

# JOHNSON & BELL

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## **THE PPP'S COSTS INCURRED AND PAYMENTS MADE REQUIREMENT – SOME GUIDANCE**

For anyone who has received their money or has applied for funds under the Paycheck Protection Program (PPP), one of the program's most questioned aspects is what specific "costs incurred and payments made" within the 8-week covered period will be forgiven.

The requirement that only "costs incurred and payments made" within the 8-week period will be forgiven may seem innocuous, but it has the potential to create a host of problems.

We are sharing some guidance that we believe is a very reasonable interpretation of the statute.

### **PAYCHECK PROTECTION PROGRAM GUIDANCE**

The PPP states the following regarding forgiveness of the loan proceeds:

(b) Forgiveness.—An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the Covered Period:

- (1) Payroll costs.
- (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).
- (3) Any payment on any covered rent obligation.
- (4) Any covered utility payment.

### **ANALYSIS**

There are both costs and payments in the four items which are to be forgiven. In our opinion, these items include:

Payroll costs incurred (i.e., the only item in the above list that is a cost is payroll costs) during the 8-week period, and costs are modified by the word "incurred;" and

Payments made during the 8-week period of interest, rent and utilities (3 of the 4 items listed are for payments made, and payments are modified by the word "made").

We anticipate that payroll costs must be incurred during the 8-week period and interest, rent and utilities must be paid during the 8-week period.

Assume your 8-week period goes from April 16 (date of the loan disbursement) - June 9 (56 days). Assume you pay your payroll on April 15, April 30, May 15, May 30 and June 15.

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Assume that the payroll on the 15th day of the month is for services rendered for the first 15 days of that month and assume that the payroll on the 30th is for the last 15 or 16 days of the month, as the case may be.

When you pay your April 15 payroll, it is for services for April 1-15, which are outside of the 8-week period. The April 30 payroll is for the period April 16 - 30 which is all incurred during the 8-week period. So are the payments on May 15 and May 30. Your next payroll is on June 15. It covers payroll costs incurred for June 1 through June 15. Nine of those days are "incurred" during the 8-week period (up through June 9) even though the payroll costs were "paid" on June 15 outside of the 8-week period. Per the above statute, payroll costs must be incurred during the 8-week period and the other three items must be paid during the 8-week period. So, in the end, you have payroll costs for the full 8-week period from April 16 through June 9. Prepayment of payroll costs during the 8-week period does not help except to the extent that those costs are actually incurred during the 8-week period.

If you prepay rent or utilities on June 9 for July, that will not count toward forgivable expenses because rent and utilities have to be "paid" during the 8-week period.

## **A FINAL RECOMMENDATION**

The PPP funds should be placed in a separate account from your banking accounts and then only used to make payments described above. This will help facilitate the documentation of your compliance with the program and enable you to more easily document the loan forgiveness.

If you have additional questions or if we can be of assistance with regards to any of the federal or state funding initiatives that recently have been launched, please contact [Joseph R. Marconi](#) or [Mark D. Belongia](#).