SBA needs to make up the exact rules and then the rules have to be implemented by the 1,800 banks that are part of the program. For you to participate you need to contact a bank.

US Bank has a pre-application you can do on-line and [they will get back to you](#). I did not get anywhere with the other large banks I contacted. If you have an existing banking relationship, you should contact that bank first thing.

At any rate how I, your accountant, your really smart cousin or your barber read the legislation doesn't matter. Even if we are right and the bank is wrong, it will be what the bank says.

With that caveat, I will dive a little deeper into the legislation in this post.

### Qualification

Besides promising that you are only going to take out one loan under the Payroll Protection Program, you have to certify two things. One is that you intend to use the money to retain workers, maintain payroll or make mortgage lease or utility payments.

The other thing you have to certify is that "uncertainty of current economic conditions makes necessary the loan request" to support your ongoing operations.

So if you have the whole COVID-19 situation figured out so you are perfectly sure how you will get through the crisis without borrowing any money, you don't qualify. And everybody else in the country wants to be you.

Generally, you can't have more than 500 employees, but I figure if you have more than a couple of hundred, you have one or two of them studying the legislation for you. There are exceptions.

### The Sweet Terms

No collateral or personal guaranty is required. Interest is no more than 4% and repayment, if required, can be over a period as long as ten years. You don't have to show that you can't borrow the money elsewhere.

### Three Sets Of Rules To Consider

There are three important things that people want to know about this program. How much can you borrow? How are you supposed to spend the money? And how much of the loan will be forgiven?

It can be somewhat confusing because each set of rules uses some of the same elements, but they are different in how they are combined.

## Payroll Costs - The Most Important Definition

Payroll costs is the most important concept and thankfully is defined the same way throughout.

**Payroll costs** is defined very broadly and includes salary, wage, commission, or similar compensation, payment of cash tip or equivalent, payment for vacation, parental, family, medical, or sick leave, allowance for dismissal or separation, payment required for the provisions of group health care benefits, including insurance premiums, payment of any retirement benefit, and payment of State or local tax assessed on the compensation of employees.

And there is one more thing included in payroll costs that I find pretty puzzling:

*the sum of payments of **any compensation to or income of** a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period* (Emphasis added)

Now I am not sure exactly what that last item means. I read it to mean that you also include the people you are paying as independent contractors and if you are a sole proprietor whatever your schedule C profit was (up to \$100,000) and something similar for partnerships.

Including your Schedule C profit would put you in a similar position (slightly better maybe) as an S corporation owner who paid himself a reasonable salary. An S corporation owner that did not pay himself salary might be worse off.

Excluded from payroll costs are amounts attributable to payroll over \$100,000 and amounts for which you are getting credit under the Families First Coronavirus Response Act.

## How Much Can You Borrow?

This is a little confusing. There are things that you can use the loan for besides payroll costs, but the maximum loan computation is based solely on payroll costs. It is 2.5 times the average monthly amount from the 1-year period before the date on which the loan is made unless the Administrator, whoever that is, says that you are seasonal. If you are seasonal it is the amount you paid in 2019 for the 12 week period beginning February 15, 2019 or at your election March 1 to June 30.

And there is a \$10,000,000 limit, but if your payroll is that large, you should have staff figuring this out for you.

The 1-year period before the date on which the loan is made strikes me as something of a moving target.

## What Can You Use The Loan For?

Besides payroll costs you can use the loan funds for:

(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

(III) employee salaries, commissions, or similar compensations;

(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);

(V) rent (including rent under a lease agreement);

(VI) utilities; and

(VII) interest on any other debt obligations that were incurred before the covered period.

There does seem to be some redundancy there.

I would recommend that you seriously consider opening an account where you deposit the loan proceeds and using that account to pay permitted expenses. That would give you a very easy audit trail.

## How Much Can Be Forgiven?

This gets very tricky, because the forgiveness section uses the term covered period, but defines it differently than the loan amount section. It is the eight-week period beginning with the origination of the loan.

Here is the actual language:

*?Forgiveness.?An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following **costs incurred and payments made** during the **covered period**:*

*(1) Payroll costs.*

*(2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).*

*(3) Any payment on any covered rent obligation.*

*(4) Any covered utility payment? (Emphasis added)*

It would seem that you are on a kind of hybrid accounting method in measuring the forgiveness amount. Things that you paid during the covered period that you incurred before and things that you incur during the period that you pay after seem to count. I wouldn't plan on that being the right interpretation, but keep it in mind.

But then there is a reduction in the forgiveness amount based on a headcount fraction.

*? (A) IN GENERAL.?The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing?*

*(i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period; by*

*(ii) (I) at the election of the borrower?*

*(aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or*

*(bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or*

*(II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.*

*(B) CALCULATION OF AVERAGE NUMBER OF EMPLOYEES.?For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.?*

There is also a carve-back in the forgiveness amount if there is a reduction in pay of more than 25% of any individual full-time employee.

These reductions, however, are not implemented if you are fully staffed up by June 30.

## **All Might Not Be Forgiven**

Even if you spend all the money on permitted expenses, the difference in the definition of "covered period" might mean that you won't have the full amount forgiven. And then there is that headcount problem.

I was just speaking with the tax manager of a CPA firm that supports service businesses that are severely impacted. They are figuring out how to maximize the loan amount and forgiveness and it can get complicated fast.

One of the big unknowns is how quickly the banks will be able to dish out the money. Still the loan is a good deal even if you have to pay some of it back.

## **What I Find Most Puzzling**

Consider a sole proprietor consultant named Robin. who does not pay anybody else and has negligible expenses. Robin had Schedule C income of \$96,000 last year. It seems that Robin can borrow \$20,000, but how is the forgiveness amount determined? Is it Robin's Schedule C profit for the year? What if Robin has a loss?

## **Heads Up To S Corp Owners**

Consider Robin's competitor Terry who runs the practice through an S corporation . Can Terry amp up the loan by paying salary now? Presumably it is easy for Terry to qualify for forgiveness by issuing a paycheck to, you know, Terry. But if Terry has been stingy with the social security taxes and keep salary very low, there seems likely a problem.

## **Other Coverage**

There is an awful lot of other coverage, but nothing that addresses the knotty questions I am still wondering about. Lucien Gauthier of the [Boston Tax Institute](#) who gave me the idea of "There's two trillion dollars. How do you get yours?" is chained to his desk studying the bill over the weekend and my tax manager friend will be sending me his newsletter, so I am hoping for better answers soon.

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**Read the original article [here on Forbes.com](#).**