For Veterinarians By Veterinarians®

Updates: March 30, 2020 *(Item 10 added)*
April 23, 2020 *(Interim Final Rule)*
May 7, 2020 *(PPP Update)*
May 18, 2020 *(Loan Forgiveness Application)*
June 2, 2020 *(Additional Final Rule Installments)*
June 4, 2020 *(Reform bill to PPP)*
June 15, 2020 ("Flexibility Act" guidance)

The Coronavirus Aid, Relief, and Economic Security Act ("CARES") was signed into law March 27, 2020 to help employers and employees weather the financial fallout from COVID. This is a summary of the relevant provisions from the Act that can affect the VIN community:

1. Use of Retirement Funds

The normal 10% penalty for early distributions from qualified retirement plans is waived for amounts withdrawn from your retirement account - up to $100,000 - in 2020, provided:

- You, your spouse, or your dependent are diagnosed with COVID; or
- You experience adverse financial consequences because of COVID related quarantine, furlough, lay off, reduction in work hours, inability to work due to lack of childcare, or closure of business.

You can repay these distributions within 3 years of withdrawal. Whether or not repaid, these distributions will be deemed taxable for federal income tax purposes, although you can spread the income over a 3-year period.

2. Interaction with the Families First Coronavirus Response Act (the paid leave act)

On March 18, a federal law known as the Families First Coronavirus Response Act (FFCRA) was enacted to provide paid leave for those who need to stay home to take care of a minor child whose school or day care closed, and for those who have COVID symptoms or are taking care of others with COVID symptoms (see summary here and full discussion here *[VIN Community only]*).

The CARES act amends portions of the FFCRA. Of special importance:

- Employers covered by FFCRA can get an advance on the payroll tax credits they would be entitled to, to help cover the costs of providing employees with paid leave. So rather than waiting for quarterly 941 payroll tax filing/remittance, employers can ask for that money "now." We are waiting for regulations, guidance, and forms from the Department of Labor ("DOL") and IRS.

- FFCRA coverage applies to employees who were laid off as of March 1, 2020, and onwards, provided they worked for the employer for at least 30 of the last 60 calendar days prior to being laid off, and were then rehired by the employer.

3. Student Loan Exclusion

Through year end, 2020, employers can provide their employees with a student loan repayment benefit of up to $5,250 per employee on a tax-free basis.

4. Unemployment Assistance

Unemployment insurance benefits are expanded under the CARES Act. In addition to adding coverage for those who are self-employed, it essentially increases the benefit any person gets by $600 per week (known as the Federal Pandemic Unemployment Compensation) - with the actual benefit dependent on state rules. The benefit applies to anyone who became unemployed, partially unemployed or is unable to work, due to COVID-19 on or after January 27, 2020, through year end.

5. Employee Retention Credit for Employers

While the FFCRA helps employers, who are required to pay employees on leave, the CARES Act aims at rewarding employers who keep employees by providing an Employee Retention Credit.

For wages paid after March 12, 2020 and through year end, covered employers are allowed a new refundable payroll tax credit equal to 50% of the qualified wages paid, with a cap of $10,000 in wages per employee – so the maximum credit is $5,000 per employee. To be eligible for this credit, the employer's trade or business must either:

- Be partially or fully suspended because of government order limiting commercial transactions, travel, or meetings; or
- Receive gross receipts for at least one calendar quarter that is less than 50% of the gross receipts received during the same calendar quarter in the prior year. This qualifying event will be deemed continuous until the gross receipts exceed 80% of the gross receipts for the same calendar quarter in the prior year.

Note the calculation of this credit differs, depending on the number of employees the employer has:

- For employers with 100 or less full-time employees in 2019, the sum of gross wages paid to all employees are eligible for credit.
- For employers with more than 100 full time employees, qualified wages are limited to the sum of gross wages paid to employees who are unable to provide services due to the pandemic.

Also note that employers who receive some of the newly created or modified SBA loans (discussed below) are not eligible for the employee retention credit.

6. Delay in payroll and self-employment taxes

The FFCRA already allows employers to dip into payroll tax deductions and use them as a credit against paid leave (see summary here and full discussion here *[VIN Community only]*).

The CARES Act further provides that depositing the employer's share of Social Security tax that would otherwise be due between now and year end can be delayed:

- 50% of such taxes must be deposited by December 31, 2021,
- the remainder by December 31, 2022.

For those self-employed, the CARES Act provides that they must still pay 50% of the self- employment tax (i.e., the employee's share) just as before, but they can similarly delay the other half as listed above.

Note that if an employer benefits from any SBA loan forgiveness (see below), they may not participate in this tax delay program.

7. SBA loan program

The US Small Business Administration (SBA) provides loans to small businesses. The CARES Act changes how the SBA loan programs function. There are multiple programs affected with very substantive changes.

The CARES Act requires the SBA to issue guidance and regulations on how these loans will be implemented within15 days of enactment, but they have 30 days to provide that guidance to the lending financial institutions, so none of this is expected to be immediate. Until we have more clarity as to how this will work for the VIN community, and by pulling the relevant provisions from both the current legislation and how the programs run now, we can provide this summary:

(a) Economic Injury Disaster Loans

The SBA's Economic Injury Disaster Loan program (EIDL) is an existing program that is now available for COVID affected businesses. The CARES Act changes how it functions and who can apply:

- An "eligible" entity now includes sole proprietors, whether or not they have employees. It also includes independent contractors, and any business with no more than 500 employees.
- You need to have been in operation as of January 31, 2020 – the requirement of being in business for at least one year has been waived.
- The requirement of not being able to get credit elsewhere has been waived.
- It provides up to $2 million to pay accounts payable, payroll, and debt obligations that cannot be paid because of a declared disaster.
- You can also apply for an advance of up to $10,000 to be funded within 3 days of submission, by certifying that you are eligible for the EIDL program. If you are later denied the full loan, you do not have to pay it back.
- Interest rate is capped at 3.75%, with terms up to 30 years, and payment deferral for up to 12 months.
- There is no application fee.
- The underwriting standards have been modified, with current guidance stating that approval and funding will be done within three to four weeks. If an employer has a bridge loan from another source during this approval period, it is eligible to be refinanced with the EIDL funds.
- The current guidance is also that real estate will no longer be needed for collateral. There is also no need for a personal guarantee, for loans of up to $200,000.
- If an initial EIDL loan isn't enough, additional funds can be requested to cover continuing injury.
- You can apply for the loan, but later decide not to accept it, so it doesn't hurt to get in the processing line. To apply, go here: https://www.sba.gov/funding-programs/disaster- assistance

(b) SBA Express Loans

The SBA Express Loan program is also an existing program, but the CARES Act increased the amount available for loans from $350,000 to $1 million through December 31, 2020.

SBA is supposed to respond to these "express" loans within 36 hours, although they have yet to provide the mechanism for this https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources.

(c) Paycheck Protection Program

Under the SBA's existing "7(a)" loan program, the CARES Act added a new "Paycheck Protection Program" ("PPP") that ***has drawn lots of attention because of a potential for loan forgiveness.***

PPP loans are available to all employers with no more than 500 employees, including self-employed individuals, sole proprietors, and independent contractors. Unlike the EIDL loans discussed earlier, which are funded through the SBA, these loans are run through financial institutions selected by the U.S. Department of the Treasury. These loans work as follows:

- The amount of loan is based on the lesser of two and a half times the average monthly payroll costs during the previous 12 months or $10 million.
- The proceeds can be used for payroll costs (excluding individual employee compensation above $100,000 per year), rent, mortgage or other debt interest (provided not "advanced payment of interest," and provided the debt was incurred before February 15, 2015), and utilities.
- The proceeds may not be used to cover qualified sick leave or FMLA wages for which a credit is allowed under the FFCRA (see summary here and full discussion here *[VIN Community only]*).
- No personal guarantee is required
- Repayment can be deferred for at least 6 months
- Payments that are not forgiven are subject to maximum interest of 4%, with a maturity of up to 10 years

The PPP loan principal may be forgiven, dollar-for-dollar, for eligible costs and payments incurred during an 8-week period following loan origination. Stated another way, whatever you spend of the loan proceeds during the 8-week period following receipt of the funds will be forgiven, as long as you use it on the eligible items described above. If the loan is forgiven, it won't be treated as taxable gross income to you***.***

But, there's a catch to make sure there is an incentive to keep employees working. The amount of forgiveness will be reduced through a complex penalty system if the borrower reduces the number of employees, their salaries, or both, during the same 8-week period:

- For terminations, the reduction will be based on multiplying the forgiveness amount by the quotient of the borrower's average number of full-time employees per month during the 8 week period divided by either:

  (1) the average number of full-time employees per month employed during the period of February 15, 2019, through June 30, 2019; or
  (2) the average number of full-time employees per month employed during the period of January 1, 2020, through February 29, 2020.

  The borrower can choose which period to use, and the "average number of full-time employees" is determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

  For example, say the forgivable amount is $100,000 and the average monthly employment for the year prior was 10. If the number of employees during the 8-week period is 7, then only $70,000 is eligible to be forgiven (30% reduction in workforce = 30% reduction in loan forgiveness).

- If salaries are reduced, the amount of forgiveness will likewise be reduced. The amount of reduction will be based on any reduction in wages of employees earning $100,000 or less on an annualized basis using 2019 figures: For each such employee who has their pay reduced during the 8-week period, the amount of forgiveness will be reduced by the amount such reduction exceeds 25% of the employee's pay for the quarter most recently completed prior to the loan origination.

  For example, say an employee's salary was reduced by 30% as compared to the most recent quarter. In that case, the forgivable amount would be reduced by 5% (i.e., 30% minus 25%).

If an employer is subject to forgiveness reduction but is able to increase their employee count and salaries by June 30, 2020, to the levels they had on February 15, 2020, they will not be subject to the reduction.

If both the number of employees and salaries are reduced, the amount of forgiveness will be reduced by both triggers (reduction of employees and reduction of salaries), if applicable.

A lender's decision on forgiveness must be made within 60 days after the lender received a completed application for forgiveness. The application will need, at a minimum, verification of full-time equivalents (e.g., IRS payroll tax filings); proof of expenses (e.g., cancelled checks, receipts, etc., verifying rents, mortgage, etc.); and relevant certification and documentation as the SBA deems necessary once this program is fully implemented.

If the borrower received an advance under the EIDL program (discussed above), the amount of the advance will reduce the amount of allowable loan forgiveness. Furthermore, if an employer gets a PPP loan, they are no longer eligible for the employee retention credits and are not allowed to delay their share of payroll taxes under the tax delay program (both programs also discussed above).

8. Net Operating Loss rules

The CARES Act changes how a business can benefit from net operating losses ("NOLs"):

- Losses arising in tax years 2018, 2019, and 2020 can now be carried back five years
- The rule limiting NOLs to 80% of the taxpayer's taxable income is suspended for tax years that begin prior to January 1, 2021, so that employers can completely offset their income both on a carryback and carryforward basis.

9. Other tax relief provisions

Several other provisions have been modified by the CARES Act to give businesses in unique situations better cash flow. These include:

- The 30% ***limit on business interest expense deduction has been temporarily increased*** to 50% of adjusted taxable income ("ATI") for taxable years 2019 and 2020, while allowing a business to use their 2019 ATI for 2020 if they wish. This reduces the cost of capital and increases liquidity.
- An ***accelerated bonus depreciation*** is allowed for qualified improvement property, with retroactivity to 2018. This gives qualifying taxpayers the ability to get a refund opportunity by way of filing an amended 2018 return.
- ***Refundable Alternative Minimum Tax ("AMT") credits can be accelerated*** –making them fully recoverable in 2019, versus in 2021.

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10. For those with student loans

The CAREs Act provides a number of relief measures to **those with outstanding student loans**, including

- The Federal Government will **suspend payments on federal student loans** it owns (e.g., Direct Loans) through September 30, 2020. No interest, penalties, or late fees will apply, and the suspension period payments will "count" as a qualifying payment under loan rehabilitation and forgiveness programs.
- **No interest will accrue** on any federal student loans, including those that are in default, through September 30, 2020.
- Any student loan **debt collections by the Federal government have been suspended**. That mean garnishment of tax refunds, social security benefits, and wages, is being halted.

Note that the above **ONLY applies to Federal student loans owned by the government** (e.g., Direct Loans). This does not apply to private loans. For more detailed discussion of the impact of COVID on student loans, see the VIN Foundation Blog as well as the VIN Student Debt Folder *[VIN Community only]*).

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UPDATED April 23, 2020

The SBA has issued the 3rd "Interim Final Rule" to provide further guidance for the PPP program. Of specific interest to the VIN community, this one attempts to clarify issues related to self-employment and partnerships.

1. Eligibility of self-employed

The new rule provides that an individual is eligible if they were in business February 15, 2020, have self-employment income, have their principal place of residence in the US, and file (or will file) a Form 1040 Schedule C for 2019. Of course, this may be an issue for those who were in business in 2020, but not in 2019 (since they won't have 2019 returns covering the business… ever), and the SBA noted it will need to provide further clarification on that front.

The SBA added that regardless of whether a 2019 tax return has been filed, the applicant "must provide the 2019 Form 1040 Schedule C" with the PPP loan application to substantiate the loan amount, along with "a 2019 IRS Form 1099-MISC detailing nonemployee compensation received (box 7), invoice, bank statement, or book of record that establishes you are self-employed."

2. How to calculate amount of loan for those self-employed

The SBA provided two ways to calculate the maximum loan amount, depending on whether or not the business employs anyone (other than the owner) – in each case, the SBA looks to average net profits:

a. For a business with employee(s) – the maximum loan amount is 2.5 times the sum of **monthly average net profit,** gross wages and tips, plus certain benefit contributions; plus the amount of any EIDL made between January 31 and April 3, 2020 that the business wishes to refinance; minus the amount of any EIDL advance.

b. For a business without employees - the maximum loan amount is simply the **monthly average net profit**, multiplied by 2.5, and again the EIDL loan is added, and any advance is subtracted.

3. How can PP loan proceeds be used by those who are self-employed

The proceeds can be used to **pay the owner(s) based on 2019 net profits**, along with all the other eligible categories (wages, mortgage interest, utilities, other secured debt interest).

The SBA added that "**interest on an auto loan** for a vehicle you use to perform your business" is an allowed expense, that "business rent payment" include "the **vehicle you use to perform your business**"), and that "business utility payments" include "**gas you use driving your business vehicle**".

However, the SBA also stated that **you must have claimed or be entitled to claim a deduction for such expenses on your 2019 Form 1040 Schedule C** for them to be permissible use during the 8 week period following disbursement of the loan. That is, **if you didn't spend the money on it in 2019, you can't spend loan money on it now**.

And just like with the others, self-employed folks are subject to the same requirement that at least 75% of the loan proceeds must be used for payroll costs.

4. How do general partners file?

Self-employment income of general active partners is to be reported as payroll cost, up to the $100,000 annualized cap, on the PPP loan application filed on behalf of the partnership. The partners are not to submit a separate application themselves as self-employed individuals. The same rule applies to LLCs filing taxes as a partnership – limiting to one PPP loan per entity.

5. What about forgiveness?

The same rules apply, with the clarification that the PPP proceeds eligible for forgiveness include the total amount paid on owner compensation replacement during the 8 week covered period (i.e., eight weeks' worth (8/52 weeks) of 2019 net profit.)

Note that it appears there is a maximum threshold limitation based on net profits. The SBA noted that "**Limiting forgiveness to eight weeks of net profit from the owner's 2019 Form 1040 Schedule C** is consistent with the structure of the Act…".

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UPDATED May 7, 2020

The SBA issued updated guidance regarding PPP funding, including how to deal with loan forgiveness and laid off employees. Here's a quick summary of changes that may be especially relevant to the VIN community:

1. When does the 8-week period begin?

The amount of forgiveness of a PPP loan depends on the borrower's expenses during an 8-week period, and there has been some debate as to when this period begins. The SBA now confirms that it begins when the lender makes the first disbursement of loan funds to the borrower – when money appears in your bank account.

2. How to deal with laid off employees – will it affect forgiveness if they refuse to come back?

If a borrower laid off an employee, then offered to rehire them at the same wage and with the same hours, but the employee refuses to return, that will NOT reduce the loan forgiveness amount. The SBA still intends to issue more ruling on this, but for now they have expressed their intent to provide this exception. To qualify, the borrower must have made a good faith written offer to rehire, and the rejection "must be documented by the borrower." The SBA also reminds everyone that the employee who refuses to return may then forfeit their eligibility for unemployment benefits.

3. What about housing stipends?

On occasion, employers provide their employees with an allowance for housing. The cost of that stipend or allowance counts towards payroll costs (along with all other "cash compensation", subject to the $100,000 annual cap.

4. What happens if a business was in operation February 15, 2020, but changed ownership thereafter?

The CARES Act approved PPP loans only to borrowers that were "in operation on February 15, 2020", so the question arose as to borrowers who had a change in ownership between that date and now. The SBA clarified that as long as the business was in operation on February 15, it can still apply regardless of the change in ownership. They also added that if the change in ownership was done through purchase of substantially all of the assets of the business that was in operation on February 15, the business acquiring the assets is still eligible to apply even through the change in ownership resulted in a new tax ID number, and even though the acquiring business was not in operation until after February 15.

5. Clarification on audits

All loans "in excess of $2 million, in addition to other loans as appropriate" will be reviewed after a lender submits the borrower's loan forgiveness application to ensure they made their certifications to get the loan in good faith, and that the proceeds were used properly. A safe-harbor was also established – any borrower who applied for a loan prior to April 24, and who repays the loan in full by May 14, will be deemed to have made all required certifications "in good faith".

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UPDATED May 18, 2020

The SBA has published a Loan Forgiveness Application form, which borrowers must turn in to their lenders once forgiveness is requested (lenders may issue electronic versions of these). The application does a flip-flop on many provisions from the Act, changes how FTEs are calculated, adds a new FTE safe harbor, while at the same time not only leaving huge gaps in missing definitions, but adding even more confusion. But for now, this is the lay of the land, so we might as well dive into it.
Consider the following both a highlight of the crucial elements gleaned from the application and related instructions, as well as an attempt at providing a little handholding as you go through the application itself:

1. Loan Amount: While it appears to be an innocent and easy question at the top of the application, note that the SBA uses the amount of your loan as the maximum amount eligible for forgiveness. This is different than language in the SBA's interim final rule, and so **limits the forgiveness to the principal of the loan, which thus does not include any accrued but unpaid interest**. I.e., your loan is accruing interest right now, and that interest is not forgivable as presented in the current application.

2. Irrelevant Questions: The SBA is asking for various data points from you that don't appear anywhere in the calculations. For example, they ask for the number of employees at the time you applied for the loan, and at the time you ask for forgiveness. Don't panic and don't worry about it – just give them what they ask but be sure to remain consistent in your replies.

3. Alternative Payroll Covered Period: To maximize forgiveness, the Act required you to use the money within an 8 week period that started with the receipt of funds. But of-course payroll doesn't necessarily line up with when funds were deposited to your account. The SBA now allows **you to elect an "Alternative Payroll Covered Period", which would be the first day of the first pay period following receipt of PPP funds**. You would then count 56 days (8 weeks) from that day. Note that if you elect this alternative period, you must use it whenever the SBA calls for it – i.e., you need to pay attention to when they use the term "Alternative Payroll Covered Period", versus "the Covered Period". This alternative period only applies to payroll, and not to non-payroll eligible costs like mortgage interest, rent, or utilities (which must be paid or incurred during the "Covered Period" – not the "Alternative").

4. Payroll costs "paid or incurred": The SBA added a **"paid or incurred" concept for payroll costs** (and to non-payroll costs, as discussed next). Payroll costs are **deemed "paid"** on the day a paycheck is given or the day you issue an ACH for the funds to your employee. Say you got the PPP on April 27, and that day ran payroll as you usually do. If you are using the regular Covered Period, starting on the 27th when you got the funds, you would have "paid" payroll using PPP funds, and you would include that amount in your forgiveness calculation.

   But at the same time, the SBA also defined the concept of "incurred", noting **that payroll costs are incurred on the day they are earned.** They then added instruction that payroll costs incurred for the last pay period of the relevant covered period remain eligible for forgiveness as long as they are paid no later than by the next regular payroll date.

By way of quick reminder, "payroll costs" include gross salaries, wages, commissions, and tips (all capped at $100,000 on an annualized basis, per employee); employee benefits, including costs for vacation, parental, family, medical, or sick leave; payments for separation or dismissal; the employer portion of group health care benefits; employer portion of retirement benefits; and state/local taxes charged on compensation (like workers compensation payments).

5. Non-payroll costs "Paid or incurred": The Act provided forgiveness of certain non-payroll costs, but the question arose as to whether you had to actually pay for those costs during the 8 week period, or if it was enough to just incur them (e.g., an electric bill for usage of utilities during the covered period, that is paid after the period ends). The new loan forgiveness application clarifies that non-payroll costs must **either be paid OR incurred during the Covered Period, and paid on or before the next regular billing date** – even if that billing date is after the Covered Period. Again, note that the period is the original 8 week covered period starting with the date you got the loan, and NOT the "Alternative" period if you elected that for payroll purposes. This would apply to mortgage interest, rent/lease, and utility payments.

6. Business Mortgage Interest: as was alluded to in earlier guidance, the SBA now confirms that the interest you can list and use as an eligible cost to spend PPP funds on must be "**business mortgage obligation on real or personal property**". One reminder - in past discussions it was noted that the reference to "mortgage" means there must be a security interest in the property – i.e., if you don't pay, the lender can go after the property (whether it is realty, or personal property). For instance, that imaging machine you bought last year with a payment plan may have an interest component – that would be considered a "mortgage" on "personal property" as long as the lender has the right to go after the machine if you fail to pay. This issue has not been addressed in this forgiveness application.

7. Illogical and inconsistent tables: The SBA requires you to list employees in two worksheet tables on Schedule A based on annualized compensation levels – in Table 1 you include those not employed in 2019, and those with "an annualized rate of less than or equal to $100,00 for <u>all pay periods</u> in 2019". Table 2 includes those with "an annualized rate of more than $100,000 for <u>any pay period</u> in 2019". Note the underline I added: the SBA uses two difference concepts, without explanation. Say you paid someone a $90,000 salary, but then gave them a bonus of $5,000 one month. For "all pay periods" they earned less than $100,000. But for the one pay period where you gave the bonus, they would have earned more on an annualized basis, thus triggered the "any pay period" – did the SBA really mean for that discrepancy? The other issue is that the relationship to the whole of 2019 is not apparent – the intent is to use these figures when calculating loss of forgiveness (see later discussion), but looking at the whole of 2019 does not follow the terms of the Act.

Note also that when listing employees in Table 1 and Table 2, **you may <u>not</u> list any owner-employees, self-employed, or partners. T**hey are dealt with separately in Line 9 of Schedule A. This has a number of consequences throughout the application process, even though not reflected in any of the instructions: these "**owner" type folks are not included in the FTE reduction calculation** (e.g., a shareholder-owner who reduces their own salary so that there will be sufficient cash flow for others); it also looks like **non-compensation payroll costs for these "owners" – like employer health care insurance payments and retirement payments – are also not forgivable**. Again, this is not explicitly detailed in the SBA application, so the argument to the contrary can still remain.

8. Calculating FTEs – the SBA did an about-face from standard Federal rules, and decided to go with **40 hours (rather than 30) as the measure of 1.0 FTE**. Why? They didn't explain. But they did confirm that 1.0 is the maximum FTE for any single employee (i.e., a 45 hour employee is still just 1.0 FTE). They also provided a **simplified alternative** for doing the math: at your choice, you can decide to take every employee who works 40 hours or more and call them a 1.0 FTE and every employee who worked less than 40 hours a 0.5 FTE. Since you may get different results by using the simplified alternative, you may want to do the math both ways to see which puts you in a better position – I know… so much for "simplified." Note that if you do the exact math, you are to round to the nearest tenth.

9. Reduction in wage test: we already know that if an employee's wage is reduced during the relevant covered period (i.e., the 8 weeks starting with loan disbursement, or the "alternative" one) by more than 25% as compared to the wages paid between January 1, 2020 and March 31, 2020, then the amount of forgiveness will be reduced. However, the **SBA only tests the employees in Table 1 – those with an annualized salary "of less than or equal to $100,000 for all pay period in 2019"**. By definition, a reduction in wage of only those employees will trigger a loss of forgiveness.

10. The "safe harbor" rules, whereby you can "fix" a reduction in wages or a reduction in hours – have been adjusted beyond how they are described in the Act

    a. Wage reduction safe harbor: Remember the wage test noted above? You have a chance to "fix" it, and not suffer any reduction, if you meet a "**Salary/Hourly Wage Reduction Safe Harbor**". For each employee, whose wage is reduced by more than 25% during the covered period as compared to the wages paid between January 1, 2020 and March 31, 2020, you do this:

        i. Step 1: look at the employee's wage on February 15, 2020

        ii. Step 2: Calculate that employee's average wage for the period of February 15, 2020, through April 26, 2020.

        iii. If the Step 2 figure is greater than the Step 1 figure: no safe harbor applies, and reduction in forgiveness applies.

        iv. If the Step 2 figure is less than the Step 1 figure, determine the wage as of June 30, 2020. If that amount is equal to or greater than the Step 1 figure, the safe harbor applies, and you will not suffer any reduction in forgiveness under the wage test.

    Let's try and apply this "fix" to a real life example.

    Your clinic was doing just fine in January. February was a "so-so" month. By the time March came, you started getting hit with COVID restrictions, and had to start reducing the base pay for Wendy, your one and only associate. By the time April and May rolled around, things were pretty dismal, and you had to reduce Wendy's pay even more. But then you got your PPP funds, restrictions eased up, and you were able to increase Wendy's salary by end of June.

Assume Wendy was paid $8,750 in January; $6,250 in February; and $5,000 in March. So her total for the period of January 1, 2020 through March 31, 2020, was $20,000. On an annual basis, that would be an $80,000 salary ($20,000 times 4).

Wendy's earnings continued to slide into April, and her average annualized salary between February 15 and April 26 was $55,000.

As noted, that slide in pay continued as the effects of COVID got worse for your clinic. By the time you got your PPP funds and started the "covered period", business was really slow. Over the 8 week period, you paid Wendy only $7,000. That is equivalent to an annualized salary of $45,500 ($7,000 divided by 8, multiplied by 52).

Things then started getting better for your practice, and by June 30th, you got her pay up to $75,000 per year. Not quite the $80,000 she earned in the first quarter of 2020, but certainly better than what she was earning in April and May.

So the first step would be to apply the reduction in wage test.

- You paid Wendy a salary equivalent to $80,000 during January 1, 2020 through March 31, 2020.
- You paid Wendy a salary equivalent to $45,500 for the 8 week covered period.
- That is a reduction to 56.875% ($45,500 divided by $80,000) or her January through March salary.
- That is less than 75% (i.e., you reduced her earnings too much), so you failed the test, and a reduction in forgiveness is required.
- The reduction would be $2,230.77 ($80,000 times 75% = $60,000; $60,000 minus $45,500 = $14,500; $14,500 divided by 52 multiplied by 8 = $2,230.77).

But now let's see if we can "fix" that reduction, by falling into the wage safe harbor. Following the steps described above:

- Step 1: What was Wendy's wage on February 15, 2020? It was $75,000 per year ($6,250 times 12).
- Step 2: What was Wendy's average wage for the period of February 15, 2020 through April 26, 2020? We said it was $55,000.
- Step 2 is less than Step 1, so we need to continue to see if the safe harbor applies.
- What was Wendy's wage on June 30, 2020? It was $75,000 per year. Even though it didn't hit the $80,000 she was earning during the first quarter of 2020, you were able to get her salary up to the level it was on February 15, 2020, and so the safe harbor applies, and you will not suffer any reduction in forgiveness under the wage test.

b. FTE reduction safe harbor: we already know that you will also suffer a loan forgiveness reduction if you lower your FTEs. But you can ignore that reduction if you fall into an "**FTE Reduction Safe Harbor**".

i. Step 1: Determine the average FTEs for the period of February 15, 2020, through April 26, 2020

ii. Step 2: Determine the FTEs for the pay period that includes February 15, 2020.

iii. If the figure in Step 1 is less than the figure in Step 2, then you will suffer a reduction unless the FTEs on June 30, 2020, equal to or are greater than the Step 2 figure – i.e., that is the FTE safe harbor. Note that a *second* safe harbor is provided later in the application, and will be discussed in this summary.

11. Exceptions to FTE Reduction for certain departing employees: in addition to the FTE safe harbor discussed above, the SBA had provided an exception for an employee that left and **refused to return to work** with the same hours/wage when presented with a written offer to do so. Now, the SBA has expanded that exception to include **employees fired for cause**, those who **voluntarily resigned**, and those who **voluntarily asked to have their hours reduced**. Any employee who falls into those categories during your relevant covered period (the actual one, or the "alternative", if you chose that), will not cause your FTEs to be reduced.

12. Owner-employees, self-employed individuals, and general partners: The SBA application uses a "Schedule A Worksheet" – this is the one that has the "Table 1" and "Table2" listing compensation of employees. But then, separately, it asks for the "Compensation to Owners" (Line 9 of Schedule A). **These individuals are thus NOT included in Table 1 or Table 2,** and instead get listed here separately. And note that the line asks for "amount paid to owners", rather than "compensation" – so in theory the like of guaranteed payments to partners would be includable. But the instructions do not clarify this point. They do, however, add **a limitation: there is a cap of $15,384 or the 8 week "equivalent of their applicable compensation in 2019"**, whichever is lower. That is, you can't claim more than you received in 2019. Note that the SBA had stated it will issue additional guidance for the situation where a business was not in operation in 2019, but that hasn't happened yet.

13. Second FTE Safe Harbor: Just when you thought you were done, after Line 10 in the Schedule A there is yet another FTE calculation to provide **a second chance at an FTE Safe Harbor**. First, you are asked if you had a reduction in "the number of employees) or the average paid hours of your employees between January 1, 2020 and the end of the Covered Period." Dissecting this sentence, note that the SBA now uses the words "number of employees", rather than FTEs, and the real "Covered Period" rather than the "Alternative" you may have picked. Why a new reference to a completely new period? Why a reference to a reduction in employees rather than FTEs? No one knows.

It is also not clear how the "or" should be read in the sentence "If you have not reduced the number of employees or the average paid hours" should be read. Is the intent that if you didn't do one of these, you get to put a 1.0 in line 13, and meet the safe harbor? Or is it the requirement that you meet both? That is, did the SBA mean "If you have neither reduced the number of employees nor the average paid hours…"? The distinction is an important one – do you get an automatic "1.0 pass" and meet the second FTE safe harbor if you neither had a drop in employee head count nor a drop in wages? Or do you get it if you did not have a drop in just one of those?

Confusion aside, the SBA does give you a second chance at avoiding a reduction in forgiveness amount. If you meet the qualification of having not reduced employees/hours by comparing your numbers on January 1, 2020, and at the end of the "Covered Period", you fall into this second FTE Safe Harbor, and will not experience a reduction in forgiveness. Otherwise, Lines 11 through 13 of Schedule A have you doing the "normal" calculation:

a. Step 1: Choose one of your historical average FTEs as the base period (either the February 15, 2019 through June 30, 2019 period; or the January 1, 2020 through February 29, 2020 period)

b. Step 2: Quote your total average FTEs for the "real" Covered period or the "Alternative" – whichever you used in Table 1 and Table 2.

c. Step 3: divide the figure from Step 2 by the figure from Step 1. If the number is less than 1.0, you will experience a reduction in loan forgiveness.

14. Usage Forgiveness Test: The SBA has again confirmed what many have missed in their various explanations/calculators –**no more than 25% of the total forgiveness amount may be attributable to non-payroll costs**. That is – it is not enough that you used 75% of the loan amount on payroll. The final calculation (Line 10 of the forgiveness form) requires you to quote a figure representing your payroll costs divided by 0.75, and the final forgiveness amount is limited by that figure (Line 11 of the forgiveness form).

15. Documentation: With the new Loan Application, the SBA has provided **a list of required documents** that must **either be submitted, or must be maintained** (but not submitted).

The **"required to be submitted" list** is broken down by the type of information being substantiated:

- To **prove payroll**, you need to provide documents verifying compensation and non-cash benefits. This includes (a) bank statement or third-party payroll reports, (b) tax forms (payroll tax filing reports – like Form 941, and quarterly wage reports and unemployment tax filing), and (c) receipt, cancelled checks, or account statements showing payments to health insurance and retirement plans.

- To **prove FTEs**, documentation like payroll tax filings reports and quarterly wage reports and unemployment tax filings showing the number of average FTEs on payroll for the relevant base period elected (February 15, 2019 through June 30, 2019; or January 1, 2020 through February 29, 2020).

Note that **for both payroll and FTEs, the above documents should be provided for every relevant period**. That means (a) for the 8 week covered period (the "real" one, or the "Alternative"); (b) for the relevant base period elected (February 15, 2019 through June 30, 2019; or January 1, 2020 through February 29, 2020); (c) for 2020 Q1 (assuming that is the last full quarter prior to the covered period); (d) and for February 15, 2020 through April 27, 2020.

- To prove **non-payroll eligible expenses**, documents showing (a) the existence of the obligation prior to February 15, 2020, and (b) proof of payments during the Covered Period. For **mortgage interest**, this specifically manes either a copy of the lender amortization schedule along with receipts or cancelled checks showing payments, or lender account statements from February 2020 and the months of the Covered Period through one month after, showing interest amounts. For **rent or lease payment**, you need to provide a copy of the lease along with receipt or cancelled check, or an account statement from the lessor – again for February 2020 and the months of the Covered Period through one month after. For **utility payments**, you need to provide copies of invoices from February 2020 along with those from the Covered Period, together with receipt, cancelled checks, or account statements showing payments.

The **"must maintain but not required to submit" list** are items that help substantiate various other elements in the application. They must be kept for 6 years after the forgiveness date or full repayment. These include:

- Any documents or calculations used to show the listing and math related to Table 1 and Table 2 (e.g., salary/wage reports showing reductions; wage lists showing those earning more than $100,000; reports showing who worked in 2019)
- Proof of job offers and refusals; for cause terminations; voluntary resignations; and requests from employees for reduction in hours
- Any safe harbor calculations and related reports (e.g., employee count and wages on January 1, 2020)
- All documents related to the PPP loan application itself, and to necessity for the loan.

To discuss the above, please use this VIN discussion thread (open to VIN members only).

For Veterinarians By Veterinarians®

UPDATED June 2, 2020

The SBA and Treasury have issued two additional installments in the series of "Final Interim Rules". They are attached here and here. They provide critical updates, including addressing **bonuses**, how to handle "double" reductions in wages and hours, and limitation on the "alternative" payroll periods. Note that additional legislation is going through congress this week which might change some of these concepts, but it is important to understand where things are at the moment:

1. Bonus and Hazard Pay: without much fanfare, the Rules clarify that **bonuses and "hazard pay" can be included in forgivable compensation**, as long as such payments do not exceed $100,000 on an annualized basis (i.e., do not increase total compensation above $15,385 which is the 8 week prorated figure of the $100,000 cap). The rules also confirm that payments made to a furloughed employee are likewise includable.

2. Alternative Payroll Covered Period: we already knew that borrowers could elect between two 8 week "covered periods" for payroll cost forgiveness. They could either use the period that started with the date of loan disbursement, or they could use an alternative payroll covered period (APCP) that starts with the first day of the first payroll cycle following disbursement. But the SBA appears to have snuck in a limitation – "a borrower **with a bi-weekly (or more frequent) payroll cycle** may elect to use" the APCP. This language is used in the SBA forgiveness application, and they apply the same limitation in an example within the Rules. Based on this guidance, if you use a semi-monthly payroll you would not be eligible to use the APCP. What's the difference? Bi-weekly payroll pays employees every 2 weeks (26 pay dates per year), while a semi-monthly payroll pays twice a month (24 pay dates per year). Was this a purposeful limitation? We don't know, but unless new guidance is issued stating this distinction was not intended, the current approach is to only use the APCP if you indeed use a bi-weekly or more frequent payroll.

   In theory, you could change your payroll to get more benefit from forgiveness. For instance, since APCP allows you to start your forgiveness period at a later date, if your utilization of staff started ramping up after the loan proceeds were received, you might be able to get higher payrolls within the APCP than you would using the period that started with the receipt of funds. Of course, the administrative burdens of changing your payroll might not be worth the exercise.

3. Owners: the limitation on "**owner-employees**" has become an immensely complex issue. The latest Rules provide some further clarity but still leave open issues. I'll try to simplify the concept here, but also quote the full text from the Rule for those who want to get into the weeds.

   Earlier rules limited compensation to self-employed individuals to the lesser of $100,000 per year on an annualized basis, or 8/52 of their 2019 compensation. But the SBA loan forgiveness application seemed to expand that restriction to owner-employees and general partners. The Rules just issued now confirmed this.

   Basically, the Rules provide a limit on what compensation is to be counted towards forgiveness when it is paid to "owner-employees and self-employed individuals". The new Rules state that the amount paid to such owners that will count towards forgiveness cannot exceed the lesser of $15,385 or 8/52 of their 2019 compensation. This applies to self-employed Schedule C filers, as well as general partners. But it is not clear whether it also applies to corporate shareholders.

Here's the exact language:

> *Are there caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' own payroll compensation?*
>
> *Yes, 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. In particular, owner-employees are capped by the amount of their 2019 employee cash compensation and employer retirement and health care contributions made on their behalf. Schedule C filers are capped by the amount of their owner compensation replacement, calculated based on 2019 net profit.3 General partners are capped by the amount of their 2019 net earnings from self-employment (reduced by claimed section 179 expense deduction, unreimbursed partnership expenses, and depletion from oil and gas properties) multiplied by 0.9235. 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.*

Note also the reference to "across all businesses" in the end of the first sentence above. While there is no further explanation, we would interpret this to mean that someone with an ownership interest in multiple businesses will be subject to the overall limit. That is, they can't get multiple $15,385 checks as a way of circumventing the cap.

4. Special Treatment of Self Employed and Partners: In addition to the above limitation on "Owners", the Rules confirm what some of us have read between the lines – **those who are self-employed and General Partners cannot get forgiveness for retirement or health insurance contributions made on their behalf** because "such expenses are paid out of their net self-employment income". That is, net self-employment income is calculated *after* reduction for contributions made towards employee health insurance and retirement (both on Schedule C for self-employed, and on Form 1065 for partnership).

5. Further Limitation on Partners: **General partners are further limited** for forgiveness purposes by (1) Section 179 expenses deductions, and (2) unreimbursed partnership expenses, all multiplied by 92.35% (which is the figure used on Schedule SE, that applied self-employment taxes on partnership income). Basically, the Rules try to better mimic gross wages of an employee by taking the earnings of a partner and reducing it by deductions that employees would not normally benefit from. But this will hit hard partnership that had large Section 179 deduction last year – if that applies to you, it may be worthwhile to talk to your CPA and pencil out whether or not you should take those deductions.

6. Timing Issues: The rules provide more verbiage regarding **the timing of nonpayroll costs**, confirming that such costs like interest and rent are covered as long as **paid** during the covered period, or **incurred** during the covered period and paid on or before the next billing date (even if such billing date is after the covered period). They also provide an example, explicitly showing that more than 8 weeks' worth of expenses can thus be included in the forgiveness calculation.

   When dealing with rent, it must be based on a Lease Agreement in force before February 15, 2020". Note that it does not require the property to actually be leased back in February – just that the agreement exists. I would be careful with related party transactions – where you are both landlord and tenant – to not push the limits. For instance, the rules do not prevent amending a lease to increase rent to fair market, but I would be cautious to ensure the rent can be justified. Similarly, while there is a prohibition on prepayment of interest, there is no such prohibition for anything else, including rents: arguably if you deferred rent owed from before the 8 week period, and paid it during the 8 week period, it would thus be subject to forgiveness – but I would still be conservative on this front.

   If you decide to prepay anything during the covered period, I would be especially wary of items that would be paid back to you if not used. For example, if you prepaid electricity, but then closed shop, you would be owed a refund – I would expect the SBA to thus not allow forgiveness of such a prepaid expense. If you accelerate any payments, stick with items that would not be subject to refund.

7. 75% Standard: The rules again confirm that total cost for nonpayroll items "cannot exceed 25% of the loan forgiveness amount." Stating another way – **75% of the total forgiveness amount has to be payroll**. So, your total payroll is a limiting factor, as we've discussed in the past.

   For example, say your total payroll is $70,000. Divide that by 0.75 and you get $93,333.33. That means you can get forgiven another $93,333.33 - $70,000 = $23,333 worth of nonpayroll costs. Anything above that, would not be forgiven.

8. FTE Math: Although the SBA considered using 30 hours as a measure of a "full-time equivalent employee", the Rule now confirms that the 40-hour standard better reflects most American workers. This means that an employee who works **40 hours or more**, on average, each week, is a 1.0 FTE. The Rules also match the SBA forgiveness application, in confirming that (1) even if an employee works more than 40 hours, they are still to be considered a 1.0 FTE; and (2) for those who normally work less than 40 hours per week, you can either do the math by dividing the hours by 40, or apply a "simplified" method by applying a standard 0.5 FTE equivalency. Whichever system you use, you need to apply that method to all part-time employees for all reference periods.

9. Reduction in Hours versus Reduction in Pay: a question existed as to how to handle math when **compensation is reduced because headcount is reduced**. Do you get "double-dinged" for that? The Rules now confirm that the answer is "NO": a reduction in salary or hourly wage will only be considered if they do not also attribute to an FTE reduction. The Rules provide an example: if an hourly employee normally works 40 hours per week, but was reduced to 20 hours during the covered period, but their hourly wage was not reduced, you will face a reduction in FTE, but you do not need to apply a wage reduction to that employee.

10. Headcount Relief: who you get "dinged" for when counting FTEs has been relaxed. You can now **exclude a reduction in FTEs that is the result of an employee that refuses to return to work** as long as you (1) made the offer to return in writing; (2) you offered the same wage and hours as were earned in the last pay period before separation/reduction; (3) the employee rejects the offer; and (4) **you inform the state unemployment insurance office** of that rejection within 30 day of the rejection. This last "snitch" requirement is new.

    You also don't need to include any employee that is "**fired for cause, voluntarily resigns, or voluntarily requests a schedule reduction**" in your FTE calculations.

    The Rules further note that you should "**not be penalized for changes in employee headcount that are the result of employee actions and requests**." How far-reaching that language can be interpreted remains to be seen – for example, can you apply it to an employee who died, or who became ill?

11. Review Procedures: The **SBA has not provided a deadline by when you must apply for forgiveness**. They did, however, require lenders to provide a decision to the SBA within 60 days of receipt of a forgiveness application. Once a lender's decision is communicated to you, you have 30 days to request an SBA review.

    The lender is responsible to only do a good faith review of your application and supporting information. **The accuracy of the math remains on you**. For example, the Rule notes that if you use a recognized third-party payroll processor to generate payroll reports, the lender isn't expected to do more than a minimal review of the data. But if you do not use a recognized source, a more extensive review would be required.

    On the SBA side, they have the right to review any loan, of any size. But if they do, they need to inform the lender, and then the lender needs to let you know within 5 business days.

For Veterinarians By Veterinarians®

UPDATED June 4, 2020

A reform bill to the PPP has been passed by both the House and Senate and is now heading for presidential signing. Known as the "Paycheck Protection Program Flexibility Act of 2020", it materially changes the rules for usage and forgiveness in 6 important ways:

1. Covered period extended from 8 weeks to 24 weeks

Those with existing PPP loans as of the date the bill is signed into law can **elect to keep their original 8 week period, or use the new 24 week period** – so if you already spent enough funds on appropriate expenses, you can thus keep the shorter period and apply for forgiveness (which will also protect you from any uncertainty in employment changes in the future). **New borrowers will have 24 weeks**, with an absolute deadline of December 31.

2. 75/25 rule changed to 60/40 – BUT with an "all or nothing" requirement

The existing rule required that 75% of the forgiven amount be spent on payroll. The new rules reduced that to 60%, except it is now an all or nothing approach – **to be eligible for ANY forgiveness, you must spend at least 60% of the forgivable amount of the loan on payroll**. The technical nature of the bill language doesn't change the requirements under the earlier SBA guidance that at least 75% of the loan amount be used for payroll, so we anticipate that new rulings will be issued to match the two standards. There is also some expectation this "cliff" concept will still be revisited, based on communications between the representative who originally co-sponsored the House bill, and two Senators who voiced a desire to issue technical corrections to keep a sliding scale on forgiveness as in the original law.

3. June 30th safe harbor extended to December 31

Under the current rule, you can "fix" a reduction in headcount or salary as long as you bring the count or wages back to what they were by June 30th. **The new rule gives you until December 31, 2020**, to get this accomplished. That may or may not be helpful, because if you were planning on ramping up to make the June 30th deadline, you now may have to keep things going even longer to meet this safe harbor.

4. A new "we tried to rehire" safe harbor

Recognizing that **some businesses just can't reopen despite best efforts**, the new law adds an exemption for those who had to reduce their headcount but can show that in **good faith** they either (a) could not find qualified employees to hire, or (b) could not restore business due to health guidelines.

To prove the inability to hire qualified employees, a borrower must document both (i) the inability to rehire those who were employees on February 15, 2020, and (ii) the inability to hire similarly qualified employees for the unfilled position on or before December 31, 2020.

To prove inability to restore the business, the borrower must show they could not reach the same level of "business activity" that existed before February 15, 2020, due to compliance with COVID sanitation standards, social distancing requirements, or customer safety requirements or guidance from the Feds (specifically from Health and Human Services, the CDC, or OSHA) during the period of March 1 through December 31, 2020.

5. Five years to repay

Any loan proceeds not forgiven can now be **repaid over 5 years**, rather than 2 years, as long as the lender and borrower so agree. The interest rate remains at 1%.

In addition, the deferment rules have changed: under the existing rules, borrowers have a 6 month deferral period, starting with the date they received their loan before they must begin to repay any funds that are not forgiven. The new rules extend that deferment period to the date the SBA makes a decision on your loan forgiveness (if you don't apply for forgiveness within 10 months after the last day of the covered period, it appears the deferment ends at that 10 month mark). But do note that the 1% interest starts accruing the day you receive the loan funds – whether or not any part of your loan principal is forgiven, you still owe that interest.

6. Payroll taxes deferral

The CARES Act allows employers to defer the deposit and payment of employer's share of Social Security taxes (and allows self-employed individual to defer payment of certain self-employment taxes) that would otherwise be required to be made during the period beginning on March 27, 2020, and ending December 31, 2020. The existing rule requires fifty percent of the deferred deposits to be paid by December 31, 2021, and the other fifty percent by December 31, 2022.

The existing rule also stated once an employer receives a decision from its lender that its PPP loan is forgiven, the employer is no longer eligible to defer payment due after that date.

The new rules do away with this restriction: If you received a PPP loan, whether or not you get anything forgiven, you are now also allowed to continue **deferring payment of the employer's share of social security taxes (and those self-employed can continue deferring part of their self-employment taxes)**.

We expect the SBA will issue some clarification rules in the coming weeks as to the above, so stay tuned.

For Veterinarians By Veterinarians®

UPDATED June 15, 2020

As we had summarized on June 4th, a bill reforming the PPP rules was signed into law. That new law is called the "Flexibility Act". The SBA has now issued yet another revised "Interim Final Rule" (the 17th one, if you are counting), changing its guidance based on these latest reforms. The changes clarify key areas of the law dealing with deferment, forgiveness rules, forgiveness amount, and loan maturity.

1. The last date to apply for loans has not changed – but it is sooner than you thought

The Flexibility Act, on its face, appears to extend the period during which prospective borrowers can apply for PPP loans. But the Rules confirm that the **SBA will not accept PPP applications after the 30th of June**. So, what does this mean? That date is the deadline for lenders to receive an SBA loan number for PPP loans. Receipt of an SBA loan number is what guarantees the availability of funds for individual PPP loan applications. It is likely many **lenders will set their internal deadline before that date**, to leave time to package your documents and electronically request the coveted loan number. **If you are going to apply, do it now**.

2. Effective Date of changes

To add another layer of complication, the provisions in this new rule that relate to **loan forgiveness and deferrals are effective as of March 27, 2020** (the date the CARES Act was signed into law). But the provisions that relate to maturity of the loan is effective June 5, 2020 (the date the new "Flexibility" Act was signed into law) – see next item below.

3. Maturity Date Extension

For loans made before June 5, 2020, the maturity remains 2 years, subject to whatever agreement a borrower may reach with their lender. But **for loans "made" on or after June 5, the maturity date is 5 years**.

The date a loan number is assigned by the SBA is the date the loan is considered "made"– something, the SBA notes, lenders should be referencing to their borrowers.

4. Covered Period extended

The original law defined the "covered period" for the purpose of using loan money with a deadline of June 30, 2020. This date is now changed to December 31, 2020. But because that same term was also used for forgiveness, **the new rules introduced a new term: "loan forgiveness covered period".** So now we have 2 covered periods. Bottom line of all this confusion? Strictly for loan forgiveness purpose, the period has been extended from 8 weeks to 24 weeks, with borrowers who took loans before June 5 having the option to elect to keep the original 8-week period if they so choose. **So, you now have up to 24 weeks, but no later than December 31, 2020, to use the loan funds for purposes to get full forgiveness**.

5. Deferral period extension

Regardless of when the loan was issued (whether before or after the enactment of this new law), **borrowers do not need to make any payments until a determination is made on forgiveness**. There is an outside limit, however – if a borrower does not submit for forgiveness within 10 months after the end of their forgiveness covered period, they then have to start making payments. To use the example offered by the SBA:

> *"if a borrower's PPP loan is disbursed on June 25, 2020, the 24-week [covered] period ends on December 10, 2020. If the borrower does not submit a loan forgiveness application to its lender by October 10, 2021, the borrower must begin making payments on or after October 10, 2021*."

6. 60% versus 75%

The new rules confirm that you need to use 60% of the PPP loan for payroll costs. If you don't, your forgiveness will not be proportionally reduced as long as at least 60% of the loan forgiveness amount has been used for payroll costs. So, **while the percentage of the loan proceeds is not a deal-killer, the percentage of loan forgiveness is**.

For example, say a borrower received $100,000 in PPP loans and used $54,000 on payroll costs. That does not meet the 60% threshold of loan amount: it is a 10% deficiency. So, the borrower will need to take a 10% haircut on their forgiveness and be able to claim a maximum of only $90,000 loan forgiveness. Did they meet the "cliff" requirement of 60% of loan forgiveness being used for payroll? Yes, because $54,000 is 60% of $90,000. So, they will be able to claim forgiveness of $54,000 in payroll costs, and another $36,000 in non-payroll costs.

What about the $10,000 not eligible for forgiveness? This will need to be repaid under the terms of the loan: 2 or 5 years, depending upon the date the loan was "made" (see above) at 1% interest – as defined in their promissory note.

7. Forgiveness Amount

For the first time, the SBA addressed the issue of interest accruing during the payment deferment period. The "amount of loan forgiveness can be up to the full principal amount of the loan and **any accrued interest**" (emphasis added). They add that:

> *"An eligible borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes . . . and employee and compensation levels are maintained or, if not, an applicable safe harbor applies."*

Until now, the way the original CARES Act and all of the interpretive rules since were written, accrued interest was required to be paid even if the loan was 100% forgiven. This latest ruling makes it clear that "full forgiveness" really means 100%.