



# UNDERSTANDING THE PAYCHECK PROTECTION PROGRAM (PPP) & MAXIMIZING LOAN FORGIVENESS AND THE ECONOMIC INJURY DISASTER LOAN PROGRAM (EIDL)

KRD - Kutchins, Robbins & Diamond, Ltd.

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Gene has been in public accounting for over 30 years

**Specialties:**

- Tax strategies, tax incentives and entitlements
- Business consulting and litigation support

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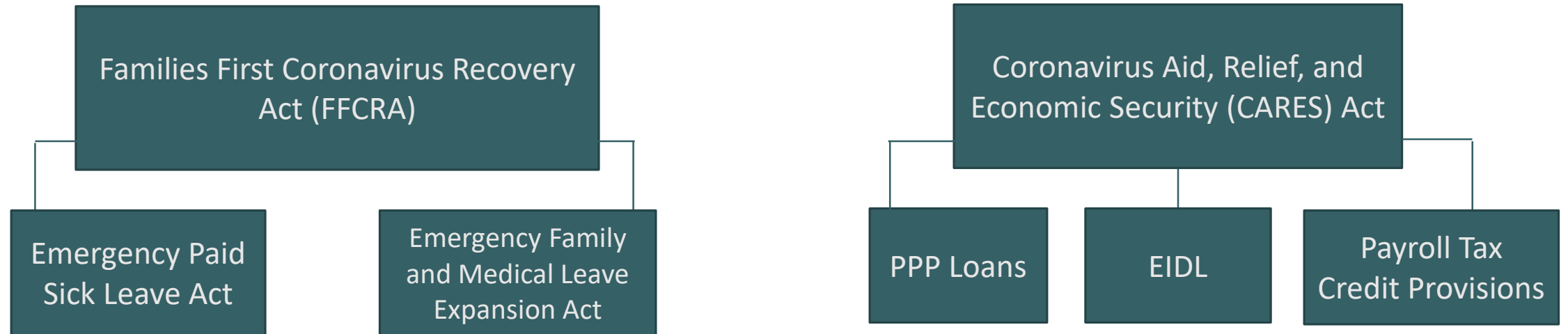


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**Specialties:**

- Small to medium-sized businesses, established companies, and start-ups

# The CARES Act



These provisions are aimed at encouraging businesses to maintain workers on their payrolls by providing immediate, short-term financing and access to cash flow through tax credits and expanded SBA assistance programs. Even as of this date there are several provisions of this program that the SBA has yet to define. This presentation is current as of April 21, 2020.



# The SBA Paycheck Protection Program ("PPP")

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# Can I Still Apply for a PPP Loan?

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- The Paycheck Protection Program is authorized to run through June 30, 2020. Small businesses are supposed to be able to apply up to that date.
- The initial appropriation in the CARES Act was \$349 billion. As of the date of this webinar the initial funding for this program has reached that limit and the SBA is no longer accepting loan applications from the approved lenders until additional appropriations are made to the program.
- On 4/21/20 the Senate approved an additional \$310 billion for the PPP Loan program. It will be sent to the House before the end of the week for approval. Once approved it is widely expected that the additional funding will run out very quickly. Once these additional funds expire it is unlikely there will be further appropriations.
- \$60 billion of the newly approved funds are earmarked for credit unions and community banks.
- **If you did not receive a PPP loan from the initial funding we urge you to be proactive with your bank to ensure they have your application and documentation ready to submit.**

# Who Qualifies?

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PPP Loans rolled out for businesses on 4/3/20. This is a new class of forgivable loans for businesses that meet the following criteria:

- Any business, nonprofit organization (501 (c)(3)), veterans organization or Tribal business concern that:
  - Was in operation as of February 15, 2020;
  - Employs no more than 500 employees
  - Paid employees (Independent Contractors are NOT a part of the PPP calculation);
  - Makes a good faith certification that the uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
- Sole proprietorships, independent contractors, and self-employed individuals are eligible. Their loan application program launched 4/10/20.
- A business that obtained an SBA Disaster Recovery loan after January 31, 2020 is allowed to refinance that loan and roll it into a PPP loan.
- Only one PPP loan is allowed per borrower.

# How Much Can I Receive?

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The maximum PPP loan available is the lesser of:

- \$10 million or
- 2.5 times the average monthly payroll costs for the previous 12 months plus any EIDL used for payroll
  - Payroll costs include:
    - Salaries, wages, commissions, tips, vacation pay, family or medical or sick leave pay, separation pay (including PEO and similar arrangements);
    - Group health care benefits including insurance premiums;
    - Retirement benefits;
    - State and local taxes assessed on employee compensation (SUTA);
    - Payments to independent contractors are NOT a part of payroll costs.
    - Partners in a partnership are included in the Payroll costs of the partnership.



## How Much Can I Receive? (Cont.)

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- Annual compensation to any individual is limited to \$100,000 (including self-employed). Based on SBA guidance issued 4/6/20 (Question 7) only the wage portion is limited to \$100,000. (2019 or trailing 12 months)
- Seasonal businesses use the average monthly payroll costs for the 12-week period beginning either February 15, 2019 or March 1, 2019 (chosen by the borrower).
- Businesses not operational in 2019 use the average monthly payroll costs for January and February 2020.
- Payroll costs do not include any amounts for which a credit is allowed under the Families First Coronavirus Response Act.
- Payments must be made to US residents.
- **It is the borrowers responsibility to accurately calculate the payroll costs.**

# What Can I Use the Money For?

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- PPP loans can be used to pay:
  - Payroll costs;
  - Group healthcare continuation costs for employees on paid sick, family or medical leave;
  - Mortgage interest on loans incurred prior to February 15, 2020;
  - Rent or leases in existence prior to February 15, 2020;
  - Utilities, phone, transportation and internet access for services begun prior to February 15, 2020;
  - Interest on any other debt obligations incurred prior to February 15, 2020.  
(This is true but this portion is not forgivable)
  - Refinance an EIDL loan made between 1/31/20-4/3/20.

# Key Definitions: Payroll Costs

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- Payments to U.S. legal residents for:
  - GROSS salaries, wages, commissions, tips, vacation pay, family or medical or sick leave pay, separation pay and bonuses;
  - Group healthcare benefits including insurance premiums (employer's share only);
  - Retirement benefits (employer's share only);
  - State and local taxes assessed on employee compensation (generally these are state unemployment taxes);
  - Self-employment income of partners in a partnership;
  - Owner Compensation Replacement for a sole proprietor or independent contractor, also known as net earnings from self-employment.

# Key Definitions: Payroll Costs (Cont.)

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- Compensation, such as gross salaries, wages, net earnings from self-employment and partner self-employment income, is capped at \$100,000 on an annualized basis for any individual, prorated for the eight-week period. This works out to 8/52 times \$100,000, or \$15,385 per person.
- Payroll costs do not include any amounts used to claim the Emergency Paid Sick Leave Credit or the Emergency Family and Medical Leave Credit.
- For a sole proprietor or independent contractor, healthcare insurance premiums and retirement benefits are not included.
- Payroll costs do not include the employer's portion of FICA, Medicare or FUTA.

# What Are the Loan Terms?

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- The interest is 1.0%.
- The loan term is 2 years.
- No payments of principal or interest for six months – interest accrues during the deferment period.
- No personal guarantees required.
- Not based on creditworthiness
- No collateral required.
- No SBA or bank fees.

# How Much of My Loan Will Be Forgiven?



- You must spend the loan proceeds over an 8 week period beginning when the loan is funded. You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan or if you do not use the funds within the 8 week period. At least 75% of the loan proceeds MUST be used for payroll costs. If you received an emergency grant under the EIDL program and roll it into the PPP program an amount equal to the EIDL emergency grant is NOT forgivable for the PPP loan.

## **THE AMOUNT THAT IS FORGIVEN WILL NOT BE TAXABLE INCOME**

You will also owe money if you do not maintain your staff and payroll.

- Number of Staff: Your loan forgiveness will be reduced if you decrease your average full-time employee headcount over a base period and do not restore your headcount by 6/30/20.
- Level of Payroll: Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
- Re-Hiring: You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

# How Can I Request Loan Forgiveness?

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- You will submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The SBA has yet to issue final guidance on the required documentation.
- You must **PROACTIVELY** make the request for forgiveness. This is **NOT** automatic.
- The lender must make a decision on the forgiveness within 60 days.



# How Do I Get a PPP Loan?

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- The loans will be disbursed through federally insured banks and credit unions, institutions of the Farm Credit System and other specialized lenders.
- The loans will be 100% guaranteed by SBA, so there is no underwriting risk for the banks. Normal SBA lending criteria do not apply to these loans.
- Loan requests under this program are being taken through 6/30/20 or when the funds are exhausted – whichever is earlier. \$349B – first come, first served. Additional funding for the PPP program will pass this week.
- The program is intended to require very little documentation for underwriting purposes. At a minimum, applicants should have records of payroll costs, lease or mortgage payments and utility payments for the preceding twelve months, as well as organizational documents to prove existence prior to February 15, 2020. Additional documentation may be necessary as requested by your lender.





# Paycheck Protection Program (PPP) Sample Application Form

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**Paycheck Protection Program  
Borrower Application Form**

OMB Control No.: 3245-0407  
Expiration Date: 09/30/2020

<b>Check One:</b> <input type="checkbox"/> Sole proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> C-Corp <input type="checkbox"/> S-Corp <input type="checkbox"/> LLC <input type="checkbox"/> Independent contractor <input type="checkbox"/> Eligible self-employed individual <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> 501(c)(19) veterans organization <input type="checkbox"/> Tribal business (sec. 31(b)(2)(C) of Small Business Act) <input type="checkbox"/> Other		<b>DBA or Tradename if Applicable</b>  	
<b>Business Legal Name</b> 			
<b>Business Address</b> 		<b>Business TIN (EIN, SSN)</b> 	<b>Business Phone</b> 
		<b>Primary Contact</b> 	<b>Email Address</b> 
<b>Average Monthly Payroll:</b> \$		<b>x 2.5 + EIDL, Net of Advance (if Applicable) Equals Loan Request:</b> \$	<b>Number of Employees:</b>
<b>Purpose of the loan (select more than one):</b> <input type="checkbox"/> Payroll <input checked="" type="checkbox"/> Lease / Mortgage Interest <input type="checkbox"/> Utilities <input type="checkbox"/> Other (explain):			

**Applicant Ownership**

List all owners of 20% or more of the equity of the Applicant. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN, SSN)	Address

*If questions (1) or (2) below are answered "Yes," the loan will not be approved.*

Question	Yes	No
1. Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*If questions (5) or (6) are answered "Yes," the loan will not be approved.*

Question	Yes	No
5. Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole? Initial here to confirm your response to question 5 →	<input type="checkbox"/>	<input type="checkbox"/>
6. Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)? Initial here to confirm your response to question 6 →	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Is the Applicant a franchise that is listed in the SBA's Franchise Directory?	<input type="checkbox"/>	<input checked="" type="checkbox"/>



**Paycheck Protection Program  
Borrower Application Form**

**By Signing Below, You Make the Following Representations, Authorizations, and Certifications**

**CERTIFICATIONS AND AUTHORIZATIONS**

I certify that:

- I have read the statements included in this form, including the Statements Required by Law and Executive Orders, and I understand them.
- The Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).
- The Applicant (1) is an independent contractor, eligible self-employed individual, or sole proprietor or (2) employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 C.F.R. 121.201 for the Applicant's industry.
- I will comply, whenever applicable, with the civil rights and other limitations in this form.
- All SBA loan proceeds will be used only for business-related purposes as specified in the loan application and consistent with the Paycheck Protection Program Rule.
- To the extent feasible, I will purchase only American-made equipment and products.
- The Applicant is not engaged in any activity that is illegal under federal, state or local law.
- Any loan received by the Applicant under Section 7(b)(2) of the Small Business Act between January 31, 2020 and April 3, 2020 was for a purpose other than paying payroll costs and other allowable uses loans under the Paycheck Protection Program Rule.

For Applicants who are individuals: I authorize the SBA to request criminal record information about me from criminal justice agencies for the purpose of determining my eligibility for programs authorized by the Small Business Act, as amended.

**CERTIFICATIONS**

The authorized representative of the Applicant must certify in good faith to all of the below by **initialing** next to each one:

- The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.
- The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan.
- I understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.
- During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
- I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.
- I acknowledge that the lender will confirm the eligible loan amount using required documents submitted. I understand, acknowledge and agree that the Lender can share any tax information that I have provided with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

<input type="text"/> Signature of Authorized Representative of Applicant	<input type="text"/> Date
<input type="text"/> Print Name	<input type="text"/> Title

Link to view full sample form



<https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>

# Likely List of Documents Needed for Lender

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- Appropriate tax returns of the business – usually 941's;
- Documents reflecting the number of employees;
- Documents showing health insurance costs (employer share only);
- Documents showing retirement plan costs (employer share only);
- Documents showing mortgage obligations;
- Lease agreements and
- Documents showing utilities costs.



# THE SBA PPP LOAN – SPENDING AND FORGIVENESS

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# Key Definitions: Full-Time Employees and Full-Time Equivalents (FTE)

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- The definitions are the same as they were for determining Obamacare era penalties.
- Full-time employee: an employee who is employed on average at least 30 hours per week or 130 hours per month.
- Full-time equivalent employee (FTE): a combination of employees, each of whom individually is not a full-time employee because they are not employed on average at least 30 hours per week, but who, in combination, are counted as the equivalent of a full-time employee.
  - For example, two employees, each of whom works 15 hours per week, are the equivalent of one full-time employee.
- To determine total FTEs, take the aggregate hours worked by non-full-time employees in a month and divide by 130, then add that result to the number of full-time employees.

# So I Received a Loan - What Can I Use the Money For?



During the eight weeks **immediately** following the initial loan disbursement, PPP loans can be used to pay:

- Payroll costs;
  - ❖ We recommend that any payments to partners made from the loan funds should be classified as guaranteed payments, so that there is no question that they constitute self-employment income to the partner.
  - ❖ We recommend that actual checks are written to partners in a partnership and that self-employed individuals write themselves checks over the 8 week period to prove payroll. It is likely that a “book entry” will not qualify as sufficient documentation.
- Group healthcare continuation costs for employees on paid sick, family or medical leave.
- Mortgage interest on loans incurred prior to February 15, 2020.
  - Includes real or personal property.
  - Property must be used in the business.
  - Includes loans for vehicles and other equipment used in the business.
- Rent or leases in existence prior to February 15, 2020. This appears to include non-facility leases such as machinery and equipment leases and copier leases.
- Utility payments for services begun prior to February 15, 2020, which includes:
  - Gas, electric and water;
  - Telephone and internet;
  - Fuel for business vehicles.

# So I Received a Loan - What Can I Use the Money For? (Cont.)



During the eight weeks immediately following the initial loan disbursement, PPP loans can be used to pay:

- Interest on any other debt obligations incurred prior to February 15, 2020. Keep in mind that loan proceeds used for this purpose will not be forgiven.
- Refinance an Economic Injury Disaster Loan made between 1/30/20-4/3/20.
  
- At least 75% of the loan proceeds **MUST** be used for payroll costs. Stated another way, no more than 25% of the loan proceeds can be used for mortgage interest, rent and utilities and interest on any other debt obligations.
- No prepayments are allowed on these costs.
- These costs must be incurred and paid during the 8 week period. Therefore arrearages are not eligible expenses.
- Sole proprietors and independent contractors can only claim mortgage interest and utilities for their home office space if these are deductions taken on their Schedule C filings (Form 8829)

# Will My Loan Be Forgiven?

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- PPP loans will be forgiven to the extent that the proceeds are used to pay the above expenses during the eight weeks following the date of the loan, with the exception of interest on debt obligations other than mortgages
- Borrowers will have to submit an application for forgiveness and related documentation such as payroll tax returns, cancelled checks, payment receipts and account transcripts, to their lender, who will be required to calculate the amount forgiven within 60 days. If you don't apply for loan forgiveness, you won't get it

**Forgiveness is a proactive process and not automatic**



# Will My Loan Be Forgiven?



## The amount forgiven is reduced:

IF you cut compensation for any individual making less than \$100,000 per year by more than 25% when measured against the most recent full quarter that individual was employed.

IF you don't maintain the average number of FTEs during the covered period (the 8 week period) when compared to a base period that the borrower gets to choose.

The choices are:

1. February 15, 2019, to June 30, 2019, or
2. January 1, 2020, to February 29, 2020.

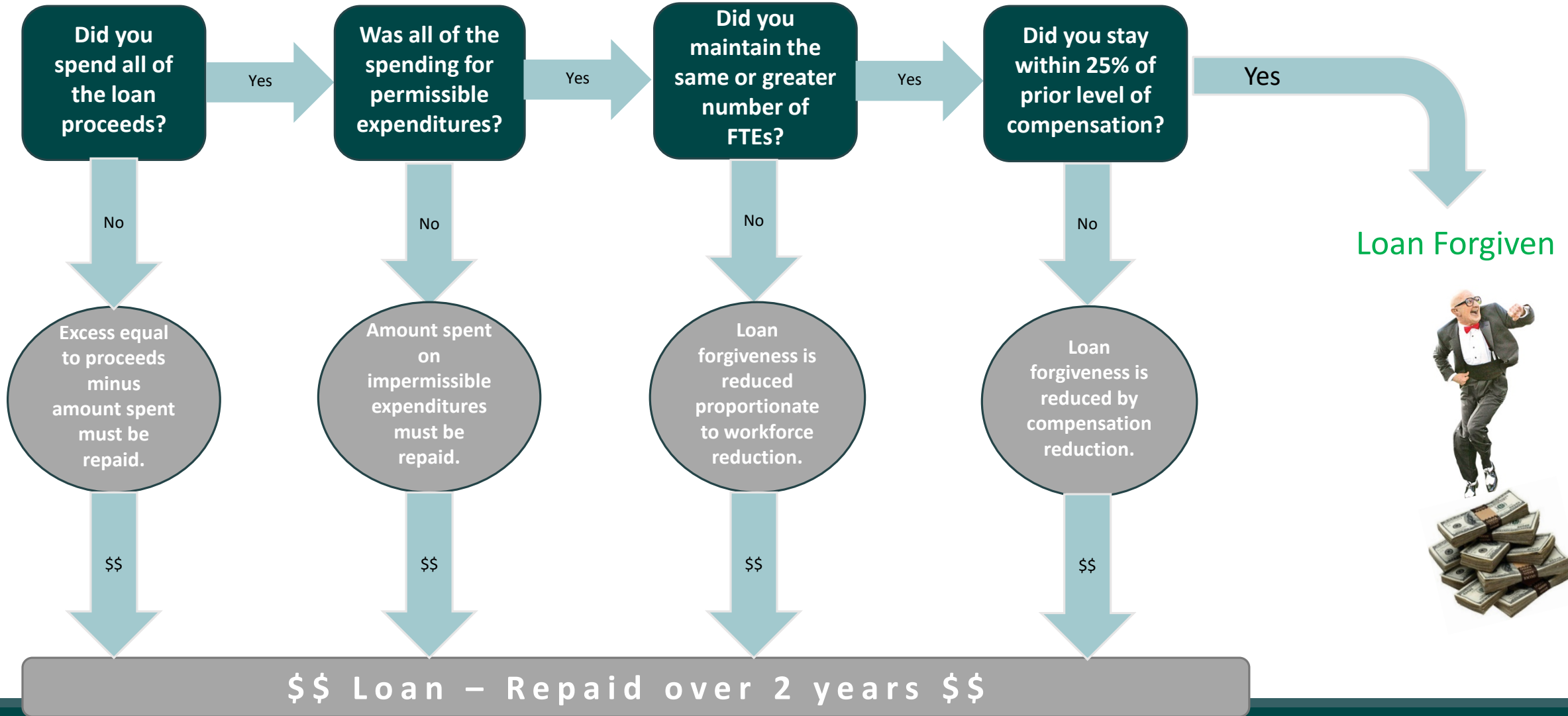
BUT if you cut FTEs or pay, there will be no reduction of the loan forgiveness as long as you restore full-time employment and salary levels by June 30, 2020.

**You can re-hire or replace individuals to get back to the needed FTE headcount.**

**You must increase the compensation of the same individuals who took pay cuts back to pre-pay cut levels.**

Grants received under the EIDL program will reduce the amount forgiven to the extent of the grant amount.

# Loan Forgiveness (Assuming No EIDL Grant)



# Loan Forgiveness – FTE Example

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- ABC Company received a PPP loan of \$400,000. All of the loan proceeds were spent on permissible expenses within the 8-week period immediately following the loan. The *potential* loan forgiveness is therefore \$400,000.
- During the 8-week period, ABC had 36 FTEs.
  - During the period February 15 – June 30, 2019, they had 42 FTEs.
  - During the period January 1 – February 29, 2020, they had 40 FTEs.
- They choose the latter period for their comparison.  $36/40 = 90\%$ . Therefore, the potential forgiveness amount is reduced by 10%, and the loan forgiveness becomes \$360,000.

# Loan Forgiveness – Compensation Example

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- Susan, an employee of ABC Company, normally earns an annual salary of \$60,000. In the first quarter of 2020, Susan is paid her normal \$15,000.
- After ABC Company receives their PPP loan, Susan's salary is reduced to \$40,000. This is a reduction of more than 25% in Susan's wages.
- The forgiveness amount of \$360,000 is further reduced by the \$20,000 reduction in Susan's salary.
- The total forgiveness amount becomes \$340,000.
- ABC Company must repay a loan of \$60,000.

# Will My Loan Be Forgiven?

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The amount of your loan that will not be forgiven also includes:

- Payments for non-payroll costs in excess of 25% of the loan.
- Amounts used for interest on debt other than mortgage obligations.
- Any amounts used for any expenses not listed in the previous slides

**Forgiven PPP loans will NOT constitute taxable cancellation of indebtedness income for federal income tax purposes**

# How Do I Prove What I Spent the Money On?



**We recommend you open a separate bank account for the loan funds**

- Keep clear records of all checks written from the account – date, payee, purpose.
- Keep receipts for items such as fuel for business autos and other utility payments.
- Keep detailed records of payroll payments.
  - If you have a separate payroll account into which you normally transfer funds for payroll from a general checking account, transfer only the exact amount of the pay needed on the pay date from the separate loan funds account, so that you have a clear trail of the payroll costs paid.
  - If you use a payroll service, the transfers should match the cash requirements reports they provide.
  - **Payment of the employer portion of FICA and Medicare taxes is not a permissible use of the funds. If you have a separate source of cash, you should transfer the funds to cover those federal taxes to the payroll account from the cash not in the loan funds account.**

## How Do I Prove What I Spent the Money On? (Cont.)

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**We recommend you open a separate bank account for the loan funds**

- Keep detailed records of changes in your workforce.
- You may be able to set up and run special reports from your accounting software for the 8-week period.
- Submit copies of all records along with bank statements to your lender.
- It is possible that the forgiveness process will involve an audit verification. It is unclear at this time what is involved in an audit verification.

# If A Portion Is Not Forgiven - What Are the Terms?

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- The interest rate will be 1% per annum.
- The term is two years.
- No payments of principal or interest for six months – interest still accrues during this deferment.
- No personal guarantees needed.
- No collateral required.
- No SBA or bank fees.





# Still Some Uncertainty

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- What if the initial loan amount calculation included independent contractors?
- How will IRS react with respect to Code §265 prohibition on expenses related to nontaxable income?



# THE SBA ECONOMIC INJURY DISASTER LOAN (EIDL)

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# Economic Injury Disaster Loans (EIDL)

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- Initial funding for the EIDL program was \$7 billion. The SBA received requests for over \$380 billion of loans. The program is no longer accepting applications until additional funds are appropriated.
- On 4/21/20 the Senate approved an additional \$60 billion for the EIDL Loan program. It will be sent to the House before the end of the week for approval. Once approved it is widely expected that the additional funding will run out very quickly. Once these additional funds expire it is unlikely there will be further appropriations.
- \$50 billion will fund the EIDL loans; \$10 billion will fund the Emergency Grants.
- If you applied for an EIDL using the “long form” you need to reapply using the streamlined process.
- Application is direct through the SBA.

# Economic Injury Disaster Loans (EIDL)

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- The EIDL loans offer up to \$2 million for working capital needs such as fixed debt and payroll and operating expenses
- UP TO a 30-year term:
- 3.75% for businesses
- 2.75% for nonprofits
- No personal guarantee for loans up to \$200,000.
- Collateral is not necessary but required if you have it – loans over \$25K.
- There is an automatic one-year deferment on repayment so the first payment is not due for a full year, although interest begins to accrue at time of disbursement

# EIDL Grant: Up to \$10,000

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- If you apply for an EIDL loan, you can request a \$1,000 per employee emergency grant (up to \$10,000 total) for working capital
- If you qualify, the grant is available even if you apply for a PPP loan. If you do apply for a PPP loan, it will not reduce your PPP loan amount
- However, the grant will be subtracted from the amount of your PPP loan forgiveness, and you will have to repay the grant amount over two years
- Make sure you apply for the grant on the SBA website.
- KRD also has recommendations for completing the EIDL application, which can be found [here](#).

# Thank you for attending!

## Questions?



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