



A Division of Bankers Alliance

WEBINAR

The CARES Act: Payment Protection Program

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Agenda

- Disclaimer
- Lending During a Pandemic
- Paycheck Protection Program Overview
- Processing Applications and Requests for Forgiveness
- Program Considerations
- Risks and Benefits of Paycheck Protection Program
- Final Conclusions and Next Steps

Disclaimer

Today's webinar focuses on recent the Interim Final Rule, regulatory guidance and commentary regarding the Payment Protection Program accurate as of April 3, 2020.

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

It is not intended to be all-encompassing.

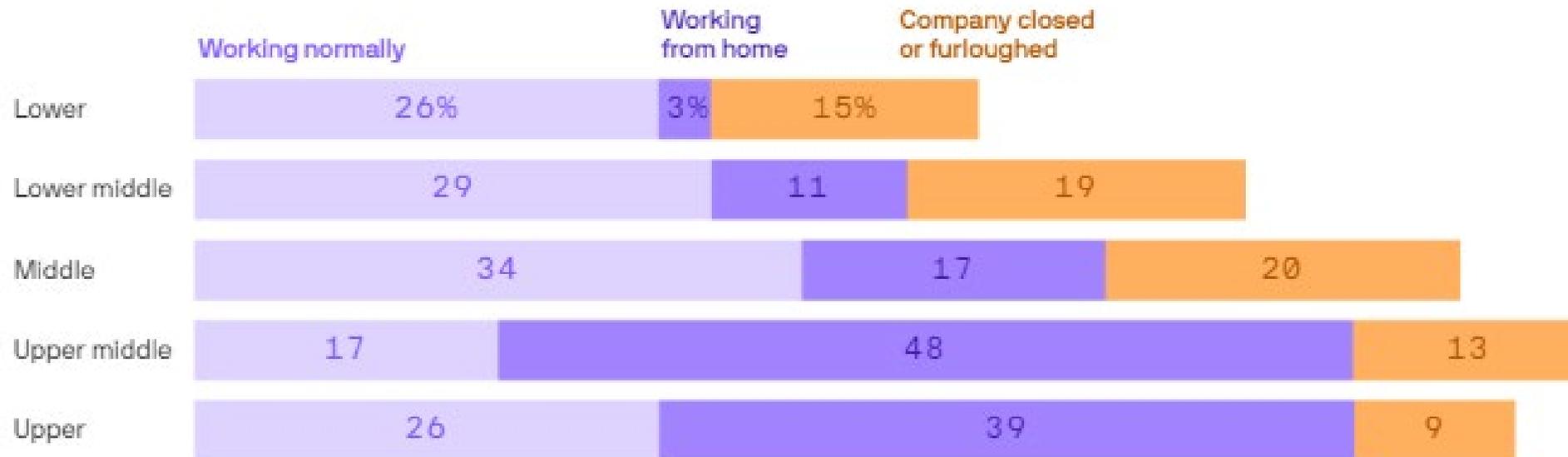
Definitive guidance should always be coming from your governing regulatory agency, along with the Treasury, the U.S. Small Business Administration, and other applicable governmental entities.

Refer to your Desktop Manual for a list of additional resources.

Lending During a Pandemic

Working status and emotional well being by socioeconomic group

Survey of 1,355 U.S. adults, March 27-30, 2020



Data: Axios/Ipsos survey. Margin of error ± 2.8 points for full sample. Margin for subgroups ranges from ± 5 to ± 9 points. Chart: Naema Ahmed/Axios

Source: [Axios](#)

Program Overview: Eligible Lenders

- SBA issued Interim Final Rule implementing the PPP provision of the CARES Act on April 2, 2020.
- PPP Lending Period: April 3, 2020 through June 30, 2020
- \$349 billion in PPP loans available on first-come, first-served basis directly from approved banks, credit unions and other participating lenders
 - All SBA 7(a) lenders are automatically eligible for authority to make PPP loans
 - Lenders designated in troubled condition by primary federal regulator or subject to formal enforcement action for unsafe and unsound lending practice are not eligible

Program Overview: Eligible Borrowers

In operation on February 15, 2020 with either:

- Employees for which it paid salaries and payroll taxes; or
- Paid independent contractors, as reported on Form 1099-MISC

And,

With 500 or fewer employees with principal place of residence within the United States; or

Are a business that operates in a certain industry that meets applicable SBA employee-based size standards for that industry

Includes:

- Nonprofits 501(c)(3) IRC
- Tax-exempt Veterans' organizations 501(c)(19) IRC
- Tribal business concerns Section 31(b)(2)(C) Small Business Act
- Certain business (food services and accommodations) with 500 or less employees if no more than 500 employees at each physical location
- Sole proprietorships, independent contractors and self-employed individuals

Program Overview: Program Parameters

- Eligible borrowers can apply for and receive loans up to 2.5 times their average month payroll expenses for the prior year
- Loan Program Length: April 3rd, 2020 to June 30th
- Interest rate: 1% or 100 basis points
- Approved PPP loans carry a 0% risk level
- Loan Term: Two-year term
- Loans payments to be deferred for the first six months of the loan
- Loan forgiveness process allows up to 8 weeks of covered expenses, including both principal and interest, to be forgiven for the borrower with no tax consequences

Program Overview: SBA Size Standards Breakdown

SBA's size standards determine whether a business qualifies as small

- Affiliate: based on power to control, whether exercised or not ([13 CFR 121.103](#))
- Annual receipts: total income (gross income) plus costs of goods sold generally found in IRS tax return forms ([13 CFR 1121.104](#))
- Employee Calculation: Average number of people employed for each pay period ([13 CFR 121.106](#))

Program Overview: SBA Size Standards Exception

SBA affiliation standards are waived for small businesses:

- In the hotel/accommodations and food services industries as listed in NAICS code 72;
- Franchises in the SBA's Franchise Directory; or
- Receiving financial assistance from small business investment companies licensed by the SBA

Businesses outside the United States may still be counted as small if they have an operation inside the United States that:

- Makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labors; and
- For PPP, have employees whose principal place of residence is in the United States.

Program Overview: Borrower Ineligibility

- Borrower is engaged in any activity that is illegal under federal, state or local law;
- Borrower is a household employer (nannies, housekeepers)
- An owner of 20% or more of the equity of the applicant is:
 - Incarcerated, on probation or parole
 - Subject to indictment, criminal investigation, arraignment, or otherwise has formal charges pending in any jurisdiction; or
 - Has been convicted of a felony within the last 5 years
- Borrower or any business owned/controlled by borrower or any of their owners has obtained a direct or guaranteed loan from SBA or other Federal Agency that is currently delinquent or has defaulted in last 7 years and caused a loss to the government

Program Overview: Additional Affiliate Guidance

- Borrower will be considered together with affiliate for purposes of determining PPP eligibility
- Section 1102 provides that provisions applicable to affiliations under SBA requirements apply with respect to nonprofit organization, veterans' organizations and Tribal business concerns in the same manner as all other small business entities
- Assistance through Borrower Application [SBA Form 2483](#)

Program Overview: Churches and Religious Nonprofits

- Churches (defined broadly) qualify for PPP *and* EIDL loans if they meet:
 - 501(c)(3) nonprofit definition under IRC; and
 - All other PPP and EIDL requirements.
- Qualified faith-based organizations are exempt from the SBA's affiliation rules where it would substantially burden their religious exercise ([RFRA](#))

***Regardless of whether they provide secular social services!**

Program Overview: Refinancing an EIDL into a PPP Loan

- EIDL loan must have been made between January 31, 2020 and April 3, 2020
- If an EIDL was *not* used for payroll costs, it will not affect borrower's eligibility for a PPP loan
- If EIDL *was* used for payroll costs, PPP loan must be used to refinance the EIDL
- Proceeds from an advance up to \$10,000 on an EIDL will be deducted from the loan forgiveness amount of the PPP loan
- Determining 75% use of proceeds for payroll costs: amount of any EIDL refinanced has to be included.
- Determining loan forgiveness: borrower must deduct the proceeds used for payroll costs in order to determine the amount of forgiveness

Processing Applications: Approved Loan Purpose

Approved Purposes

- Payroll costs, including benefits
- interest on mortgage obligations incurred before February 15, 2020
- Rent, under lease agreements in force before February 15, 2020
- Utilities when service began before February 15, 2020

*Note: Sole Props or Independent Contractors—capped at \$100,00 on annualized basis for each employee:

- Wages,
- Commission,
- Income,
- Net earnings for self-employment

Payroll Costs*—Compensation to Employees in Form of:

- Salary, wages, commissions or similar compensation** on an annualized basis for each employee
- Cash tips or equivalent** based on employer records of past tips or in absence, reasonable good-faith estimates
- Employee benefits including vacation, parental, family, medical or sick leave, allowance for separation or dismissal, payments required for provisions of group health care benefits including insurance premiums and payment of any retirement benefit
- State/local taxes assessed on compensation of employees

**Capped at \$100,000

Processing Applications: Approved Loan Amount

- Up to two months of the borrower's average payroll costs from the last year plus an additional 25% of that amount
- Subject to a \$10 million cap
- If seasonal or new business, different applicable time periods in calculation
- Payroll costs are capped at \$100,000 annualized for each employee

Processing Applications: Calculation Requirements (1)

Step 1: Aggregate payroll costs (defined in detail below) from the last twelve months for employees whose principal place of residence is the United States.

Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

***Note Agricultural or Seasonal employer differences!**

Processing Applications: Calculation Requirements (2)

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

***Note Agricultural or Seasonal employer differences!**

Processing Applications: Application Process

Lender:

- Submit Paycheck Protection Program Lender's Application for 7(a) Loan Guaranty ([SBA Form 2484](#))

Borrower:

- Completes [Paycheck Protection Program Loan Application](#)

- Provides payroll and additional documentation
- Sign Application Certification

Lender:

- Begin Underwriting Process as dictated by the SBA and the bank's internal BSA/AML requirements

Processing Applications: Loan Underwriting

- Confirm receipt of borrower certifications in the PPP application
- Confirm receipt of information demonstrating eligibility requirements (employees and size)
- Confirm dollar amount of average monthly payroll costs for preceding calendar year by reviewing payroll documentation
- Follow applicable BSA/AML requirements

***Yes! Until specifically excluded, Beneficial Ownership applies!**

Processing Applications: Program Fees

SBA will pay lender fees for *processing* PPP loans in the following amounts:

- 5% for loans no more than \$350,000
- 3% for loans more than \$350,000 but less than \$2,000,000
- 1% for loans at least \$2,000,000

Agent fees: paid by Lender out of fees the Lender receives from SBA:

- 1% for loans no more than \$350,000
- 0.5% for loans no more than \$350,000 and less than \$2,000,000
- 0.25% for loans at least \$2,000,000

***5 Day Rule for Reimbursement!**

Loan Forgiveness: Parameters

- Amount can be up to full principal of loan and any accrued interest
 - Borrower is not responsible for any loan payment *if the borrower uses all of the loan proceeds for a forgivable purpose*
 - Employee and compensation levels **must** be maintained
 - Not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.
- Borrower is responsible to repay money if they do not maintain staff and payroll

Failure to Maintain Staff and Payroll Requires Repayment:

Number of Staff: Forgiveness reduced if borrower decreases full time employee headcount

Level of Payroll: Forgiveness reduced if borrower decreases salaries/wages by more than 25% for any employee that made less than \$100,000 annualized in 2019

Re-Hiring: Borrower has until June 30, 2020 to restore full-employment and salary levels for any changes made between February 15, 2020 and April 26, 2020

Loan Forgiveness: Borrower Requests

- Borrower must submit a request to the Lender for loan forgiveness
- Include:
 - Documents that verify number of full-time equivalent employees and pay rates
 - Payments on eligible mortgage, lease and utility obligations
 - Certification that documents are true and the borrower used forgiveness amount for eligible purposes
- Lender must make decision on forgiveness within 60 days of receipt
 - Free to rely on documentation submitted by borrower for loan forgiveness as long as there is borrower attestation to accuracy

Loan Forgiveness: SBA Purchase Requests

- Lender may request SBA purchase the Expected Forgiveness Amount (EFA) at the end of week seven of the covered period
 - Expected Forgiveness Amount—amount of loan principal Lender reasonably expects borrower to expend on payroll costs, covered mortgage interest, covered rent and covered utility payments during the 8-week period after loan disbursement
 - At least 75% of the Expected Forgiveness Amount shall be for payroll costs
- Lender submits report to SBA request advance purchase with EFA including:
 - PPP Application Form 2483 and supporting documentation submitted with application
 - Lender’s Application for 7(a) Loan Guaranty Form 2484 and any supporting documentation
 - Detailed narrative
 - Any additional information SBA may require

***SBA will purchase forgiveness amounts within 15 days of date on which it receives a complete report demonstrating EFA is reasonable**

Loan Forgiveness: PPP Funds Misuse

- Unauthorized purposes—SBA mandates borrower to repay those amounts
- If knowingly used funds for unauthorized purposes—Borrower subject to additional liability (charges of fraud)
 - Applies to shareholders, member or partner of Borrower as well

Program Considerations: Regulation B/ECOA

- Adverse Action timing and notice requirements remain applicable *if* Lender engages in PPP lending
- Prohibited from discouraging applications on a prohibited basis (including Fair Lending considerations)
- Prohibition on personal guaranties and requiring additional borrowers in violation of PPP and Reg B.

Program Considerations: Regulation O

(c) *Loans not subject to the lending limits.* The following loans or extensions of credit are not subject to the lending limits of 12 U.S.C. 84, or 12 U.S.C. 1464(u), as applicable, of this part.

...

(4) *Loans to or guaranteed by a Federal agency.*

(i) Loans or extensions of credit to any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States.

(ii) Loans or extensions of credit, including portions thereof, to the extent secured by unconditional takeout commitments or guarantees of any of the foregoing governmental entities. The commitment or guarantee--

(A) **Must be payable in cash or its equivalent within 60 days after demand for payment is made;** [Emphasis Added]

(B) Is considered unconditional if the protection afforded the national bank or savings association is not substantially diminished or impaired if loss should result from factors beyond the bank's or savings association's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to pay on the obligation only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank or savings association.

[12 CFR 32.3\(c\)\(4\)\(ii\)](#)

Program Considerations: Notes and Forms Providers

- Lender is responsible for developing the Note to the PPP's specifications
- Systems and forms constraints
- Delays from form service providers
- Risks from improper loan documentation

Program Considerations: FinCEN Guidance

- Compliance with BSA Obligations
- Beneficial Ownership Information Collection Requirements for Existing Customers
 - Does not specifically negate the requirement to re-certify documentation!
- COVID-19 Online Contact Mechanism: www.FinCEN.gov

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

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

Final Conclusions and Next Steps

- Daily monitoring
 - Compliance Alliance has numerous toolkits available for members and nonmembers during this time here: <https://compliancealliance.com/find-a-tool/tool/pandemic-toolset>
- Educating Board of Directors and Senior Management of risks and benefits of this Program
- Performing 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

Questions?

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

Review your Manual for additional guidance, comments, tools and FAQs.

If you have any additional questions,
contact Compliance Alliance at 888-353-3933 or admin@compliancealliance.com.