

U B A F a l l C o m p l i a n c e C o n f e r e n c e

# The Paycheck Protection Program: Puzzling, Profitable and Problematic

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# Agenda

- Disclaimer
- Lending During a Pandemic
- PPP and PPPFA in Comparison
- PPP Loan Forgiveness Process
- Risks and Benefits of the PPP
- Final Conclusions

# Disclaimer

Today's webinar focuses on the state of the Payment Protection Program accurate as of October 9, 2020. It is not intended to be all-encompassing.

It is not intended to constitute legal, tax-advisory or other advice.

Definitive guidance should always be coming from your governing regulatory agency, along with the Treasury, the U.S. Small Business Administration, and other applicable governmental entities.

# Lending During a Pandemic

## What is the Fed Doing in response to COVID-19?

- Near-zero Interest Rates
  - Federal funds rate
  - Forward guidance
- Support for Financial Market Functioning
  - Securities purchases (QE)
  - Lending to securities firms
  - Backstopping money market mutual funds
  - Repurchase agreement operations
- Heightened encouragement for banks to lend
  - Direct lending to banks
  - Temporary relaxation of regulator requirements
- Supporting corporations and small businesses
  - Direct lending to major corporate employers
  - Commercial Paper Funding Facility
  - Supporting loans to small- and mid-sized businesses and non-profits
- Supporting households and consumers
- Supporting state and municipal borrowing
  - Direct lending to state and municipal governments
  - Supporting municipal bond liquidity

# PPP and PPPFA in Comparison

Program Provision	PPP Rule	New PPPFA, IFR and Forgiveness Application Rules
<b>Loan-Term Extended:</b> Loans must be fully paid within:	2 years	5 years
<b>Loan Forgiveness Period Extended:</b> Loan proceeds must be spent during the “Covered Period” which begins on the date the funds were disbursed and ends:	8-weeks from the date loan funds are disbursed (or 8-weeks from the elective “Alternative Payroll Covered Period” which starts on the first day of the pay period following the date the loan funds were disbursed).	<i>Earlier of:</i> <ul style="list-style-type: none"> <li>• 24 weeks from disbursement; or</li> <li>• December 31, 2020</li> </ul> <p><b>Borrowers can keep their original CARES Act 8-week forgiveness period for loans issued prior to June 5, 2020</b></p>
<b>PPP Forgivable Purpose</b>	Payroll costs, including benefits Interest on mortgage obligations; Rent, under lease agreements; and Utilities *All in effect on or before Feb. 15, 2020	Same but refer to Slide 6: New Rule Health Insurance Costs Subtraction

# PPP and PPPFA in Comparison (2)

Program Provision	PPP Rule	New PPPFA, IFR and Forgiveness Application Rules
<b>FTE and Compensation Restoration Periods Extended:</b> FTEs and compensation reductions can be ignored if restored to Feb. 15, 2020 levels by:	June 30, 2020	December 31, 2020
<b>Maximum Forgivable Compensation for Owner Employees/Self-Employed/General Partner</b>	8-weeks of 2019 compensation capped at \$15,385	24-weeks of 2019 compensation capped at \$20,833
<b>New Rule:</b> Health insurance costs subtraction	N/A	Exclude health insurance contributions made on behalf of owner-employees/self-employed/general partners as these payments are included in their compensation already

# PPP and PPPFA in Comparison (3)

Program Provision	PPP Rule	New PPPFA, IFR and Forgiveness Application Rules
<b>New Rule: FTE Reductions Ignored if Employees are Unavailable</b> This new provision allows borrowers to ignore FTE reductions if, in good faith:	N/A	Borrower can document inability to: <ul style="list-style-type: none"> <li>• Rehire individuals who were employed on Feb. 15, 2020; AND</li> <li>• Hire similarly qualified employees on or before Dec. 31, 2020</li> </ul>
<b>Up to 40% of Loan can be spent for Non-Payroll Costs</b>	Under CARES Act, only 25% of forgiveness amount could be spent on non-payroll costs	Up to 40% of forgiveness amount can be spent on non-payroll costs. June 12, 2020 IFR states if borrower exceeds this 40% cap, a portion of the loan can still be forgiven.
<b>Extension of Loan Deferral</b>	Loan payments start 60months after loan disbursement	Loan payments start when SBA pays bank the forgiveness amount. <b>If borrower does not apply within 10-months after end of Covered Period, payments commence at end of 10-month period.</b>

# PPP and PPPFA in Comparison (4)

Program Provision	PPP Rule	New PPPFA, IFR and Forgiveness Application Rules
<b>Extension of Loan Deferral Continued:</b>	N/A	<b>Unofficial SBA Guidance:</b> <ul style="list-style-type: none"><li>• As a placeholder, next installment date should be listed as 16-months from the date of loan disbursement.</li><li>• After SBA remittance of any partial forgiveness or SBA notice no forgiveness is allowed, deferment period ends, and Lender must update this date to correspond to the first payment due date the Lender provides to borrower.</li><li>• Lenders can update the Next Installment Due Date to 16-months from date of loan disbursement on their monthly PPP 1502 report.</li></ul>



# *Update: PPP FAQ #52 Published October 7, 2020*

**52. Question:** The Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) extended the deferral period for borrower payments of principal, interest, and fees on all PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period). Previously, the deferral period could end after 6 months. Are lenders and borrowers required to modify promissory notes used for PPP loans to reflect the extended deferral period?

**Answer:** The extension of the deferral period under the Flexibility Act automatically applies to all PPP loans. *Lenders are required to give immediate effect to the statutory extension and should notify borrowers of the change to the deferral period. SBA does not require a formal modification to the promissory note.* A modification of a promissory note to reflect the required statutory deferral period under the Flexibility Act will have no effect on the SBA's guarantee of a PPP loan.

# PPP and PPPFA in Comparison (5)

Program Provision	PPP Rule	New PPPFA, IFR and Forgiveness Application Rules
<b>CARES Act Payroll Tax Deferral Program</b>	PPP loan participants could not obtain payroll tax deferral for payroll tax deposits made after the PPP loan is forgiven.	PPP loan participants can fully participate in the Payroll Tax Deferral Program.
<b>Up to 40% of Loan can be spent for Non-Payroll Costs</b>	Under CARES Act, only 25% of forgiveness amount could be spent on non-payroll costs	Up to 40% of forgiveness amount can be spent on non-payroll costs. June 12, 2020 IFR states if borrower exceeds this 40% cap, a portion of the loan can still be forgiven.
<b>Extension of Loan Deferral</b>	Loan payments start 60months after loan disbursement	Loan payments start when SBA pays bank the forgiveness amount. <b>If borrower does not apply within 10-months after end of Covered Period, payments commence at end of 10-month period.</b>

# PPP Loan Forgiveness Process

## ***NEW UPDATE!***

The Trump Administration announced that it is taking administrative action to provide simplified PPP loan forgiveness for borrowers of \$50,000 or less.

The SBA provides a simpler PPP loan forgiveness process and includes:

- An Interim Final Rule on Additional Revisions to Loan Forgiveness and Interim Final Rule on Loan Review Procedures [here](#)
- A new Form 2508S, a simpler loan forgiveness application [here](#); and
- Instructions for completing [here](#).

# PPP Loan Forgiveness Process

## General Concepts of PPP Forgiveness

- Borrowers must complete and submit the Loan Forgiveness Application (SBA Form [3508](#), [3508EZ](#), 3508S\* or lender equivalent) to their lender or servicer.
- Lender must review and make decision regarding loan forgiveness within 60 days of receipt of a complete application and issue decision to SBA.
  - If Lender determines borrower is eligible for forgiveness on some or all the amount applied for, lender must request payment from SBA at the time the lender issues its decision to the SBA.
  - SBA, subject to any SBA review of the loan or application, will remit appropriate forgiveness amount to the lender plus interest accrued through the date of payment, not later than 90 days after the lender issues its decision to the SBA.

# PPP Loan Forgiveness Process (2)

## General Concepts of PPP Forgiveness Continued

- SBA will deduct EIDL Advance amounts from forgiveness amount remitted to Lender per 1110(e)(6) if applicable
- Lender is responsible for notifying borrower of forgiveness amount
- If amount remitted by SBA to lender exceeds remaining principal balance (i.e.- borrower made scheduled payments on loan after initial deferment period), Lender must remit excess amount, including accrued interest to borrower

# PPP Loan Forgiveness Process (3)

## General Concepts of PPP Forgiveness Continued

- SBA may review any PPP loan at its discretion, for the following:
  - Borrower Eligibility
  - Loan Amounts and Use of Proceeds
  - Loan Forgiveness Amounts
- Lender will be required to contact borrower in writing to request additional information or SBA will request directly from borrower
- If SBA determines borrower is ineligible for the PPP loan, SBA will direct Lender to deny loan forgiveness application in whole or in part.
  - SBA may seek repayment of the outstanding PPP loan balance or pursue other available remedies

# PPP Loan Forgiveness Process (4)

## General Concepts of PPP Forgiveness Continued

- For each Forgiveness Application Form 3508, Lender must:
  - Confirm receipt of borrower certifications in Application Form 3508
  - Confirm receipt of documentation borrower must submit verifying payroll and nonpayroll costs
  - Confirm borrower's calculations on the borrower's Application, including dollar amount of the:
    - Cash Compensation, Non-Cash Compensation, and Compensation to Owners in Schedule A and
    - Business Mortgage Interest Payments, Business Rent or Lease Payments, and Business Utility Payments
  - Confirm borrower made the calculation on Line 10 of the Calculation Form correctly by dividing borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.

# PPP Loan Forgiveness Process (5)

## General Concepts of PPP Forgiveness Continued

- For each Forgiveness Application Form 3508EZ, Lender must:
  - Confirm receipt of borrower certifications in Application Form 3508EZ
  - Confirm receipt of documentation borrower must submit verifying payroll and nonpayroll costs
  - Confirm borrower's calculations on the borrower's Application, including dollar amount of the:
    - Payroll costs, business mortgage interest payments, business rent or lease payment and business utility payments on Lines 1, 2, 3, and 4; and
  - Confirm borrower made the calculation on Line 7 of the Calculation Form correctly by dividing borrower's Eligible Payroll Costs claimed on Line 1 by 0.60.



# PPP Loan Forgiveness Process (6)

## General Concepts of PPP Forgiveness Continued

- When Lender issues decision to SBA approving a 3508 application (in whole or part), it must include:
  - PPP Loan Forgiveness Calculation Form
  - PPP Schedule A
  - Optional PPP Borrower Demographic Information Form
  - Lender Confirmation information provided to SBA accurately reflects lender's records for the loan
  - And, if Lender determines not forgivable in any amount, the reason(s) for its denial
- Review procedures for when SBA notifies Lender it is reviewing a loan

# PPP Loan Forgiveness Process (7)

## General Concepts of PPP Forgiveness Continued

- When Lender issues decision to SBA approving a 3508EZ application (in whole or part), it must include:
  - SBA Form 3508EZ or lender's equivalent (including representations and certifications page of application initialed, signed and dated by an authorized representative of the borrower); and
  - The PPP Borrower Demographic Information Form (if submitted by the borrower)
  - And, if Lender determines not forgivable in any amount, the reason(s) for its denial
- Review procedures for when SBA notifies Lender is it reviewing a loan

# General Concepts of the PPP:

## Interim Final Rule #15: SBA Loan Review Procedures and Related Borrower and Lender Responsibilities

***a. Is the lender eligible for a processing fee if SBA determines that a borrower is ineligible?***

*No. If SBA conducts a loan review and determines that the borrower was ineligible for a PPP loan, the lender is not eligible for a processing fee.*

***b. Are lender processing fees subject to clawback if SBA determines that a borrower is ineligible?***

*Yes. For any SBA-reviewed PPP loan, if within one year after the loan was disbursed SBA determines that a borrower was ineligible for a PPP loan based on the provisions of the CARES Act or applicable rules or guidance available at the time of the borrower's loan application, or the terms of the loan application, SBA will seek repayment of the lender processing fee from the lender. However, SBA's determination of borrower eligibility will*

*have no effect on SBA's guaranty of the loan if the lender has complied with its obligations under section III.3.b of the First Interim Final Rule and the document collection and retention requirements described in the lender application form (SBA Form 2484).*

***c. Are lender processing fees subject to clawback if a lender has not fulfilled its obligations under PPP regulations?***

*Yes. If a lender fails to satisfy the requirements applicable to lenders that are set forth in section III.3.b of the First Interim Final Rule or the document collection and retention requirements described in the lender application form (SBA Form 2484), SBA will seek repayment of the lender processing fee from the lender and may determine that the loan is not eligible for a guaranty.*

# In recent News:

## SBA Procedural Notice October 2, 2020

### “Change of Ownership” —

1. When at least 20% of the common stock or other ownership interest of a PPP borrower (including a publicly traded entity) is sold or otherwise transferred whether in one or more transactions, including to an affiliate or an existing owner of the entity;
  2. The PPP borrower sells or transfers at least 50% of its assets (measured by FMV) whether in one or more transactions; OR
  3. A PPP borrower is merged with or into another entity.
- Borrower is still responsible for all obligations and compliance under PPP loan, including documentation
  - Lenders may be required to get SBA prior approval depending on transfer structure
  - Lenders will continue to report monthly 1502 reports until PPP loan is satisfied
  - If PPP loan was collateral under PPPLF, Lender must comply with any notification or other requirements.

# In Recent News:

## The HEROES Act 2.0

- House Democrat \$2.2 trillion package with streamlined forgiveness for loans under \$150,000 and second draw for distressed businesses
  - Borrowers under \$50,000 only need to certify they met Program's requirements for forgiveness
  - Borrowers between \$50,000-\$150,000 submit certification to lender through simplified forgiveness application
- Creates 3 set-asides for targeted relief:
  - At least 10% of remaining and future funding for loans to small businesses with 10 or fewer employees, sole proprietors and the self-employed and for loans less than \$250,000 to businesses located in LMI areas
  - Up to 30% of remaining and future funding for non-profits of all sizes/types with housing coops allowed to take first-time PPP loans
  - Up to 50% of remaining and future funding for secondary PPP loan program for second loans to small businesses with less than 200 employees and a 25% reduction in revenue year-over-year due to pandemic
- Carved out business expenses of PPP borrowers as tax deductible

# Risks and Benefits of the Paycheck Protection Program

## Risks

- Too many unknown variables
- Not backed by major industry hitters
- An overwhelmed infrastructure
- Unsecured collateral with a 1% interest rate
- Potential to deny small business entities hardest hit
- Financial institutions carry almost all the risk
- Class action lawsuits, particularly agents or discrimination claims
- Negative examinations and subsequent findings due to failure to comply with other regulatory obligations

## Benefits

- Saving your community and local businesses
- Assists Federal Reserve initiative of injecting money back into the economy, increasing lending impacted by COVID-19 recessive trends
- Potential income on fees
- Assist with bank's liquidity issues in a time of Fed flooding

# SBA PPP Updates: What is Outstanding?

## Pending Questions:

- When can borrowers furlough employees without affecting forgiveness?
- Is the bank required to send written notice of forgiveness approval? If so, when?
- Can borrower later apply 24-week covered period if the forgiveness application has already been submitted?
- Will the present PPP forgiveness rules continue to change? (i.e.- like with August 24<sup>th</sup> update to related interest and rent payments)
- What is going to happen with the EIDL program?
- If The HEROES 2.0 passes:
  - Will new PPP loans require repayment, or will forgiveness be permitted?
  - Who can grant the second loan?

# Final Conclusions and Next Steps

- Daily monitoring
  - Compliance Alliance has numerous toolkits available for members here: <https://compliancealliance.com/find-a-tool/tool/pandemic-toolset>
- Educate Board of Directors and Senior Management of risks and benefits of this Program
- Perform risk assessments of bank's capital liquidity, infrastructure and operational capabilities to perform a service like the Program
- Determining if mitigating factors are applicable and implementing accordingly
- Training of staff on all PPP requirements for uniformity and consistency
- Continually monitor and check in with C/A for updates to the PPP Program



# Questions?

Thank you for your participation! We hope you found today's presentation valuable.

If you have any additional questions, please contact Compliance Alliance.

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