



ADVOCACY

**CUTTING THROUGH THE CLUTTER
SURROUNDING PPP LOANS AND
THEIR FORGIVENESS**

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“There are known
knowns;
... there are known
unknowns;
... there are also
unknown unknowns.”



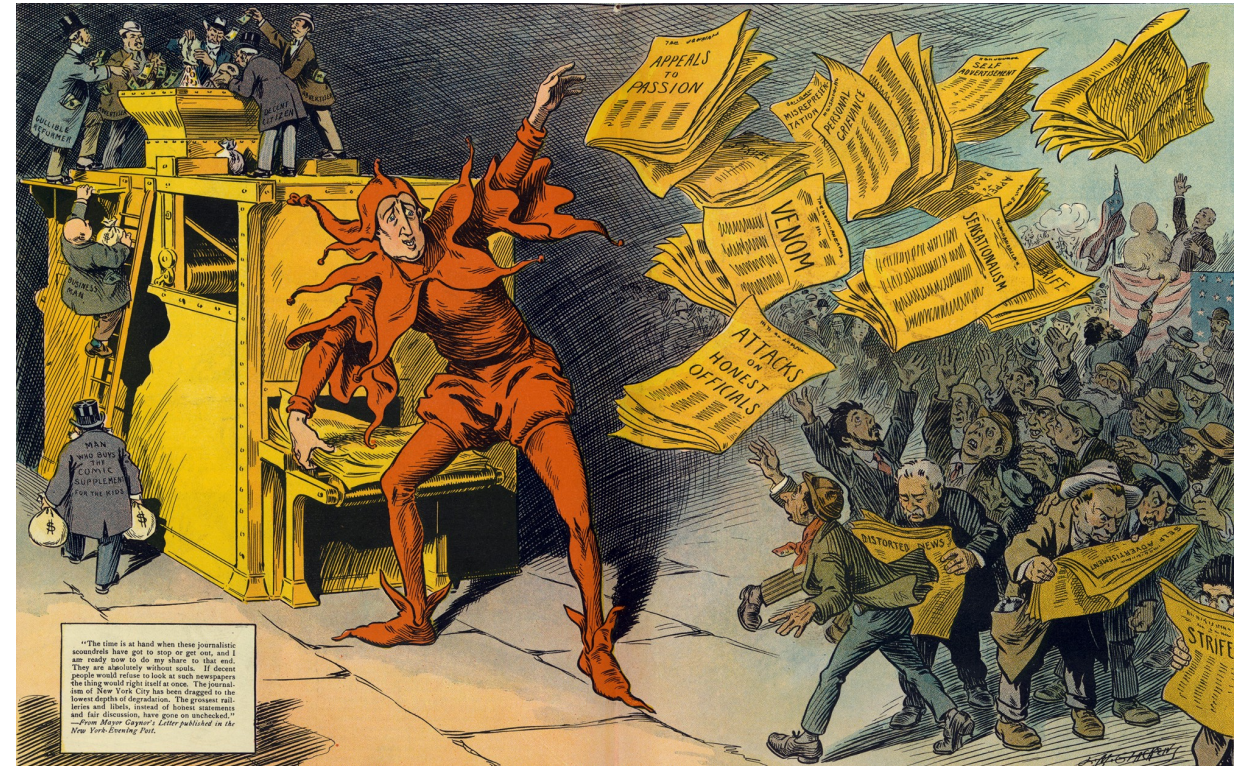
WHAT WE'LL COVER TODAY

- Background on the Paycheck Protection Program
- Requirements for loan forgiveness
- Update on forgiveness for businesses with employees not returning to work
- Treasury's latest guidance on eligibility for businesses with adequate liquidity
- SBA review of all loans over \$2 million
- IRS Notice on wages paid with PPP funds
- DOJ announcements on investigating fraudulent applications
- Future Congressional action on PPP

PAYCHECK PROTECTION PROGRAM

- The Paycheck Protection Program is a loan designed to provide a direct incentive for small businesses to keep their workers on the payroll.
- SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities.

- Don't be scared by yellow journalism



REQUIREMENTS FOR LOAN FORGIVENESS

- The following “costs incurred and payments made”¹ during the 8 week period will be forgiven:
 - Payroll costs
 - Must be >75% of total forgiven amount
 - Mortgage interest payments (no prepayment of interest or principal allowed from PPP funds, also buildings owned by other companies do not qualify for interest expense)
 - Payment on rent obligation (existing prior to February 15)
 - Triple Net Leases: check your lease to determine how other costs are listed in the lease, “additional rents” are likely included
 - Covered utility payment
 - “electricity, gas, water, transportation, telephone, or internet access”

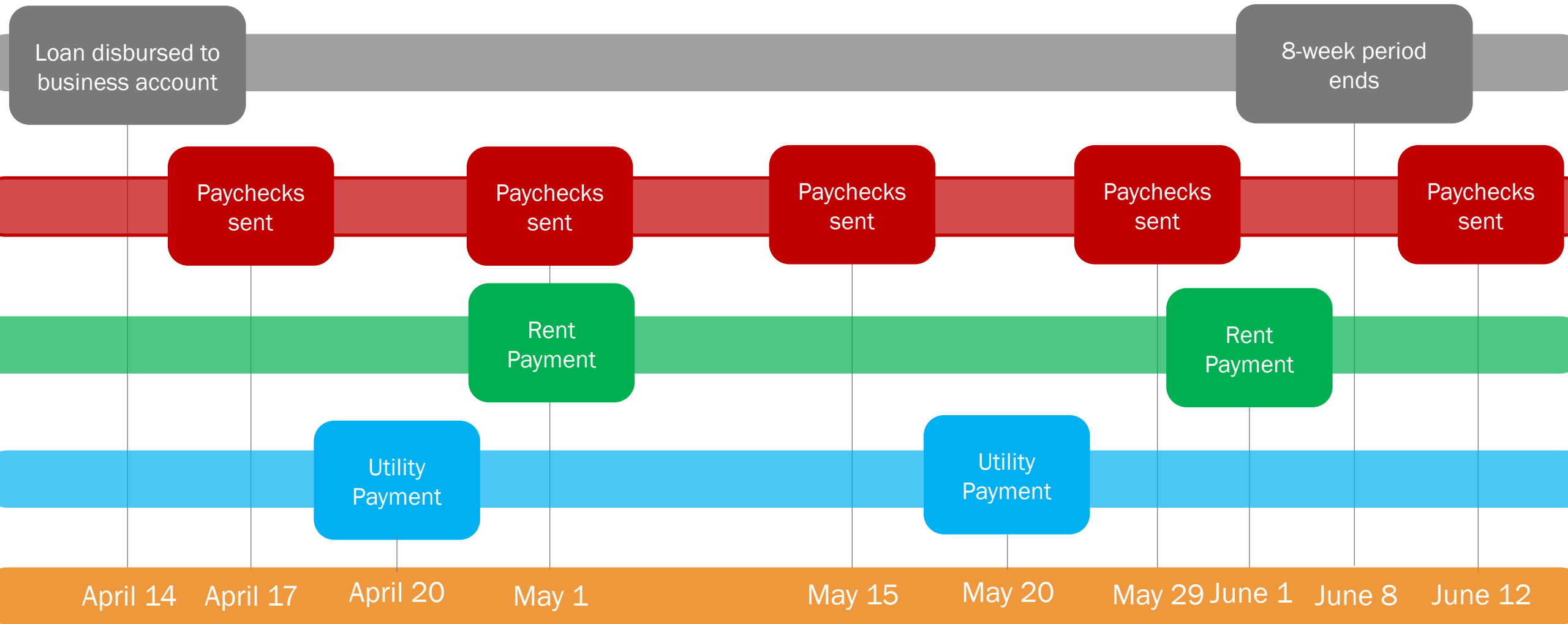
WHAT ARE PAYROLL COSTS?

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees

WHAT ARE NOT PAYROLL COSTS

- Employee/owner compensation over \$100,000
 - Cash or cash equivalent only, not benefits
- Payroll and income taxes imposed or withheld
- Compensation of employees whose principal place of residence is outside of the U.S.
- Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act
 - Any compensation reimbursed through refundable tax credits

COSTS INCURRED AND PAYMENTS MADE IN 8-WEEK PERIOD



COSTS INCURRED AND PAYMENTS MADE IN 8-WEEK PERIOD

- Payroll costs incurred
 - Prorate pay periods falling outside the beginning and end of the 8-week period for the days inside of the 8-week period
- Payments made
 - Include the full payments made for approved uses, no need to prorate for the 8-week period
 - Pre-payment of mortgage interest is not allowed, pre-payment of other payments also unlikely to be allowed

75% MUST BE USED ON PAYROLL

Fully forgiven loan

- Average monthly payroll expense: \$400,000
- Loan Amount: \$1,000,000
- 8-week payroll costs: \$800,000
- Rent/Utilities: \$250,000
- \$1m of loan spent plus \$50,000 business cash
- \$1,000,000 forgiven

Not fully forgiven

- Average monthly payroll expense: \$400,000
- Loan Amount: \$1,000,000
- 8-week payroll costs: \$600,000
- Rent/Utilities: \$250,000
- \$850,000 of loan spent
- \$800,000 forgiven, \$200,000 must be repaid, \$150,000 unspent

100% USED ON PAYROLL OVER 10 WEEKS

Fully forgiven loan

- Average monthly payroll expense: \$400,000
- Loan Amount: \$1,000,000
- 8-week payroll costs: \$800,000
- Rent/Utilities: \$250,000
- \$1m of loan spent plus \$50,000 business cash
- \$1,000,000 forgiven

Not fully forgiven

- Average monthly payroll expense: \$400,000
- Loan Amount: \$1,000,000
- 10-week payroll costs \$1,000,000
- 8-week payroll costs: \$800,000
- \$1,000,000 of loan spent
- \$800,000 forgiven, \$200,000 must be repaid

100% USED ON PAYROLL OVER 8 WEEKS

Fully forgiven loan

- Average monthly payroll expense: \$400,000
- Loan Amount: \$1,000,000
- 8-week payroll costs: \$1,000,000
- \$1,000,000 of loan spent
- \$1,000,000 forgiven
 - *Remember \$100,000 annual salary caps, must go to employee salaries, not owners

Fully forgiven loan

- Average monthly payroll expense: \$400,000
- Loan Amount: \$1,000,000
- 8-week payroll costs: \$1,000,000
- 4 employees paid \$50,000 bonus raising annual compensation to \$150,000
- \$1,000,000 of loan spent
- \$800,000 forgiven

DOCUMENTATION NEEDED FOR FORGIVENESS

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods, including—
 - Payroll tax filings reported to the Internal Revenue Service; and
 - State income, payroll, and unemployment insurance filings;
- Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- Certification from a representative of the eligible recipient authorized to make such certifications that—
 - The documentation presented is true and correct; and
 - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- Any other documentation the Administrator determines necessary.

ALLOWED USES OF FUNDS WITHOUT FORGIVENESS

- The loan can be used for any 7(a) approved expense, however only the previously mentioned expenses are forgivable according to legislative text
 - Example of allowed but not forgiven:
 - Interest on any other debt obligations that were incurred before the covered period

REQUIREMENT FOR MAINTAINING EMPLOYMENT

- PPP requires retention of the number of full-time equivalent employees compared to one of two available periods:
 - average number of FTEs per month from February 15, 2019 – June 30, 2020
 - average number of FTEs per month from January 1, 2020 through February 29, 2020
- Full-time equivalent employee is total hours worked divided by 30-hour work week (only use part-time workers in this calculation) (Federal law uses 120 hours per four week)
 - $300 \text{ hours worked part time} / 30 = 10 \text{ FTE}$
- If a business decreases the number of FTEs, forgiveness is decreased at an equal rate
 - 15 FTE average Feb 15, 2019 – June 30, 2020
 - 12 FTE employees for 8-week period
 - $12/15 = 80\% \text{ forgiveness}$

EMPLOYEES NOT RETURNING TO WORK

- SBA has clarified that an employee voluntarily not returning to work after an offer to be re-hired will not count against the forgiveness threshold.
 - Documentation needed: borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower
- Open questions:
 - How will employees fired for cause/let go for performance be counted?
 - How will employees retiring during the covered period be counted?

REQUIREMENT FOR MAINTAINING WAGES

- Wages cannot decrease by more than 25% from the previous quarter
 - Except for employees with wages greater than \$100,000
- Example:
 - Previous quarter average payroll per employee \$5,000 per month
 - Covered period average payroll per employee \$4,000 per month
 - $\$4,000/\$5,000 = 80\%$ - Full forgiveness allowed
- If reduction exceeds 25%, forgiveness decreased by excess over 25%
 - $\$3,000/\$5,000 = 60\%$ - Forgiveness reduced by \$750 per employee

BUSINESSES WITH ADEQUATE LIQUIDITY

- April 23: Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?
- April 28: Do businesses owned by private companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?
- “Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere ... borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that ‘[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.’ Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.”
- Deadline to return funds extended to May 14th to give SBA more time to release guidance

WHAT DOES LIQUIDITY MEAN?

- Until guidance is released this is an open question, but important points to remember:
 - CARES Act required lenders to ignore the requirement that borrowers seek credit elsewhere first
 - The certification is at the time of the application
 - April is when distributors are filling warehouses with equipment but not yet selling a lot of equipment, cashflow is low
 - Demand was affected by many factors, layoffs, homeowners not allowing contractors into homes, state construction bans, etc.
 - Lines of credit have penalties and fees for utilizing too much of the credit which has a significant detriment to the business

SBA REVIEW OF LOANS OVER \$2 MILLION

- Question: Will SBA review individual PPP loan files?
- Answer: Yes. In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Additional guidance implementing this procedure will be forthcoming.

REACTION TO NEGATIVE PRESS

- Most of the negative press is in reaction to edge cases
 - Few hundred publicly traded companies out of 2.4 million loans
- Over 33,000 loans >\$2 million, SBA will need good reason to take a close look

Loan Size	Approved Loans	Approved Dollars	Loan Size	Approved Loans	Approved Dollars
\$150K and Under	1,229,893	\$58,321,791,761	\$50K and Under	1,567,355	\$28,388,688,805
>\$150K - \$350K	224,061	\$50,926,354,675	>\$50K - \$100K	304,561	\$21,565,070,866
>\$350K - \$1M	140,197	\$80,628,410,796	>\$100K - \$150K	121,086	\$14,793,771,283
>\$1M - \$2M	41,238	\$57,187,983,464	>\$150K - \$350K	138,968	\$30,739,136,703
>\$2M - \$5M	21,566	\$64,315,474,825	>\$350K - \$1M	58,758	\$32,766,135,277
>\$5M	4,412	\$30,897,983,582	>\$1M - \$2M	13,481	\$18,619,762,249
			>\$2M - \$5M	6,110	\$18,121,875,023
			>\$5M	1,472	\$10,748,807,702

DEDUCTIBILITY OF WAGES

- IRS Notice 2020-32
- Forgiven loans are tax free, however proceeds cannot also be deducted under existing law
 - Considered a double benefit under normal circumstances
- Bills to change, letters sent to IRS/Treasury
- Look for action alert to send letters to Congress

DOJ INVESTIGATIONS

- DOJ has announced investigations into fraud
- Ensure bank used accurate payroll information, use funds for approved purposes

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, May 5, 2020

Two Charged in Rhode Island with Stimulus Fraud

First in the Nation to be Charged with Fraudulently Seeking CARES Act SBA Paycheck Protection Loans

Two businessmen have been charged in the District of Rhode Island with allegedly filing bank loan applications fraudulently seeking more than a half-million dollars in forgivable loans guaranteed by the Small Business Administration (SBA) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

PHASE 4/CARES 2.0

- Political battle lines are forming now, lots of disagreement over non-PPP issues
- PPP proposals
 - Fixes to help restaurants
 - 75%/25% rule
 - 8 weeks/16 weeks
 - Transparency/accountability
 - Fix to deductibility issue
- HARDI will be actively working to ensure no retroactive changes that hurt distributors
 - Keep an eye out for issue alerts



ADVOCACY

QUESTIONS?

If you have additional questions after the webinar send to
aayers@hardinet.org