

# ALTA

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## How to Plan for PPP Loan Forgiveness

Allyson B. Baker | Venable LLP  
Meredith L. Boylan | Venable LLP  
Steve Gottheim | ALTA

# Meet the Panel of Experts

- Allyson B. Baker | Partner | Venable LLP
- Meredith L. Boylan | Partner | Venable LLP
- Steve Gottheim | Senior Counsel | ALTA



**Background**

# Federal Response (so far)

- Phase 1: \$8.3 billion in funds for health care and medicine/vaccine development
- Phase 2: Families First Coronavirus Response Act
  - Expanded FMLA
  - Paid Sick Leave
- Phase 3: \$2 trillion stimulus (CARES Act)
  - Direct cash payments
  - Small business loans – PPP
  - Increase unemployment insurance payments
  - Support for distressed sectors of economy

# Paycheck Protection Program (PPP)

- What: \$650 billion in loan guarantees to small businesses to sustain operations and keep workers employed
- Who: Business with 500 employees or less or less than \$12m in revenue
- When: Applications started April 3. End June 30.
- How: Much: 250% of average monthly payroll cost
- Cost: 100% forgivable if you don't lay off workers
- What can it be spent on: payroll costs such as salary, health insurance, sick leave, and 401k and rent, utilities and mortgage

# The PPP Flexibility Act

- Reduced amount required to be spent on payroll to 60%
- Extended time to use funds from 8 weeks to 24 weeks
- Pushed deadline for rehiring furloughed workers from June 30 to December 31
- Provided flexibility if your business can demonstrate an inability to rehire workers after a good faith effort
- Allows PPP borrowers to also use payroll tax deferral

# Some Facts

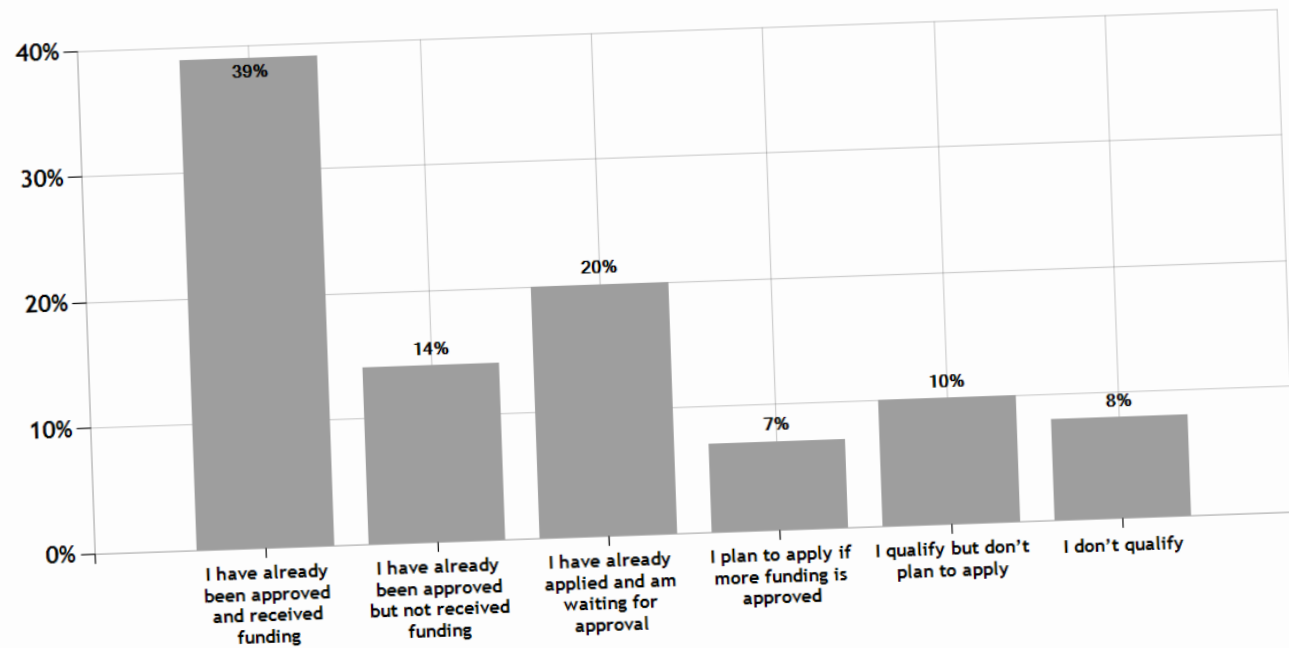
# Amount of Funding Remaining

**\$130,681,819,671**

*Available funds captures approvals net of cancellations as well as loan increases, decreases, and reinstatements. This amount accounts for statutory program costs.*



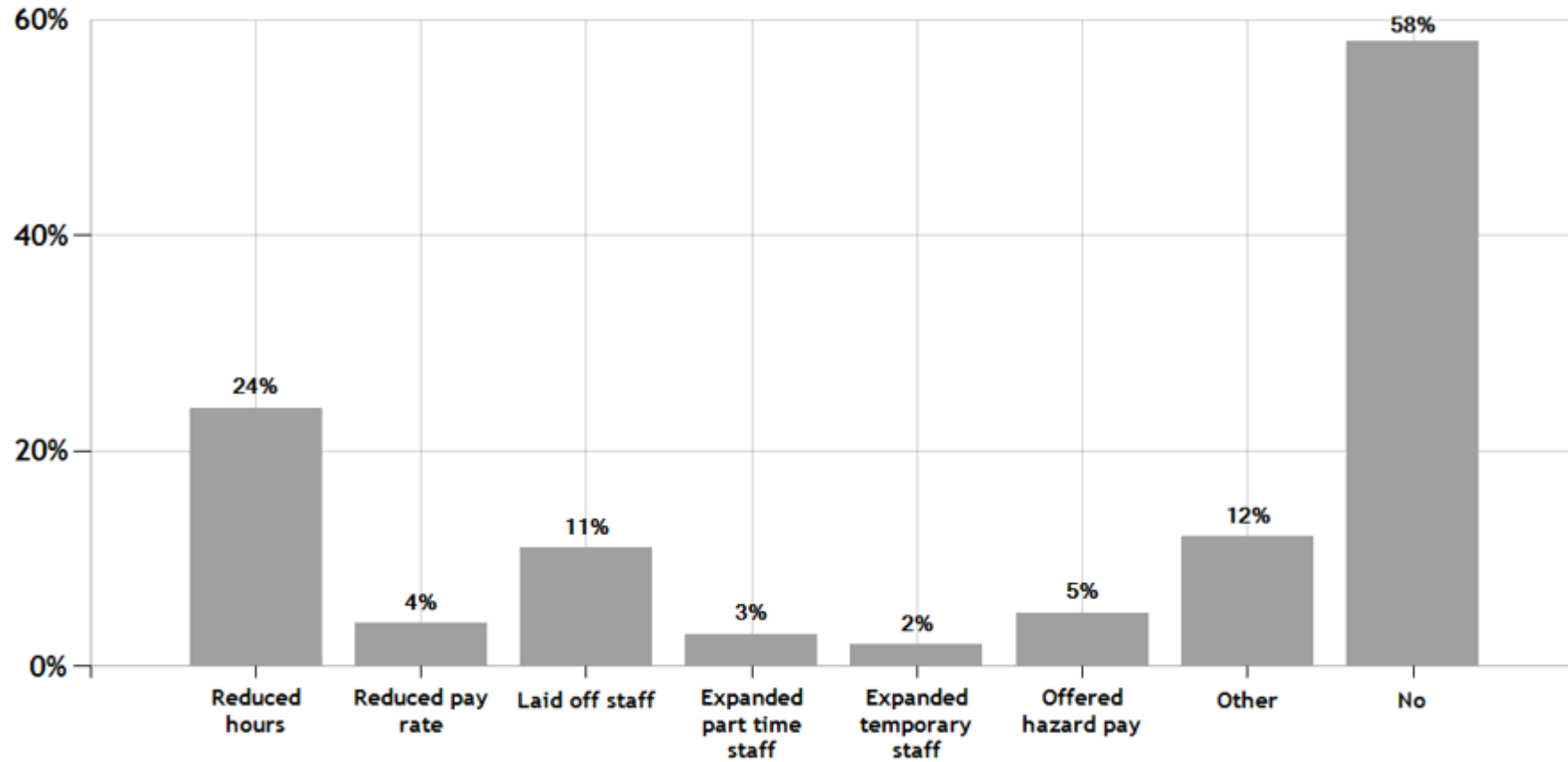
With respect to the Paycheck Protection Program (PPP), which option best describes your situation:



# Industry by NAICS Sector

NAICS Sector Description	Loan Count	Net Dollars	% of Amount
Health Care and Social Assistance	475,706	\$66,116,892,187	12.93%
Professional, Scientific, and Technical Services	589,542	\$65,242,167,416	12.76%
Construction	434,720	\$63,578,254,948	12.43%
Manufacturing	219,814	\$53,505,238,934	10.46%
Accommodation and Food Services	344,104	\$41,066,112,230	8.03%
Retail Trade	421,687	\$39,658,145,446	7.76%
Other Services (except Public Administration)	477,316	\$30,059,675,387	5.88%
Wholesale Trade	158,519	\$27,415,340,831	5.36%
Administrative and Support and Waste Management and Remediation Services	224,768	\$25,974,183,957	5.08%
Transportation and Warehousing	157,820	\$16,293,334,981	3.19%
Real Estate and Rental and Leasing	225,139	\$15,202,496,179	2.97%
Finance and Insurance	156,429	\$11,967,840,821	2.34%
Educational Services	74,230	\$11,758,914,754	2.30%
Unclassified Establishments	223,648	\$9,961,029,864	1.95%
Information	63,984	\$9,092,167,092	1.78%
Arts, Entertainment, and Recreation	106,352	\$7,677,909,825	1.50%
Agriculture, Forestry, Fishing and Hunting	129,258	\$7,635,183,929	1.49%
Mining	20,610	\$4,477,493,683	0.88%
Public Administration	12,473	\$1,697,067,492	0.33%
Management of Companies and Enterprises	8,327	\$1,557,291,638	0.30%
Utilities	7,437	\$1,445,430,383	0.28%

Have you adjusted (or do you plan to adjust) your workforce due to COVID-19 crisis in any of the following ways?



# PPP Loan Forgiveness

# Basics

- Businesses are eligible to have 100% principal amount of the loan and any accrued interest forgiveness if:
  - It is spent on an allowable purpose (Payroll costs, rent, utilities)
  - In the required time frame - 24 weeks after the disbursement of the loan or Dec. 31, 2020, whichever is earlier.
  - Retain or rehire an equivalent number of FTEs at the same rate of pay as on Feb 15.

# Otherwise...

- Your amount of loan forgiveness will be reduce
- The unforgiven amount will be repaid
  - 5 year maturity (first 6 months repayment delayed)
  - 1 % interest rate

**Step 1: Determine your  
forgiveness eligibility**

# What Spending is Eligible for?

- Businesses can use funds from the Program loans to cover expenses including:
  - Payroll costs, including
    - compensation to employees;
    - payments for vacation, parental, family, medical or sick leave;
    - severance payments;
    - payments required for group healthcare benefits (including insurance premiums), retirement benefits, and state and local employment taxes
  - Interest payments on any mortgage obligations or other debt obligations incurred before February 15, 2020 (but not any payments or prepayments of principal)
  - Rent
  - Utilities



# The money cannot be used for:

- compensation of individual employees, independent contractors, or sole proprietors in excess of an annualized salary of \$100,000;
- compensation of employees with a principal place of residence outside the United States; or
- leave wages already covered by the Families First Coronavirus Response Act.

# However...

- At least 60 percent of the PPP loan proceeds shall be used for payroll costs
  - Includes health care, retirement, etc

# PPPFA – Changes to “Covered Periods”

## **Extends the PPP's "covered period":**

- Under the CARES Act, the PPP's covered period ends on June 30, 2020.
- The PPPFA extends that date to December 31, 2020.
- Congressional members later stated that the "intention of the extension of the covered ... is to allow borrowers who received PPP loans before June 30, 2020 to continue to make expenditures for allowable uses until December 31, 2020," but that "[t]he extension of the covered period does not authorize the Small Business Administration (SBA) to issue any new PPP loans after June 30, 2020, as this date remains fixed by section 1102(b) of the CARES Act."

## **Enlarges the forgiveness period:**

- The CARES Act requires PPP funds to be spent in the 8 weeks following the loan origination in order to be eligible for forgiveness.
- The PPPFA amends the CARES Act to replace the 8-week loan forgiveness period with the earlier of 24 weeks after the disbursement of the loan or December 31, 2020.
- Borrowers who received loans before the PPPFA was enacted may retain the original 8-week loan forgiveness period.

# Reductions to Loan Forgiveness

- **Reductions in FTE**: Reduction in number of full-time equivalent employees (FTEs) during covered period after origination of loan.
  - Period for calculating FTEs is average number from either (A) February 15, 2019 to June 30, 2019 or (B) January 1, 2020 to February 29, 2020.
  - Number of FTEs determined by calculating average number of FTEs for each pay period falling within a month.
- **Reductions in Payroll**: Reduction in pay of any employee making less than \$100,000 by more than 25% - compared to last complete calendar quarter.
  - No limit to amount of reduction in pay of employees who make over \$100,000.

# Repairing Reductions in Payroll

- No penalty for salary reductions from February 15, 2020 to April 26, 2020 if salaries are restored to original amount by December 31, 2020 (per PPPFA).
  - Example: On February 15, 2020, Company A decreased the salaries of employees making \$75,000 to \$50,000. If Company A increases the salaries of those employees back to \$75,000 by December 31, 2020, there will be no penalty regarding the amount of loan forgiveness.
- Keep in mind that this possible reduction in loan forgiveness applies only to employees who make less than \$100,000 per year.

# PPPFA – Headcount Calculations

## **Expands the exemption for rehires:**

- The CARES Act reduces a borrower's eligibility for loan forgiveness if the borrower reduces the number of full-time equivalent employees (FTEs) or reduces the compensation of one or more employees between February 15, 2020 and April 26, 2020, but allows employers to avoid reductions to the forgiveness amount if they restore the number of FTEs or compensation by June 30, 2020.
- The PPPFA extends the deadline in which to rehire employees or restore compensation levels to December 31, 2020.

## **Adds additional exemptions to the loan forgiveness reduction:**

- The PPPFA also allows borrowers to avoid a reduction in forgiveness amounts if the borrower can:
  - (1) document an inability to rehire the individuals employed on February 15, 2020 and an inability to hire "similarly qualified" employees for unfilled positions on or before December 31, 2020, or
  - (2) document an inability to "return to the same level of business activity" that the business experienced before February 15, 2020 "due to compliance with the requirements established or guidance issued" by certain federal agencies from March 1, 2020 to December 31, 2020 "related to the standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19."

My business tried to rehire workers, but some of our furloughed workers did not return and we couldn't replace them. Are we still eligible for forgiveness?

- Yes. If you have documentation that any furloughed worker did not accept an offer to be rehired and you can demonstrate that you were unable to hire a similarly qualified employee for the unfilled position on or before December 31, or that your business was unable to return to a level of business activity you achieved before February 15, this requirement will be exempted from your forgiveness application. In order to prove this, ensure every step of the offer to rehire a furloughed worker is documented and that your business made a good faith effort to fill the position, if you were able to do so under CDC and OSHA guidelines.

# Do I have to have to rehire the exact same worker to be eligible for forgiveness?

- No. The application requires comparing your FTE headcount on February 15 with the headcount during the period chosen on your PPP Schedule A form on line 11.



# Step 2: Applying

# Loan Forgiveness Application

- Borrowers must submit certain documentation, including documents verifying eligible payroll expenses, including bank statements, tax forms, and third-party payroll reports and receipts of benefits payments; documents evidencing FTE numbers for the applicable periods (i.e., payroll tax filings and wage reports).
- Borrowers must submit documentation of nonpayroll expenses, such as amortization schedules and receipts of eligible mortgage interest expenses; leasing agreements and receipts for eligible lease expenses; and utility invoices and receipts for eligible utility expenses.
- Documentation retention requirements – For a period of 6 years from the date of forgiveness (or loan repayment in full), loan forgiveness applicants must preserve and be prepared to furnish upon request documentation that would support the facts and figures underlying the applicant's calculations and statements submitted as part of the loan forgiveness application, and underlying worksheets, including documents supporting applicants' salary/wage reduction calculation; documents evidencing job offers and rejections, firings for cause, voluntary resignations, and written requests for a reduced work schedule; and other documents supporting the maintenance or reduction of employment and salary levels, as reflected in the borrower's application.
- Must indicate if the borrower (with affiliates, if applicable) received PPP loan proceeds in excess of \$2 million.

# *What do I need to qualify for loan forgiveness under the PPP?*

- Your SBA PPP Loan Number (provided by the SBA when your loan is approved);
- Your Lender PPP Loan Number;
- The amount you received for your PPP loan;
- The number of employees at your business at the time you applied for the loan;
- The number of employees at your business at the time you applied for loan forgiveness;
- The date your PPP loan was disbursed;
- Information regarding your payroll schedule and whether your business used the traditional covered period or alternate payroll covered period; and
- Records regarding how much of your loan you spent on payroll expenses and non-payroll expenses.

# Interim Final Rule Offers Additional Insight into the Review Process

- Clarifies that the SBA may review “any PPP loans,” at any time in its discretion, and that the SBA may consider in that review whether a borrower correctly calculated the loan amount, properly used the loan proceeds, and/or is entitled to the loan forgiveness amount sought.
- Borrowers must retain PPP documentation for at least 6 years after the date the loan is forgiven or paid in full, and the SBA and SBA Inspector General must be granted these files upon request.
- If the SBA believes a borrower may be ineligible for the loan or for some forgiveness amount, it will require that the lender make a written request for additional information from the borrower, and it may also request information directly from the borrower.
- All information provided by the borrower in response (either directly to the SBA or through the lender) will be considered in the SBA's review. Failure to respond to the SBA's request for information may result in a determination that the borrower is ineligible for forgiveness or for the loan itself.
- The shareholders, members, or partners of a borrower that is deemed ineligible to have received a PPP loan will not be protected by "the CARES Act's nonrecourse provision ... which limits SBA's recourse against individual shareholders, members, or partners of a PPP borrower for nonpayment of a PPP loan **only** if the borrower is an eligible recipient of the loan" (emphasis added).
- Borrowers will be given the opportunity to seek reconsideration and appeal of review decisions. The SBA intends to issue a separate interim final rule on this process.

*Once I apply for forgiveness how long does the bank have to respond to my application?*

- The lender you used has 60 days to issue a decision to the SBA, and then the SBA has 90 days to remit forgiveness.

# What documents do I need to provide in addition to completing the application?

- The PPP Loan Forgiveness Calculation Form;
- The PPP Schedule A form;
- Payroll documentation
  - Payroll processor records
  - Bank account statements o
  - Tax forms for the covered period, including:
  - Payroll tax filings that have been or will be reported to the IRS; and
  - State quarterly business and individual employee wage reporting and unemployment insurance tax filings that have been or will be reported to your state; and
- Non payroll expense records
  - Payment verification of rent, mortgage interest, utilities

# Payroll Tax Deferral

# Payroll tax deferral

- Employers can defer paying their portion of the Social Security payroll tax (6.2 percent) otherwise due with respect to wages accrued between March 27, 2020 and December 31, 2020.
- The above delay provisions apply to all employers regardless of size.
- **payroll tax deferment eligibility to PPP borrowers:** The CARES Act excluded borrowers who received loan forgiveness under the PPP from being able to defer employer payroll taxes. The PPPFA eliminates this exclusion.



# Repayment

The deferred amounts will ultimately repaid in two installments.

- Half must be repaid by December 31, 2021
- Any remainder due December 31, 2022.

Questions?