**PYA Webinar:** **New COVID-19 Webinar: "So You Have a PPP Loan. Now What?"**

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Welcome to the PYA webinar – "So You Have a PPP Loan. Now What?'

A question we have all been wondering since the letters PPP were first heard. Our hope today is that this presentation will provide each of you with some insight into what you need to know about the program and some of the recent guidance that has been passed, along with perhaps a few best-practices that will be helpful as you contemplate next steps.

*{ADVANCE SLIDE – INTRODUCTIONS}*

As Laura mentioned, my name is Mark Brumbelow, and I am the managing principal of PYA's tax services group. I am located here in our Knoxville, TN headquarters. Joining me today will be Debbie Ernsberger, a principal with PYA's Healthcare Consulting team. She is also located in our Knoxville, TN office. She and I will be answering questions during the webinar as they are submitted through the dialogue box. There will also be some time at the end of our presentation for us to answer some of your questions live – particularly those questions that will benefit multiple attendees.

We have been on the front lines of the PPP questions since the world was essentially shut down and small businesses around the country started to feel the economic impact. The Paycheck Protection Program or PPP loan was a lifeline for many businesses although a shaky and not well thought out lifeline at that.

*{ADVANCE SLIDE – PAYCHECK PROTECTION PROGRAM (PPP) – **SLIDE HAS ANIMATIONS**}*

As a quick overview, the Paycheck Protection Program or PPP was enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) which was signed into law March 27, 2020. I believe the "application process" opened on April 3, 2020 and the funding was depleted within about two weeks. The initial funding for the PPP loans was $349 billion. We use the term "application process" loosely, because as many of you know, there were significant issues encountered during the roll out.

***Animation 1 -*** Round 2 of the PPP loans came about through an amendment on April 24, 2020 with the Paycheck Protection Program and Health Care Enhancement Act. ***Animation 2 -*** Round 2 provided funding of $310 billion. At the point of this webinar, funding still exists in round 2 although certainly depleted. Funding has been slower with Round 2 more so related to businesses questioning the program and the ever-changing rules.

So, let's just remind ourselves how we arrived here. I don't know about the rest of you but since the program was released it has been like riding on a roller coaster. Guidance would change from one day to the next and applications for the original loan are probably pretty varied as to how the actual loan amount was calculated depending on what day the application was submitted.

*{ADVANCE SLIDE – HOW MUCH CAN BE BORROWED}*

So, how much could be borrowed? All small businesses meeting the requirements could borrow up to $10 million or 2.5 times a borrower's average payroll which was calculated as either the average of 2019 or the 12 months leading up to the application with some special provisions related to an Economic Injury Disaster Loan. One of the criteria to meet the small business definition limits the number of employees to up to 500 employees – and the court of public opinion quickly decided that that criteria alone might not be sufficient to be considered by some as "small")

*{ADVANCE SLIDE – HOW MUCH CAN BE BORROWED (ii)}*

For purposes of the loan application as well as the forgiveness calculation, payroll is calculated for employers based on the following:

Salary, wage, commission, or similar compensation;

Payment of cash tips or equivalent

Payment for vacation, parental, family, medial or sick leave

Allowance for dismissal or separation

Payment for group health care and retirement benefits

Payment of state or local tax assessed on the compensation of the employee.

Special provisions exist to limit compensation for an employee to $100,000 as prorated during the covered period.

We have gotten several questions recently about the differences between compensation of employees and those independent contractors, sole proprietors, and partners in partnerships. Based on the recently released PPP Loan Forgiveness Application, the amount specific to allowable payroll is reflected as $15,385 for owner-employees, a self-employed individual, or general partners which represents the eight-week equivalent of $100,000 per year (or the equivalent of their applicable compensation in 2019, if lower). This seems consistent with an Interim Rule released on April 14, 2020 which noted that, for purposes of forgiveness, covered benefits were applicable to employees and not owners. Based on current information available, this is an unfortunate result for independent contractors, proprietors, and partners in partnerships.

*{ADVANCE SLIDE – PPP Details}*

One of the benefits of a PPP loan was that they could be obtained through any authorized SBA Act Section 7(a) lender that "opted in" to the program. The SBA did not charge fees for the PPP loans. There were no collateral or personal guarantees associated with the loans.

The PPP loans and programs must be applied for on or before June 30, 2020 (there is pretty significant risk that the funds will be fully depleted by that time). They are issued on a first-come, first served basis. PPP funds were to be disbursed within 10 days of the date upon which the loan was assigned an SBA loan number.

It is important to note here that once the funds were received the clock started running for purposes of what we reference as the covered period – meaning the covered period was defined as the eight-week (or 56 day) period beginning the date the funds were deposited into your account. 56 days is critical to the "clock" as you count the date of disbursement of the loan as part of the 56 days. If a loan was disbursed on April $20^{th}$, the last day of the 56-day period would be June $14^{th}$. This will be important to remember in a minute as we discuss alternative periods the forgiveness application provides borrowers. Most businesses ended up with the cash in hand and no real guidance other than general guidance as to how to spend the funds all while the clock was ticking. Anecdotally, I have heard of many businesses that calculated everything correctly for the loan but are really struggling with how to spend the dollars during the eight-week period. Why? Loan funds were received but the national, state, and local economies were still shut down. Payroll was based on a year where overtime might have been included along with bonuses and most businesses have eliminated those factors in an effort to save money. The spirit of the PPP was to keep folks on the payroll and employed during the pandemic. As I have thought through guidance for clients, I have honesty tried to keep that thought in my mind. Hopefully, the SBA and Lenders will as well.

*{ADVANCE SLIDE – Allowable Uses of PPP Loan Proceeds – Payroll Costs}*

So, what can we use the loan proceeds for? What are the allowable uses?

In general, 75% of the loan proceeds must be used for payroll costs.

Payroll Expenses are defined as:

- Compensation (not exceeding $15,385 per employee) in the form of: gross salary, gross wages, gross commissions, and gross tips,

Note (as I mentioned before): For an independent contractor or sole proprietor, payroll costs only include wages, commissions, income, or net earnings from self-employment, or similar compensation

- vacation, parental, family, medical, or sick leave (other than leave for which the employer was reimbursed under the Families First Coronavirus Response Act), and

- allowance for separation or dismissal;
- Employer contribution for employee group health care coverage;
- Employer contribution for employee retirement plans; and
- Payment of state and local taxes assessed on compensation of employees.

*{ADVANCE SLIDE – Allowable Uses of PPP Loan Proceeds – Non-Payroll Costs}*

And not more than 25% of the proceeds may be used for nonpayroll costs – rent, mortgage interest payments (with no prepayment allowed), utilities, including power, water, transportation, telephone and internet access. Also included in the non-payroll costs is any interest on other debt obligations incurred before 2/15/20. If you as a borrower use the loan proceeds for unauthorized purposes, you may be subject to additional liability, such as charges for fraud, and will be ordered to repay the amounts spent for unauthorized uses.

*{ADVANCE SLIDE – Loan Forgiveness Application - FINALLY}*

The Loan Forgiveness Application – FINALLY! On May 15th, the loan forgiveness application was issued which could be argued to be borrower friendly. The application is referred to as Form 3508 by the SBA. We are going to look at parts of the application in the couple of slides, but in essence, the application was broken into four key parts with only the "PPP Loan Forgiveness Calculation Form" and the "PPP Schedule A" to be submitted to the lender along with any specific documentation they may require. Other components to the application are the "PPP Schedule A Worksheet" and the "PPP Borrower Demographic Information Form" which are not required for submission but must be retained.

*{ADVANCE SLIDE(S) – Form 3508 Examples}*

{Discuss some of the interesting things on the Form 3508 Slides}

Now, let's talk through some of the key forgiveness takeaway items. It is important to note that there are still some questions outstanding; however, the Treasury Secretary believes additional guidance is not really needed. In perhaps the biggest understatement you will here today, that is debatable.

*{ADVANCE SLIDE – Loan Forgiveness}*

Loan Forgiveness-Payroll costs and an Alternative Payroll Covered Period

As we have discussed, payroll costs are expenses that will be considered forgivable for PPP loan purposes. For purposes of forgiveness, they are defined the same as the application process. They are calculated on a gross basis without regard to federal employee and employer payroll taxes imposed or withheld at any time, not just the time period from February 15th, 2020 through June 30th, 2020.

The application provides that a borrower may elect an "alternative payroll covered period" - I will refer to this as the APCP in the following discussion - which will allow the eight-week period to start later than it would under the default covered period. This is extremely beneficial to those borrowers that have a pay period that might have fallen outside of the covered period. Let's use an example. If you received your loan proceeds on April 20, and your first payroll after receiving the PPP funds falls on April 26, then the APCP is defined as the period April 26 through June 20. But, you have to elect the alternative covered period on the application, or the covered period would apply. For purposes of our same example, the standard covered period would be from April 20 through June 14.

The application also favorably defined forgiveness - eligible payroll costs as those that are "paid" or "incurred" during the Borrower's APCP. Payroll costs are deemed "paid" on the date the paychecks are distributed or payroll ACH credit transactions are originated. For active employees, payroll costs are deemed as "incurred" on the date earned by the employees. For some borrowers, folks were left on the payroll even though there was no work for them to do. For employees who are not performing work but are still on the payroll, payroll costs are incurred based on the schedule established by the borrower (typically, each day the employee would have performed the work).

As an additional clarification in the application, the SBA addressed payroll costs incurred but not paid during the last pay period of the borrower's covered period or APCP stating that they would still be eligible for forgiveness if paid on or before the next regular payroll date.

Essentially, the application allows us to have some flexibility in the payroll expenses that do not have to be paid AND incurred during the strict 8-week period. The alternative payroll covered period attempts to provide some flexibility for the period to coincide with a borrower's payroll schedule.

One key item to note that was released in one of the interim rules is that eligible payroll costs for purposes of the PPP forgiveness has been expanded to include "salary, wages, or commission payments to furloughed employees, bonuses, and hazard pay." This is tremendous to have in writing as guidance as some employers did still have employees on the front lines during these extraordinary times for which hazard pay or a bonus would apply (of course subject to the compensation limits of $100,000 annually and prorated as appropriate for the defined period).

If you elect to use the APCP for payroll costs, this would also be the same method to account for employee health insurance, retirement plan contributions, and state and local taxes assessed on employee compensation during the same period of time.

Loan Forgiveness-Nonpayroll Costs

Loan forgiveness will be limited for nonpayroll costs of 25% or less. The application did provide some relief that nonpayroll costs are eligible if paid during the covered period or incurred during the covered period and paid on or before the next regular billing date even if such date is after the covered period. It is important to understand that for nonpayroll costs there is not an APCP but means that payments must be timely. The definition was even expanded to say the eligible expenses can even start before the covered period due effectively to the 25% limitation. So, for example, if your covered period started on June 1 and ends on July 26, during which time you pay your May electricity bill (incurred before the covered period but paid during the covered period) you can count that expense as it was essentially paid during the covered period. This flexibility is more related to the effective limitation of nonpayroll costs.

*{ADVANCE SLIDE – Loan Forgiveness – 75% Payroll Use Threshold}*

All forgiveness will not be lost if the 75% payroll use threshold is not met. The application provides for at least 75% of the potential forgiveness amount must have been used for payroll costs. The application allows borrows to exclude nonpayroll costs to help meet this requirement. Let's say you received a $100,000 PPP loan for which $60,000 was used for payroll costs or 60% and $40,000 was used for nonpayroll purposes or 40%. The entire loan would not satisfy the 75% requirement. If the borrower excluded $20,000 of nonpayroll costs from the amount requested for forgiveness, then the total amount for which forgiveness was sought would be $80,000 - $60,000 for payroll and $20,000 for nonpayroll which, in this case, has payroll at 75% of the total.

For any amounts not forgiven, the original loan terms apply – 2-year maximum loan at 1% with payments deferred for the first 6 months.

*{ADVANCE SLIDE – Loan Reduction Rules}*

Loan Reduction Rules

Keep in mind that how you use your PPP funds is the first part of the loan forgiveness calculation. You also have to look to see if the loan forgiveness amount must be reduced for two considerations:

- The dollar amount of any reduction in excess of 25% of the total salary or wages for any employee whose annual pay rate at all times during 2019 was less than $100,000, occurring during the covered period as compared to such employee's average annual salary or hourly wage between January 1, 2020 and March 31, 2020, applied on a per-employee basis and then aggregated for all employees; AND
- The dollar amount reduction resulting from looking at the proportion of any decrease in the average number of monthly FTE employees which is obtained by dividing the average number of FTEs during the covered period (the numerator) by (at your election) either the average number of FTEs employed per month (the denominator) for either the period 2/15 through 6/30/19 OR the period 1/1 through 2/29/20.

A couple of clarifications related to these rules are that:

- Borrowers are not going to be penalized by the application of both, meaning the salary or wage reduction applies only to the portion of the decline in employee salary and wages that IS NOT attributable to the FTE reduction.
- PPP Loan forgiveness will also not be reduced for any employees, who, during the covered period or APCP,
  - Were fired for cause;
  - Voluntarily resigned; or
  - Voluntarily requested and received a reduction of their hours.
- Also, there is an additional exemption if you had a rejected written offer to rehire employees previously laid off for the same salary and same number of hours, or to restore the employee's reduction in hours, which the employee declined. Now, there is also an obligation to report these rejected rehire offers to state unemployment insurance office so probably not going to win any friends there.

- Additionally, a safe harbor exists for both reductions, if salary is restored **or** the number of employees are restored by June 30th with the number of FTEs being considered as of February 15th.

*{ADVANCE SLIDE – PPP Loan Reviews}*

PPP Loan Reviews

There has a been a lot in the news of specific businesses that obtained PPP loans (Shake Shack, the LA Lakers) with many returning the funds even though, technically, they qualified under the guidance at that time with many certifications added to the loan for clarification. There was also an option to return the monies received if a business did not believe they could certify as needed. If a PPP loan was less than $2 million, there was essentially a "free pass" -a safe harbor -in that need was assumed to exist. If your PPP loan was $2 million or greater, then the PPP loan will be reviewed by the SBA.

*{ADVANCE SLIDE – PPP Loans Record Keeping Requirements}*

What should you be retaining for purposes of record-keeping?

Borrowers need to think – how can I make this the easiest paper trail for the lender or SBA review?

For Payroll, documents include:

- Bank account statement or third-party payroll service provider reports documenting cash compensation paid to employees,
- Tax forms or equivalent third-party payroll service provider reports for periods overlapping with the 8-week period for: (1) payroll tax filings (typically Form 941), and (2) state quarterly wage reporting and unemployment insurance tax filings, and
- Payment receipts, cancelled checks, or account statements documenting payment of employer contributions to employee health insurance and retirement plan.
- For Nonpayroll Expenses, documents include:
- Business mortgage interest payments: amortization schedule and cancelled checks or lender account statements from February 2020 and covering the 8-week period.
- Business rent and lease payments: Copy of current lease and receipts or cancelled checks or lessor account statements from February 2020 and covering the 8-week period.
- Business utility payments: Copy of invoices from February 2020 and the 8-week period and receipts, cancelled checks, or account statements

*{ADVANCE SLIDE – What is still unanswered}*

What is still unanswered?

One of the outstanding questions relates to any amount paid by the borrower for retirement plan contributions. Guidance has indicated payroll costs include amounts paid for any retirement benefits. We also know that this will be based on either the covered period or alternative payroll covered period. What can be included in "paid by the borrower?" Contributions for an entire year? Contributions for the prior year? What about other plans such as those for executives? Safe right now to just assume those costs attributable to the period for which the funds are to be used.

> Will the eight-week period be expanded? The House bill would give small businesses up to 24 weeks, up from the current eight weeks, to use the loans and extend the deadline for rehiring workers from June 30 to the end of this year.
>
> It would also give small businesses to spend more of the money on non-payroll costs. The current terms of the loans require recipients to use 75 percent of the funds on payroll and up to 25 percent on other costs to qualify for loan forgiveness. But the legislation would change the ratio to at least 60 percent on payroll and up to 40 percent on rent, overhead and other costs.
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> . . . .
>
> The bill now heads to the Senate, which left for its Memorial Day recess last week before taking action on its own version of legislation to make changes to the small business loans.
>
> . . . .
>
> The Senate version is largely similar to what the House has passed, but it only extends the timeframe for small businesses to spend the funds to 16 weeks instead of 24
>
> . . . .

The key is to continue to remember the spirt for which the program was enacted – keep small businesses alive during these unprecedented times and folks on the payroll. With the future uncertain, these loans are vital to keep businesses moving forward as the uncertainty of a second wave and a shaky economy continue to loom.

*{ADVANCE SLIDE – Questions}*

Let’s open it up for questions!

## LIVE QUESTIONS & ANSWERS:

48:45

We're going to toss it out for questions for what little time we have remaining. So, Laura, can you start, start that process?

49:09

Thank you. That's good. We're ready to go with some questions for you. Our first question is a question about the alternative payroll.

49:32

**“For example, our funding day is April 20th, we pay biweekly. Our first paycheck was April 30th for the pay period April 13th-24th. This includes the week of April 13th through the 17th, which is before the funding. Do we include this entire paycheck?”**

50:03

So, ultimately, I think the guidance has been a little bit unclear as far as payments that were made in arrears, right? So ultimately, the original guidance that came out always talked about paid and incurred in a given period, and we've gotten a little bit more flexibility of late with the alternative coverage period election that you can make.

50:28

But ultimately, I think there's still a little bit of lack of clarity, if you will, on those payments made for payroll that was incurred in arrears. Debbie, did you have anything else that you wanted to add related to that particular item?

50:49

Sure, Mark, and that's a great question.

50:51

I think, you know, again, until the specific guidance that comes out, the argument could be made that those payments were paid, then, during that period for which the PPP funds were received. And you could include those. And then, because the language really just says, Paid or incurred. So, as Mark said, there's not been any specific guidance related to that, but I think until anything's released, you could argue that, those were certainly paid during that eight week or 56 day period. And then, additionally, then, when payments are made after, let's say, that 56 day period, you could make the argument on the flip side that, that that payroll was incurred during your PPP period.

51:48

**Thank you. And we have another question also on timing, looking for, again, some additional clarification. And this person is asking for "clarification about the speculation that you could benefit by using the original payroll period if you've made a payment and the covered area, the payroll data accrued before the period, then you could also get the eight week, allowing for almost an entire extra pay period depending on the timing. Is there any additional clarification you could make on this topic?"**

52:25

So, I think that question is a little bit in line with the previous question. And, again, I think it gets to the heart of the matter of paid or incurred. So, it sounds like from a planning opportunity, the argument being it's paid during the covered period. So, working to get an additional payroll cost included in that timeframe.

52:52

We have a question regarding additional guidance. **"Since more guidance keep coming out. How long should we hold off before actually submitting the forgiveness application?"**

53:06

So, this is Debbie, and I'll start by answering that. That's a great point. I think that's part of this PPP loan that we've had to pivot pretty quickly as new guidance and changes and guidance about the key here to remember is that you really have a six month deferral periods. So that starts upon date of receipt of those funds.

53:31

So, if you've got eight weeks, let's say, you're 56 days, to use those funds, and I think right now, lenders have 60 days to approve the forgiveness, you need to get your information in fairly quickly once you, in, the eight week period, just so that you can start that process, because, the fear of being, you, want to make sure you get forgiveness in that six month period after that, We're not really sure, you know, what it might look like in terms of repayment, but you've gotta kinda think about how much time the lender has, 60 days, how much time you have, which has been eight weeks to use the funds. So, you have about, let's say, 60 days and never gather your information and submit your forgiveness application.

54:22

We have one question regarding a cap: **“I noticed a cap of a little over $15,000 for independent contractors. I was granted more than this amount. Do I have to pay the remainder?”**

54:40

That's one of those questions, When I saw it, I want to get Debbie to chime in, because I'd like to get her input. That ultimately independent contractors, that calculation, when they were supposed to be talking about he amount of loan proceeds you could give would be, essentially 2.5 months of a prorated income number for a sole proprietor or something like that.

55:08

So, ultimately, I would have expected that income number to be limited to the $15,000 limit that you're talking about there, which is actually the $100,000 annual income number, prorated, but ultimately, that's, that's purely a wage number that would be subjected to that $100,000 limit.

55:29

So, my suspicion is that the reason you were granted more dollars than that would be to cover those other costs that would be included. For example, the utilities, or ren,t or whatever other costs that you might be incurring. So, my suspicion is that that's why that the amount that get calculated was a little bit higher than the $15,000 number that we tossed around that’s purely based on essentially your income or your compensation number. Do you agree with that assessment, Debbie?

56:04

I do, and I think, you know, one of the things, when it came out about the application, the forgiveness application, it was not favorable, per se, to independent contractors based on that cap amount, which kind of included a cap being kind of everything being paid to them. Comp, retirement plans, those type of things. You might want to go back and look at your original application just to see how it was calculated, but, that cap of 15,385 I believe it is, is accurate per that forgiveness application at this point.

56:46

Thank you. **“Can a person hired after the loan was granted and received, had their payroll included in the calculation for forgiveness? This is strictly payroll, and not bonus, or hazard pay.”**

57:02

I'll go ahead and answer that. So when they're looking at, and I think what you're really getting at, also is FTE count, those type of things. They’re not matching up exact names that someone was on the payroll, prior to the PPP Loan, and those same names are on the payroll after the PPP Loan. So, you can hire a person after the fact and include their compensation and their FTE status in your forgiveness.

57:35

**“I am the owner of a C Corporation. My employees are not coming to work. I'm having to pay myself as an employee since I go into work. Is that considered OK under forgiveness?”**

57:53

I can certainly take that because that's a kind of a two prong question.

57:59

Forgiveness is going to be based on a couple of things. It's going to be based on making sure that you have qualifying expenses and qualifying expenses paid and the ratio that are currently allowed.

58:10

So, your compensation as payroll would be a qualifying expense.

58:18

And as long as you stayed within the 75% / 25% ratio, I think that that would qualify you for the first wave of the forgiveness calculation. The second piece of that forgiveness calculation is based on retaining your full-time equivalent levels basically at pre COVID 19 levels. And so, that's the part of the forgiveness calculation, where I'm afraid those particular facts and circumstances might lend a bad result. Because ultimately, if your FTE counts are going down, although you do have some qualifying expenses, that your forgiveness calculation is a little bit more complicated and takes into consideration those modifications to your FTE count.

59:16

And, Mark, just to kind of expand on that, the only caveat I have there is if your employees are not coming to work, because, they're either, let's say, there, you had to lay them off during this process.

59:30

And, know, what you have to look to is documentation that you've had to rehire them and you’ve extended a written offer, the same salary, same level of hours, and they've not accepted that. Then you're going to submit that information to the state unemployment offices. And you'd be able to kind of, put that in your documentation to help you in terms of that rehire exemption.

1:00:00

Thank you, and that brings us to the end of our time together today. I'd like to thank our presenters Mark Brumbelow, and Debbie Ernsberger. If you have any questions, their presentation and contact information will be e-mailed to you, along with a recording of today's webinar.

1:00:19

Also, if PYA can provide additional assistance, please call or e-mail us. you may visit our website at PYAPC.com for more details about our specific areas of expertise or to subscribe to receive PYA Insights.

1:00:35

On behalf of PYA, thank you for joining us. And have a great rest of your day.