



Update on PPP Flexibility Act and Loan Forgiveness

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OVERVIEW

Objective: We will discuss the changes to the Paycheck Protection Program and outline what we know and what we don't.

Topics include:

- ▶ Tax and regulatory update
- ▶ Covered period (8 weeks, 24 weeks or something in-between?)
- ▶ Loan maturity dates
- ▶ Payment deferral period
- ▶ 60/40 payroll/non-payroll split (vs. old 75/25 split)
- ▶ Allowable uses of loan proceeds
- ▶ Restorative adjustments to forgiveness (safe harbors)
- ▶ FICA tax deferral

Paycheck Protection Program Overview

(as of June 22, 2020)



Approved
Loans
Over 4.6 Million



Approved
Dollars
\$515 Billion



Average
Loan Size
\$110,000



\$1.0 Million Plus Loans: 82,274
\$2.0 Million Plus Loans: 29,557



Funds
Remaining:
\$128.4 Billion



TAX AND REGULATORY UPDATE

- ▶ Taxability of PPP loans (based on current Internal Revenue Code)
 - Amount forgiven is not taxable
 - However, expenses paid with PPP loan funds are not deductible to the extent such loan amounts are forgiven
 - Waiting to see if Congress will change the tax code

- ▶ FAR guidance
 - Forgiveness amount may reduce the overhead cost pool

EXIT 8

(WEEK COVERED
PERIOD)



EXIT 24

(WEEK COVERED
PERIOD)

CAUTION
UNCERTAINTY
AHEAD

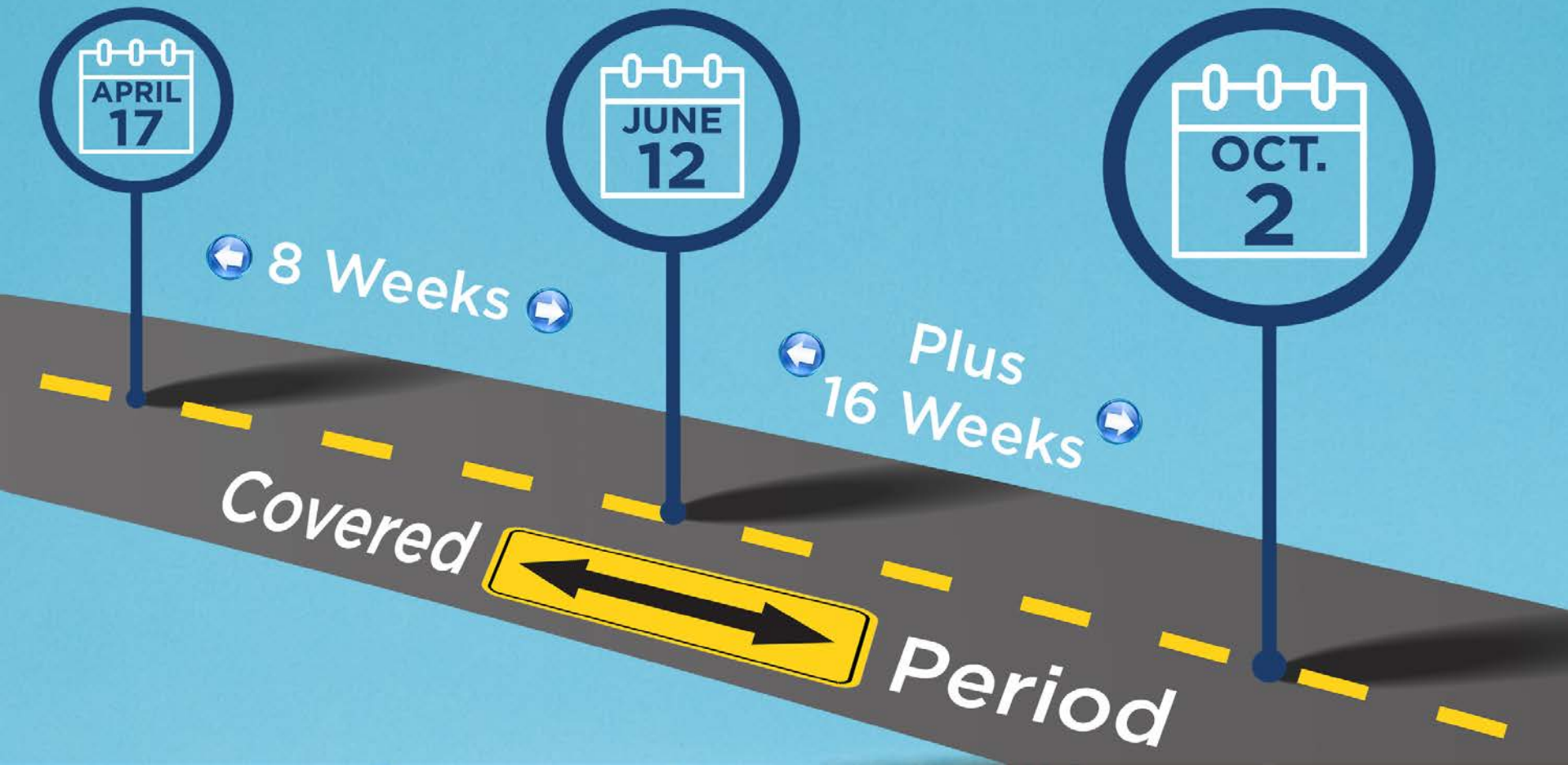


COVERED PERIOD

- ▶ Loans approved before June 5th can elect an 8 week or 24 week covered period
 - If elect 24 weeks, need to assess impact of longer period for headcount and salary dilution tests
- ▶ Loans approved on or after June 5th have a 24 week covered period
- ▶ Guidance needed to determine if a company can end its covered period before 24 weeks if it has spent the funds
- ▶ Alternative covered period for payroll costs only applies if you pay bi-weekly (or more frequently).

8-Week vs. 24-Week

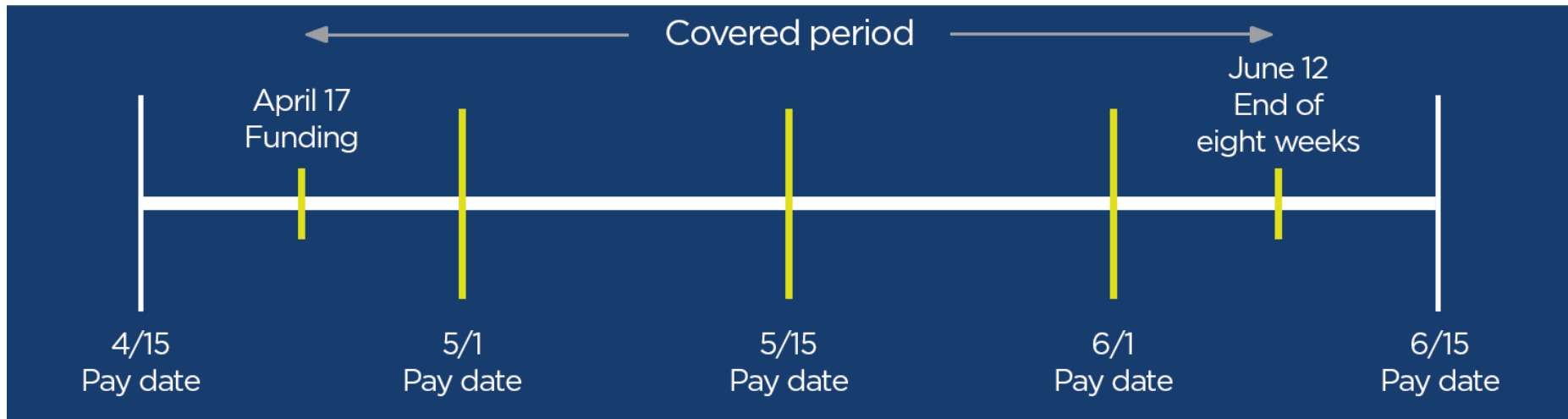
- Covered period
- Alternative covered period
- Decision points, issues and concerns



COVERED PERIOD ILLUSTRATION

Begins as of date of first disbursement of loan funds

- ▶ Pay periods may need to be pro-rated if you are unable to use the alternative covered period
- ▶ Payroll costs incurred but not paid during the last pay period of the forgiveness period are eligible for forgiveness if paid on or before the next regular payroll date.



MATURITY DATES

- ▶ Loans approved before June 5th have a two year maturity
 - The lender may approve a longer maturity – review any changes to terms
- ▶ Loans approved on or after June 5th have a five year maturity
- ▶ Interest rate is still 1% (worst case scenario is a very favorable loan)
- ▶ Forgiveness application is due within 10 months after the end of the loan forgiveness covered period
- ▶ Payments are deferred until the forgiveness amount is approved by the SBA. Banks have 60 days to review the forgiveness application. SBA then has 90 days to review the bank's determination.

PAYROLL/NON-PAYROLL SPLIT

- ▶ To maximize forgiveness, at least 60% of the proceeds must be spent on payroll costs (compensation and employer share of health insurance, retirement contributions and state/local payroll taxes)
- ▶ Up to 40% can be spent on rent, utilities and mortgage interest
- ▶ Partial forgiveness if less than 60% of the proceeds are spent on payroll costs

ALLOWABLE USES OF COVERED LOANS

- ▶ Employee payroll costs – **subject to the cap**
 - Salary, wage, commission, or similar compensation
 - Payment of bonuses
 - Payment for vacation, parental, family, medical, or sick leave
 - Allowance for dismissal or separation
 - Employees principal place of residence must be in the U.S.
- ▶ 8 week cap equals \$15,385 ($\$100,000/52 \text{ weeks} \times 8 \text{ weeks}$)
- ▶ 24 week cap equals \$46,154 ($\$100,000/52 \text{ weeks} \times 24 \text{ weeks}$)

- ▶ Employee payroll costs – **excluded from the cap**
 - Employer share of group health care benefits, including insurance premiums
 - Payment of retirement benefits
 - Employer share of state or local tax assessed on the compensation of employees
- ▶ No prepayments of salaries are allowed

ALLOWABLE USES OF COVERED LOANS

- ▶ Owner payroll costs (C-corps and S-Corps) – **subject to the cap**
 - Salary, wage, commission, or similar compensation
 - Payment of bonuses
 - Payment for vacation, parental, family, medical, or sick leave
- ▶ Cap for 8 week covered period is the lesser of 8/52 of 2019 compensation or \$15,385
- ▶ Cap for 24 week covered period is the lesser of 2.5/12 of 2019 compensation or \$20,833
- ▶ Do not separately add health insurance premiums for S-Corporation owners (if under cap, consider processing the W2 adjustment early)
- ▶ Health insurance premiums for C-Corporation owners are capped based on 2019 amounts
- ▶ Retirement contributions for C-Corp and S-Corp owners are capped based on the 2019 contribution amount
- ▶ Who is an “owner-employee” ???

ALLOWABLE USES OF COVERED LOANS

- ▶ LLC/LLP partners are capped at the lesser of their 2019 adjusted net earnings from self-employment or \$15,385/\$20,833
- ▶ Schedule C filers are capped at the lesser of 8/52 of 2019 net profit (up to \$15,385) for an 8 week covered period, or 2.5/12 of 2019 net profit (up to \$20,833) for a 24 week covered period
- ▶ Do not separately add retirement and health insurance contributions

ALLOWABLE USES OF COVERED LOANS

- ▶ Rent under a leasing agreement that was incurred before February 15, 2020
 - Office lease
 - Office parking
 - Personal property leases
 - Company autos, plotters, computers, etc.
 - CAM or real estate taxes ???
 - No prepayments allowed

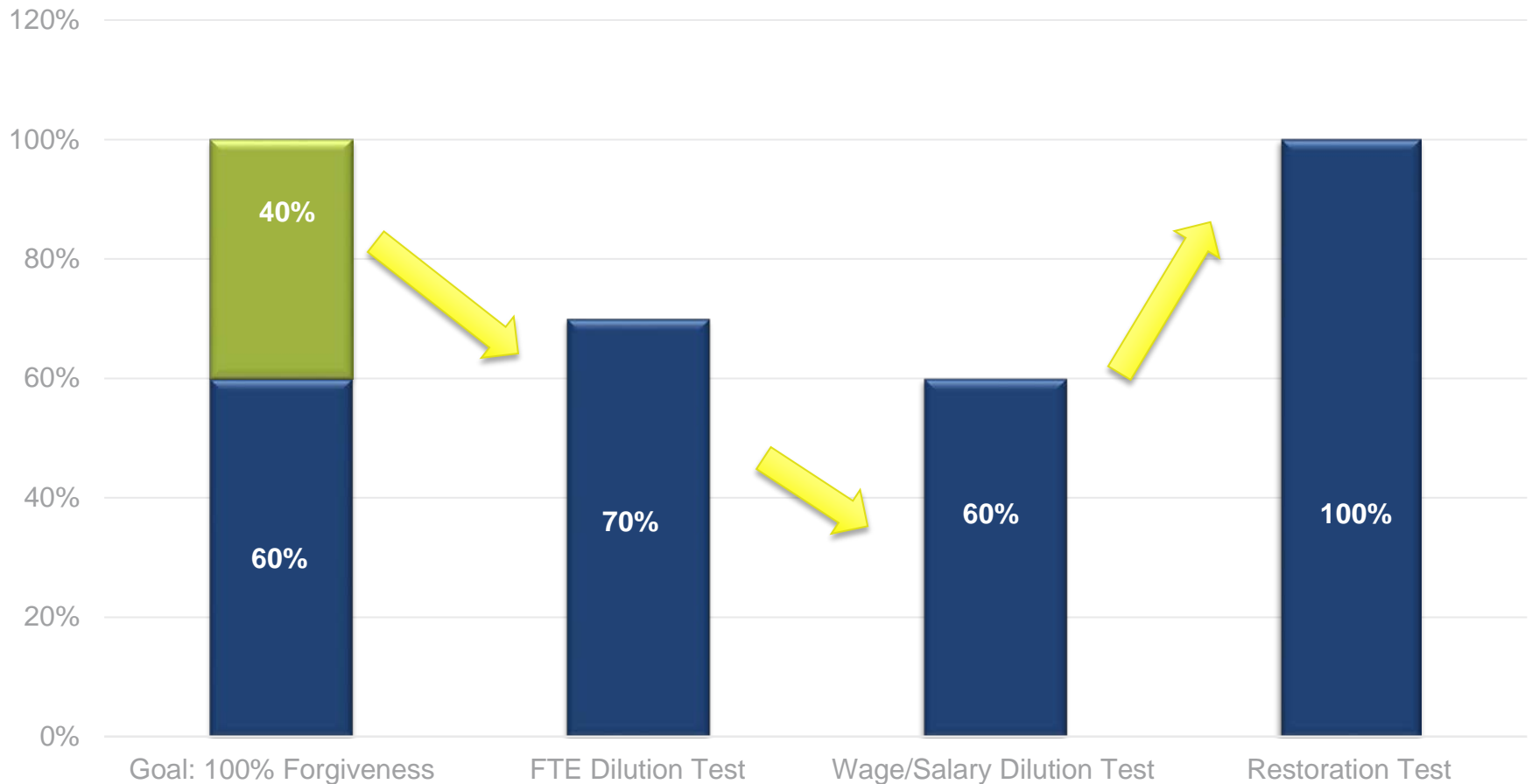
- ▶ Utilities for services that began before February 15, 2020
 - Electric, gas, water
 - Internet access
 - Office telephones
 - Cell phones ???
 - No prepayments allowed

ALLOWABLE USES OF COVERED LOANS

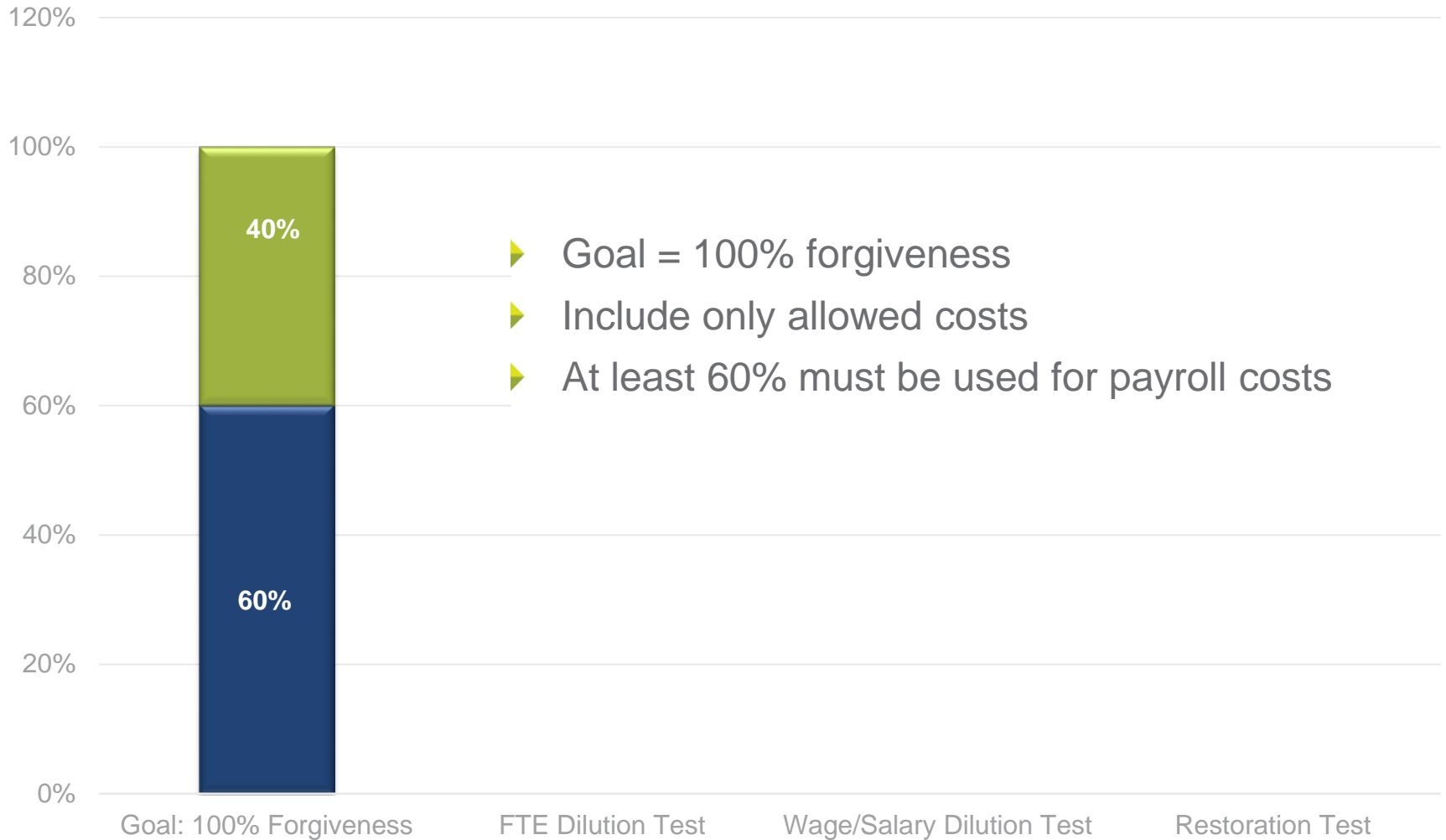
- ▶ Interest on mortgage obligations incurred before February 15, 2020
 - Loans for buildouts
 - Loans for computers, etc.
 - No prepayments allowed

- ▶ Interest on the following does not qualify
 - Working capital loans
 - Lines of credit
 - Stockholder buyout loans

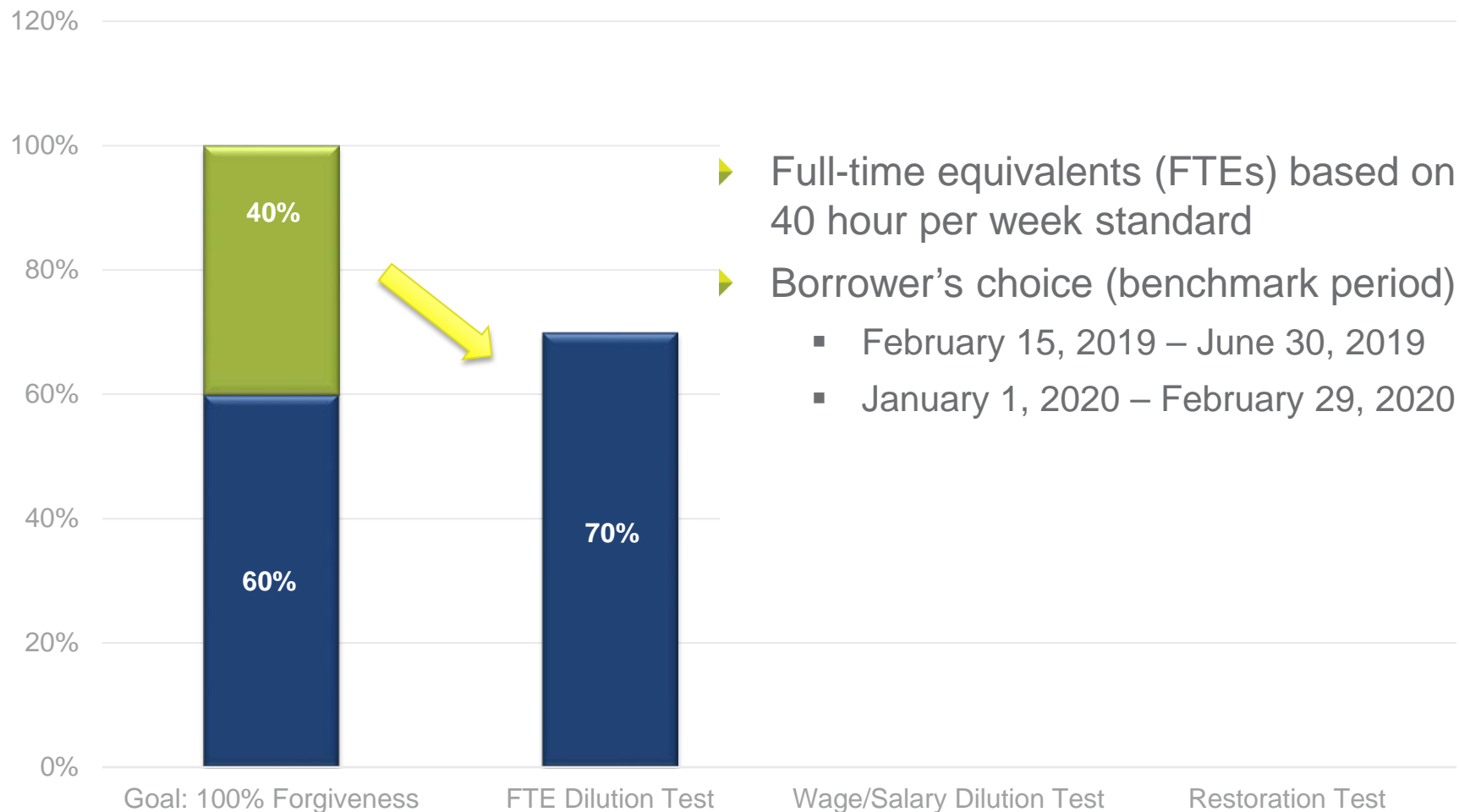
PERCENTAGE OF FORGIVENESS



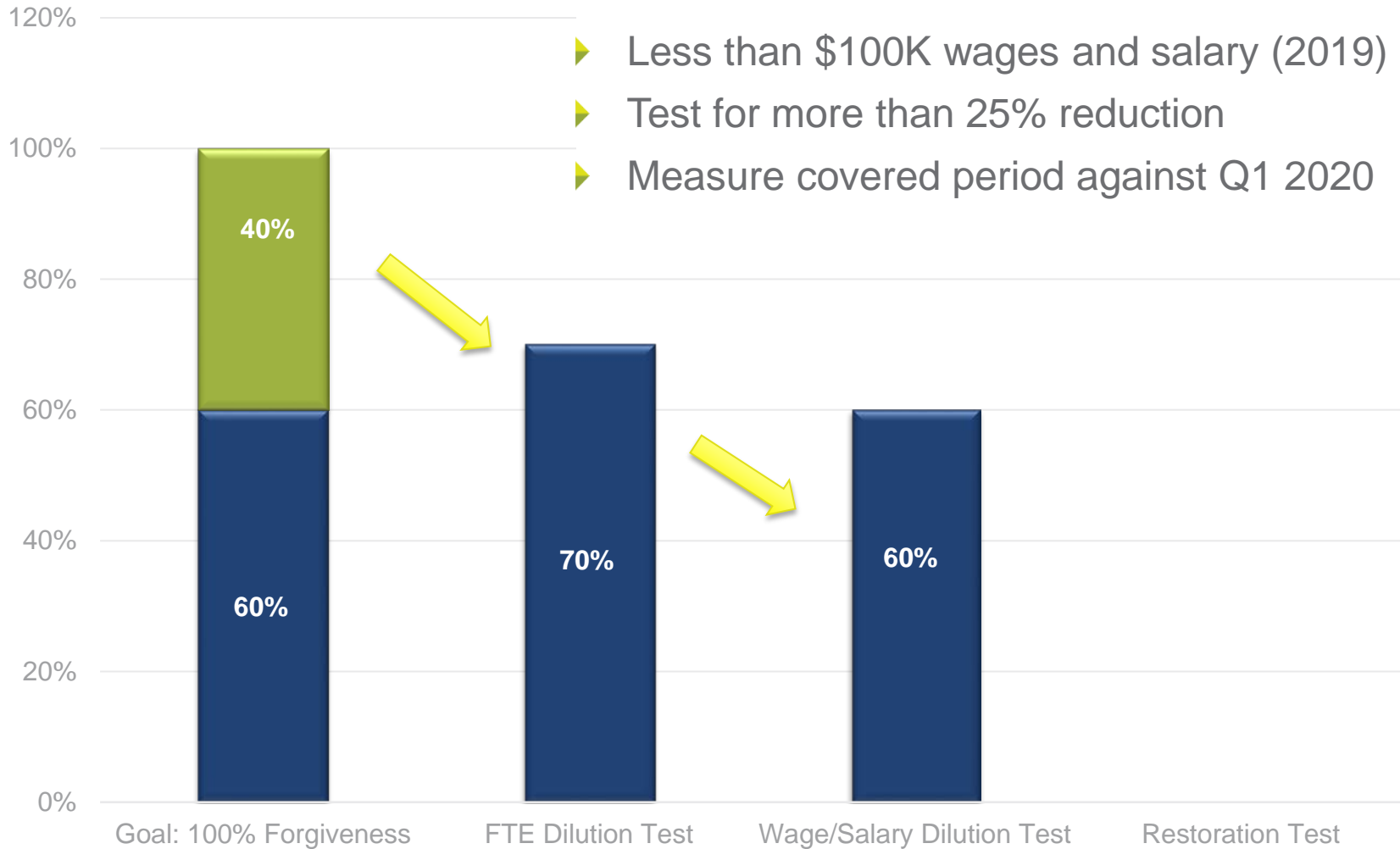
REQUESTED FORGIVENESS



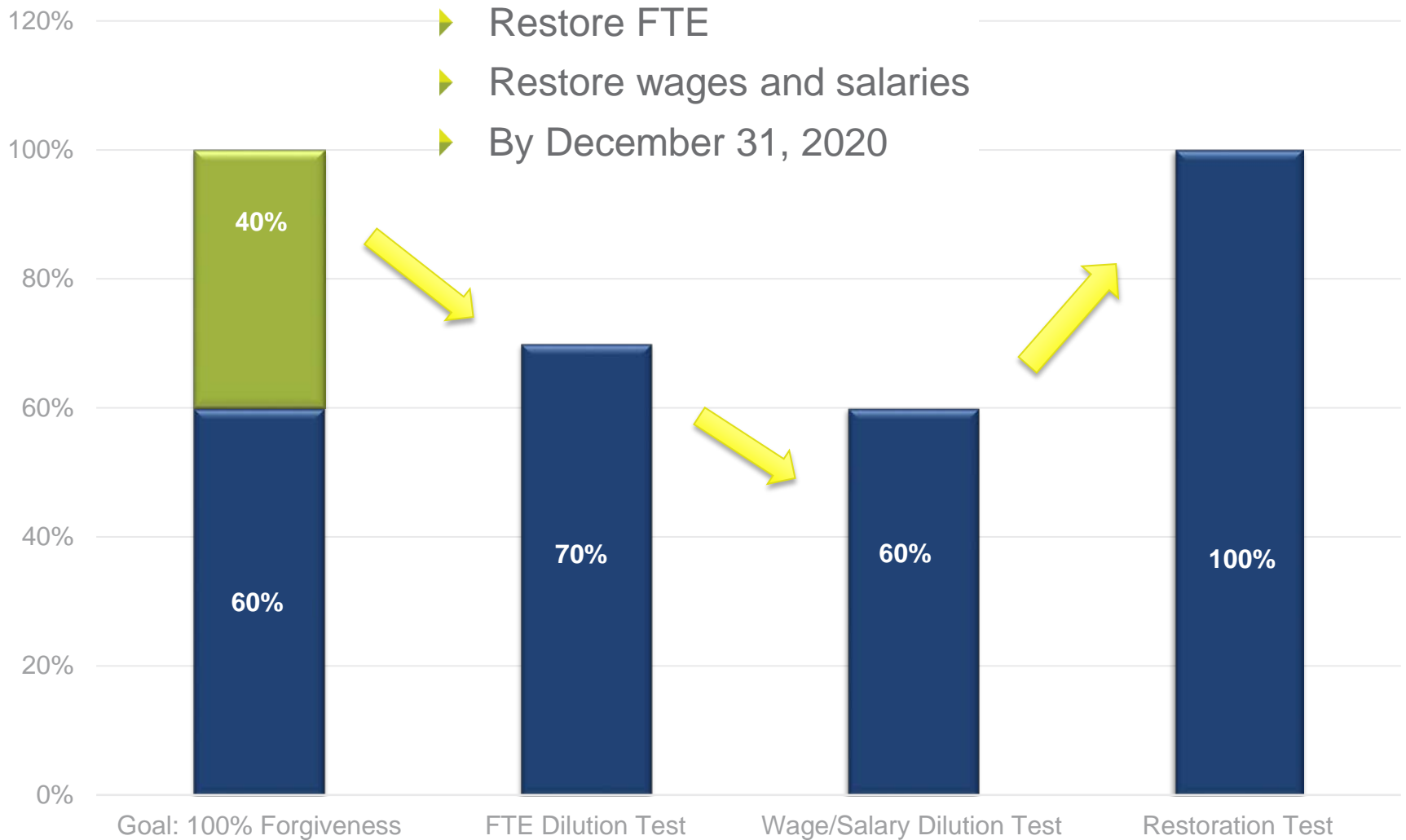
FULL-TIME EQUIVALENT TEST



WAGE/SALARY DILUTION TEST



RESTORATION TEST



SAFE HARBOR PROVISIONS

- ▶ Forgiveness not impacted if:
 - Employee voluntarily terminates employment (need written documentation/must inform state unemployment office)
 - Employee terminated for cause (need written documentation)
 - Employee rejects the offer to return to full-time status (need written documentation/must inform state unemployment office)
 - Unable to rehire terminated employees or hire qualified replacements
 - COVID-related safety regulations prevent the company from returning to the same level of business it operated at on February 15, 2020

- ▶ Guidance needed if a company restores/rehires but subsequently terminates the employees before December 31, 2020

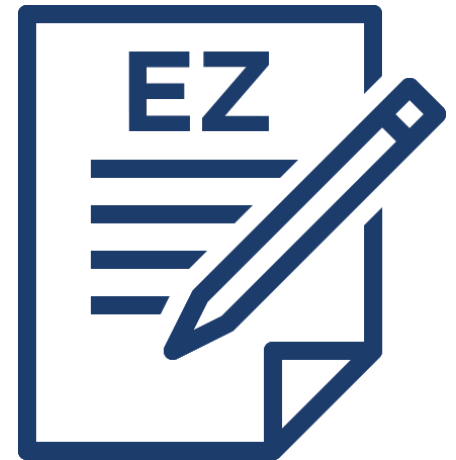
FORGIVENESS APPLICATION PROCESS

- ▶ Borrower may submit an application any time on or before the maturity date of the loan
 - Including before the end of the covered period
 - Must account for any salary dilution for the full 8 or 24 week covered period

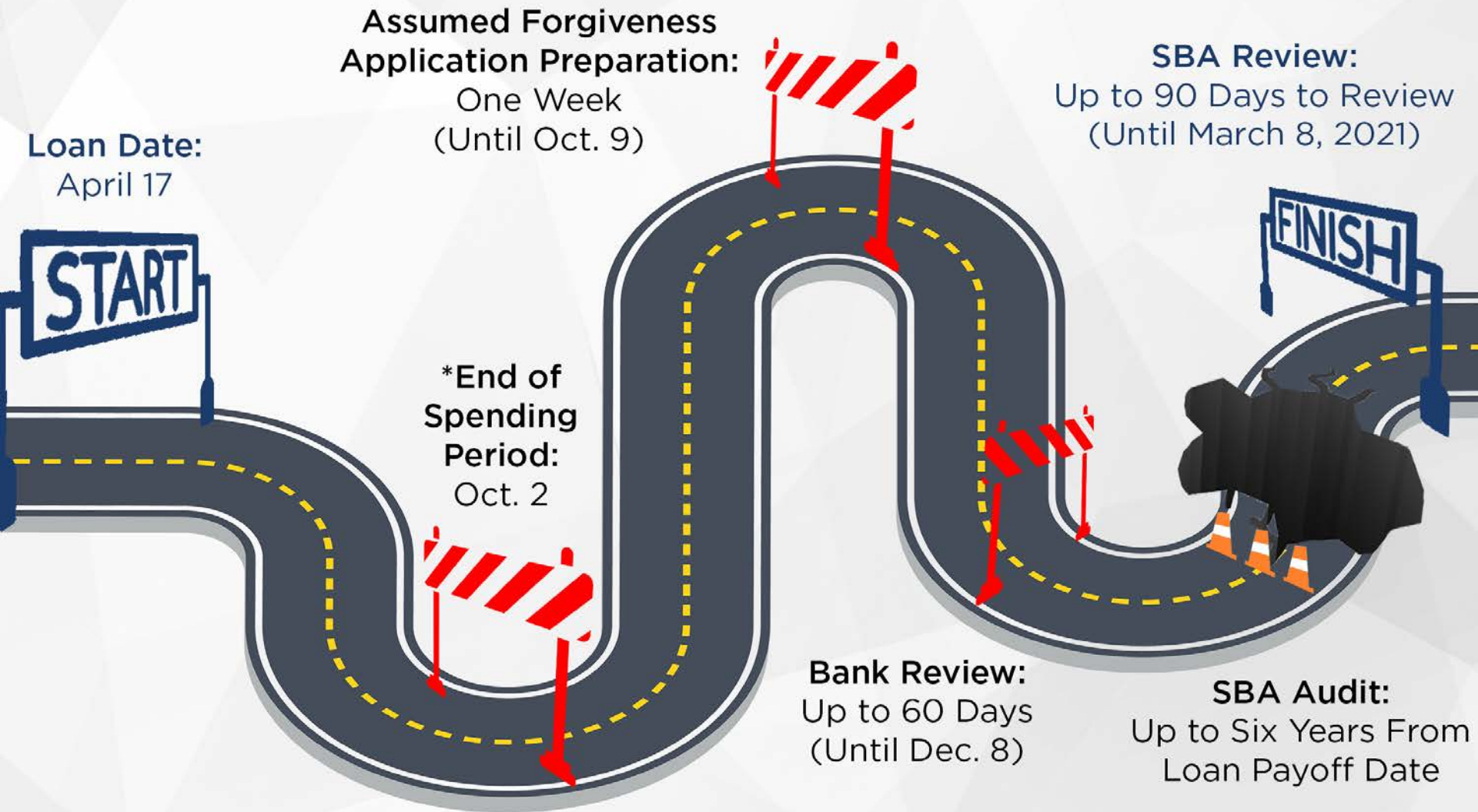
- ▶ Borrower must submit an application within 10 months after the last day of the covered period

EZ FORGIVENESS APPLICATION

- ▶ Self-employed individuals who have no employees; OR
- ▶ Did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; OR
- ▶ Experienced reductions in business activity as a result of health directives related to COVID-19 and did not reduce the salaries or wages of their employees by more than 25%
- ▶ Note: Cannot use the 2019 base period for the FTE dilution test



PPP Loan Forgiveness Timetable



***Spending Period: April 17 + up to 24 weeks**

GUIDELINES FOR FORGIVENESS

- ▶ Re-confirm and document eligibility, especially for loan amounts > \$2M
- ▶ Make sure funds used only for eligible purposes
- ▶ Track use of funds and document, document, document!
- ▶ Payroll companies are generating reports to help you document the FTE and salary dilution tests
- ▶ Monitor SBA and Department of Treasury websites and/or speak with your CPA

OTHER ITEMS

- ▶ PPP loan borrowers are eligible to defer the employer portion of FICA tax for the rest of 2020
 - Amounts to an interest free loan (50% due on 12/31/21, 50% due on 12/31/22)

- ▶ PPP loan borrowers can account for the loan as follows:
 - A liability until it has been legally forgiven (approved by the SBA) or repaid; or
 - A grant if forgiveness is probable

QUESTIONS?



APPENDIX

PAYROLL: WHAT INFORMATION TO GATHER

- ▶ Federal payroll tax reports: 2019 IRS Form 941, Form 940, annual Forms W-3 or 944
- ▶ Compensation payroll reports
 - Gross wages by employee (payroll reports by pay period)
 - State and local employer taxes assessed (SUTA)
- ▶ Group health care benefits, including insurance premiums paid by the organization under a group health plan
 - Employer costs only
 - Do not include employee withholdings for their portion of contributions to the plan
- ▶ Retirement plan benefits paid by the organization
 - Employer costs only
 - Do not include employee withholdings for their portion of contributions to the plan

OTHER COSTS: WHAT INFORMATION TO GATHER

- ▶ Other costs include: (1) Rent, (2) Mortgage Interest, (3) Utilities
- ▶ Provide copies of the following:
 - Cancelled checks (during the covered period)
 - Wire transmittals (during the covered period)
 - Invoices
 - Account transcripts
 - Mortgage in effect as of February 15, 2020
 - Rent agreements in effect as of February 15, 2020
 - Utilities provide copies of invoices and cancelled checks to demonstrate service before February 15, 2020