



# Paycheck Protection Program Forgiveness

May 5, 2020



## **Legal Disclaimer:**

The information in this presentation is based upon relevant legal authority as of a specific point in time. These authorities are subject to change or modification retroactively and/or prospectively and such changes may affect the validity or correctness of this information. Additionally, the information contained within the presentation may be tailored to a specific audience and therefore may not be applicable to all people or all situations. This presentation does not constitute tax advice by DHG.

# Paycheck Protection Program

- **What is it?**

- + The CARES Act allocated \$350 billion (to date) to provides 100% federally guaranteed loans to small businesses, with potential for forgiveness

- **What have we learned?**

- + We anticipate rules will continue change over time
- + Clarifications since the law passed:
  - \$100k cap applied to gross wages only and not other employer benefits
  - Independent contractors – Not part of loan or forgiveness calculations because 1099 personnel can file their own PPP loans
  - Salary computation – Federal taxes are excluded from loan calculation and forgiveness calculations
  - 75%/25% Rule - no more than 25% for non-payroll expenses
- + Loan Applications began on April 2<sup>nd</sup> - \$349B loaned by April 16<sup>th</sup>
- + Paper trail for forgiveness appears to be substantial compared to loan application

# Comparison: Eligibility vs Forgiveness

	Eligibility	Forgiveness
Number of Employees	<ul style="list-style-type: none"><li>• Full-time</li><li>• Part-Time</li><li>• Other basis</li></ul>	<ul style="list-style-type: none"><li>• Full Time Equivalent (“FTE”)</li></ul>

# What is a Full-Time Equivalent (FTE)?

- IRC 4980H to determine FTEs which was used for Obamacare
- **FTEs per historical SBA guidance:**
  - + Person working at least 30 hours a week
  - + Employees working <30 hours per week can be combined to achieve a full FTE
  - + Compute average monthly FTE for dates required

FTE Calculation (1 week)			
Example:	30 full-time employees		
	6 part-time employees		
	<b>144 part-time hours worked</b>		
Calculation:	Full-time personnel		30
	Part-time hours worked in a week	144.00	
	Divide by weekly hourly equivalent	30.00	4.80
	FTEs per the week		34.80

# Comparison of Allowable and Forgivable Uses

	Allowable	Forgivable
Payroll	Included	Included
Mortgage Interest	Included	Included
Rent	Included	Included
Utilities	Included	Included
Other Debt Interest	Included	N/A

- Rent/Utilities/Loan Documents:
  - + In Writing
  - + Already in effect as of February 15, 2020

# How Much of the Loan is Forgiven?

- **Loan forgiveness calculation:**

- + Paid and incurred during 8-week covered period for the following:

- Payroll
    - Interest portion of mortgage
    - Rent
    - Utilities (electricity, gas, water, transportation, telephone, internet)
      - Mortgage, rent and utilities must be in writing and in force by Feb. 15, 2020

(Reductions may apply – see subsequent slides)

# Payroll Timeline

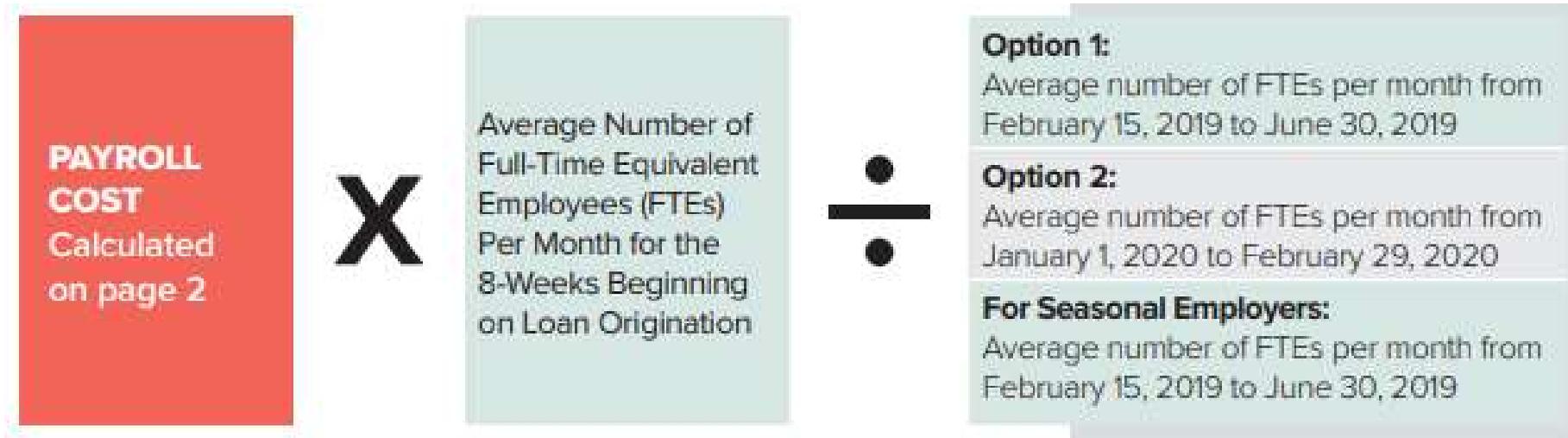
- My funding was approved mid-payroll cycle – How do I do account for this payroll?
- Payroll Timeline:
  - + Weekly payroll period 3.30.20 to 4.3.20, paid on 4.9.20
  - + PPP Funded 4.9.20
  - + Would payroll paid 4.9.20 be forgivable?
- Do I need to change my pay cycle to weekly?
- Can I change the date paid for any payroll cycle?
- Can I advance my payroll at the end of the covered period?

# Step 1: Forgiveness Reduction – 75/25 split

- 75/25 requirement not in original CARES Act
- Interim Final Rule – “not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs”
  - + Non-payroll portion of the forgivable loan amount should be limited to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll
  - + We are hearing all kinds of questions/thoughts around how to make sure EE’s are at 75% of prior-virus compensation – would just make sure you consult with your labor attorney to make sure that what you are planning to do is not at conflict with any state/local labor and compensation laws.

## Step 2: Forgiveness Reduction – FTE Test

- Loan forgiveness reduced by a reduction in number of employees



Source: US Chamber

- + Calculation of average number of employees – average number of FTEs is determined by calculating the average number of FTEs for each pay period falling within a month

## Other FTE questions

- What if I have someone that only works 5 hours per week for me? How are they counted in the FTE calculations?
- What if an employee typically has 40 hours but since business has slowed down and now actually works 24 hours, are they FT or PT?
- Are the FTEs calculated by pay period, by week, by month?

## Restore by June 30, 2020!

- Reductions in employment or wages that occur between February 15, 2020 and April 26, 2020 (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees and/or reduction in wages.

# Forgiveness Reduction – FTE Test Questions

- What dates are important for the FTE test?
  - + The 8-week time period starting with the loan funding date
  - + February 15, 2019 – June 30, 2019
  - + January 1, 2020 – February 29, 2020
  - + February 15, 2020
  - + April 26, 2020
  - + June 30, 2020

# Forgiveness Reduction – FTE Test Questions

- Is this test by specific employee or can a new employee replace another employee?
- How do we calculate the FTEs on a specific date that is listed in the prior slide (i.e. 2/15/2020)? Is it based on the pay period including that date or is it the pay period closest to that date?

## Step 3: Forgiveness Reduction - Compensation

- Loan forgiveness reduced by a decrease of more than 25% in compensation to employees making less than \$100,000 on annualized basis
- EXCLUDE: any employee who received, during ANY SINGLE PAY PERIOD during **2019**, wages or salary at an annualized rate of pay > \$100,000.
  - + Monthly bonus/commission – (12 pay cycles) - \$8,333.33
  - + Bi-monthly payroll – (24 pay cycles) – \$4,166.66
  - + Bi-weekly payroll (26 pay cycles) – \$3,846.16
  - + Annual bonus – (1 pay cycle) - \$100,000

# Process for Loan Forgiveness

- Borrower completes an “application” which likely will include:
  - + Documentation verifying the number of FTEs on payroll and pay rates for the periods described above, including—
    - payroll tax filings reported to the Internal Revenue Service; and
    - state income, payroll, and unemployment insurance filings;
  - + Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on mortgage, leases, and utilities;
  - + A certification from the borrower

# Items to Gather Now

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>• Compensation for the following time periods:<ul style="list-style-type: none"><li>+ Gross wages for 2019</li><li>+ By pay period by employee for 2019</li><li>+ By employee for the following:<ul style="list-style-type: none"><li>• January 1, 2020 – March 31, 2020</li><li>• October 1, 2019 – December 31, 2019</li><li>• The 8-week time period starting with the loan funding date</li><li>• February 15, 2020 – April 26, 2020</li><li>• April 27, 2020 – June 30, 2020</li></ul></li></ul></li></ul> | <ul style="list-style-type: none"><li>• FTEs by pay period for the following dates:<ul style="list-style-type: none"><li>+ The 8-week time period starting with the loan funding date</li><li>+ February 15, 2019 – June 30, 2019</li><li>+ January 1, 2020 – February 29, 2020</li><li>+ February 15, 2020</li><li>+ April 26, 2020</li><li>+ June 30, 2020</li></ul></li></ul> |
|---|--|

# Best Practices

- Deposit loan proceeds into a separate bank account (and GL account)
  - + Especially important if your regular operating account sweeps overnight into a common account used by multiple entities
- Use a spreadsheet to track everything and update it regularly
- Model different scenarios – modeling is key
- Retain and document the paper trail – separate shared folder on server
- Consider timing of payments

# DHG

DIXON HUGHES GOODMAN LLP

**Wesley Allen, CPA, CMA, CFE**  
**4350 Congress Street, Suite 900**  
**Charlotte, NC 28209**  
**[CARESActQuestions@dhg.com](mailto:CARESActQuestions@dhg.com)**  
**Direct: 704-367-7051**