

# PPP Loan Forgiveness + Next Steps

## Aldrich

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## Schwabe

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### Carrie Sowders

PARTNER, ALDRICH CPAs + ADVISORS

Carrie specializes in serving large and middle market companies, primarily in the consumer and industrial products sectors. Carrie has exclusively practiced in tax since beginning her career in 1998.

Prior to joining Aldrich in 2009, she spent a decade with Deloitte and oversaw the tax function of a publicly traded consolidated group of companies. Her background is rich in experience with multi-state operations, transactions, cross-border taxation and ongoing tax consulting and compliance.

Carrie received her degree from Washington State University and remains active with the AICPA and OSCP.



### Charmin Shiely

SHAREHOLDER, SCHWABE, WILLIAMSON & WYATT

Charmin Shiely works with prominent businesses in a number of industries, including real estate development and seniors housing.

She acts as lead counsel for high-profile Oregon real estate development projects, including high-rise office buildings, hotels, apartment complexes, single family housing developments and senior housing projects.

Charmin is lead counsel for several of the Northwest's leading seniors housing and assisted living facility developers and operators. She frequently assists with commercial and private equity financings for facility construction or refinancing (including the U.S. Department of Housing and Urban Development, Freddie Mac, and Fannie Mae financing), single property and large portfolio mergers and acquisitions (M&A) transactions, general contracting and regulatory advising.

In addition, Charmin is a leader in structuring equity and executive compensation arrangements that comply with the myriad of applicable corporate, tax and securities laws. She also serves on Schwabe's CARES Act Taskforce.



# Omar Contreras

ASSOCIATE, SCHWABE, WILLIAMSON & WYATT

Omar Contreras is a corporate attorney who is passionate about business, the economy, and how these are impacted by state and federal regulatory structures. His practice is focused on advising domestic and international companies to help them achieve their current and long-term business goals. Omar's breadth and depth of professional experience as both an attorney and former business owner affords him an original approach to crafting tailored solutions to complex business and corporate legal issues.

Omar focuses on the real estate and construction industry as well as technology. He is also a member of Schwabe's CARES Act Taskforce.

# AGENDA

- Update to Rules: PPP Flexibility Act
- PPP Loan Documentation Needed
- Loan Forgiveness Process
- Loan Forgiveness Application (SBA Form 3508)
- Forgiveness Calculations
- SBA Audits
- PPP Loan Tax Considerations

*The information provided herein does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only. Readers of this presentation should contact their attorney to obtain advice with respect to any particular legal matter. The information was updated as of June 4, 2020 and we recognize it may change. Please contact your Aldrich Advisor for the most up to date information for your situation.*



## PPP FLEXIBILITY ACT

- Extended loan maturity to 5 years
- Extended use period through 12/31/20
- Covered period extended to 24 weeks (not longer than 12/31/20)
- Changed forgiveness rule regarding FTEs (exception for inability to hire or inability to return to business activity)
- 60% payroll costs / 40% other covered for forgiveness
- Changed deferral period
- Permits eligibility for payroll tax deferral benefit



- Eligibility
- Necessity
- Usage
- Forgiveness (discussed later)



## CONSIDERATIONS FOR DOCUMENTATION

- Focus on macro and micro level information
- Keep relevant time periods in mind
- Track SBA and Treasury guidance
- Maintain records in preparation for SBA review





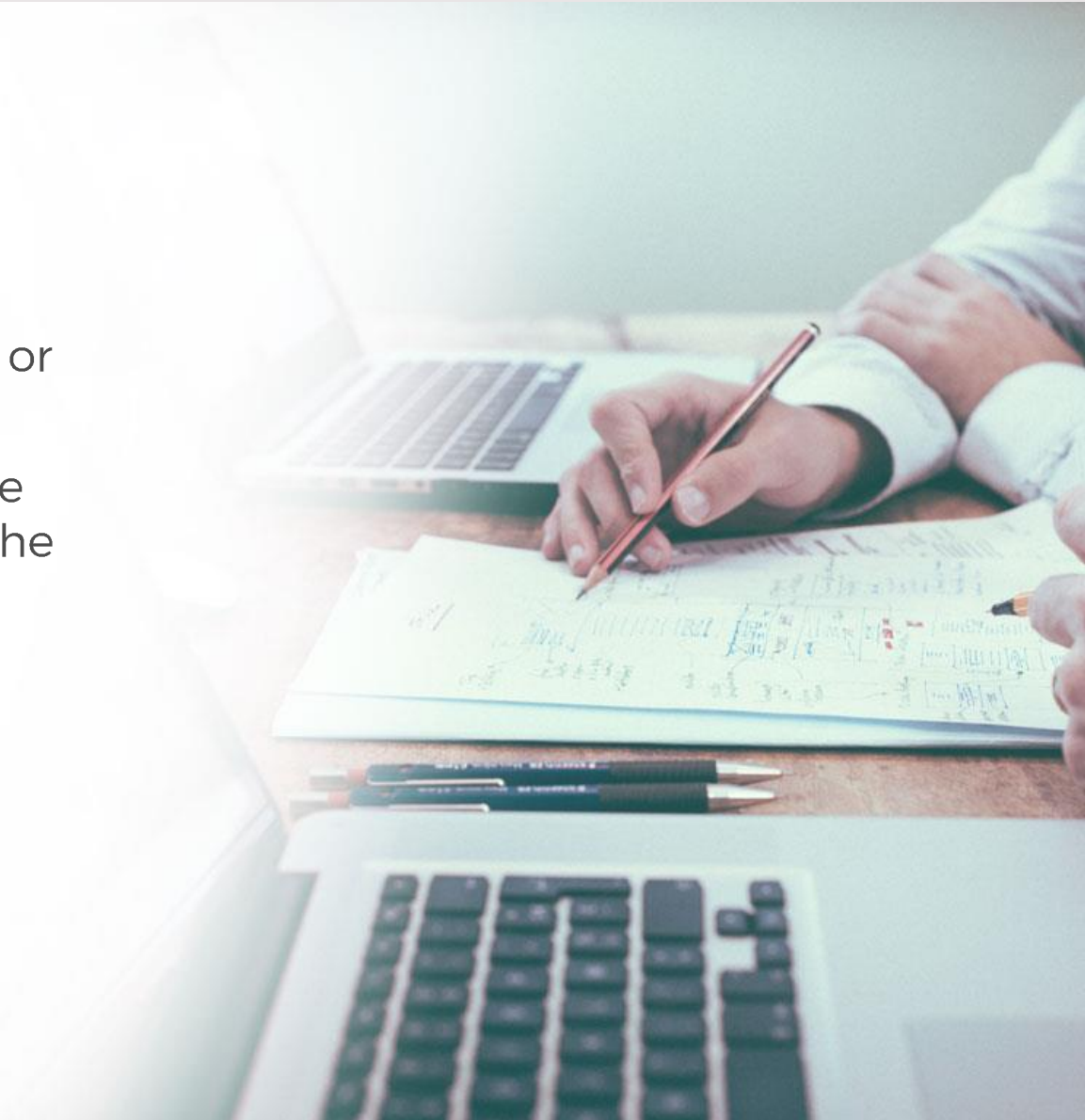
## FORGIVENESS PROCESS

- Submit application and supporting documentation to lender
- Lender reviews application and makes forgiveness decision within 60 days
- Lender provides decision to SBA and requests payment
- SBA remits forgiveness amount to the lender within 90 days
- Lender notifies borrower of forgiveness amount



- What are payroll costs?
- What payroll costs are eligible?
  - Paid or incurred during the “covered period”
- What is the covered period?
  - Period from loan disbursement until earlier of (i) 24 weeks after loan origination or (ii) December 31, 2020
- What is the definition of paid or incurred?

- Paid payroll costs
  - Payroll costs paid during your applicable period
  - Defined as when paychecks are distributed or ACH originated
  - Costs incurred during the last pay period are eligible for forgiveness if paid on or before the next regular payroll date
- Incurred payroll costs
  - When earned by the employee
  - Compensation for unworked hours would typically follow schedule employee would have worked



## COVERED PERIOD EXAMPLE

<b>Option 1: Disbursement Date</b>							
Loan Origination Date			April 16, 2020				
8 Week Covered Period End:			September 30, 2020				
Pay Cycle:			Bi-Weekly				
First Pay Date in 8-week Covered Period:			April 16, 2020				
First Pay for Wages Incurred:			3/29 - 4/11				
					Covered Period Criteria		Forgiveness Eligible?
Cumulative Weeks Covered	Payroll #	Dates Worked	Date Paid		Incurred	Paid	
2	1	3/29 - 4/11	April 16, 2020		N	Y	Y
4	2	4/12 - 4/25	April 30, 2020		Y	Y	Y
6	3	4/26 - 5/9	May 14, 2020		Y	Y	Y
8-24	4-12	5/10 – 9/12	Various		Y	Y	Y
	13	9/13 - 9/26	October 1, 2020		Y	N	N
	14	9/27 – 10/10	October 15, 2020		Partially	N	N
Option 1 - payroll costs paid starting with disbursement date							

## ALTERNATIVE COVERED PERIOD EXAMPLE

### Option 2: Alternative Payroll Covered Period

Loan Origination Date

April 16, 2020

Alternative Payroll Covered Period Start:

April 26, 2020

24 Week Alternative Covered Period End:

September 30, 2020

Pay Cycle:

Bi-Weekly

First Pay Date in 24-week Covered Period:

May 14, 2020

First Pay for Wages Incurred:

4/26 - 5/9

				Covered Period Criteria		Forgiveness Eligible?
Cumulative Weeks Covered	Payroll #	Dates Worked	Date Paid	Incurred	Paid	
	1	3/29 - 4/11	April 16, 2020	N	Y	N
	2	4/12 - 4/25	April 30, 2020	N	Y	N
2	3	4/26 - 5/9	May 14, 2020	Y	Y	Y
4-22	4-13	5/10 – 9/26	Various	Y	Y	Y
24	14	9/27 – 10/10	October 15, 2020	Partially	N	Y

Option 2: Payroll costs start with pay period starting after loan origination date



## OTHER PAYROLL

- All wages paid during the covered period qualify as long as they do not exceed \$100k on a prorated basis (\$46,154 for the 24-week period)
  - Amounts paid to furloughed employees
  - Bonuses
  - Hazard pay
- May be some flexibility around retirement costs
  - Payroll costs during the period could imply prior period contributions are permitted
- Owner employee compensation limitation
  - Limited to lesser of 24/52 of 2019 compensation or \$46,154
  - Schedule C filers are capped at amount of owner compensation based on 2019 net profit

## OTHER FORGIVABLE EXPENSES

Other expenses eligible for forgiveness (limited to 40%)

- Mortgage interest on real or personal property obligations
  - No advance payments
- Rent obligations on real or personal property
- Utility payments for distribution of
  - Electricity
  - Gas
  - Water
  - Transportation
  - Telephone
  - Internet access
- Remember, these contracts must be in place as of February 15, 2020



- Forgiveness is reduced for reductions in full time equivalent (FTE) employee count
  - Calculated on a 40 hour workweek
  - Each employee capped as one person (1.0 FTE)
  - Option to count any non-full time employee as 0.5 FTE (must be applied consistently)
- Under Flexibility Act
  - Exemption where written offer to restore at same compensation and hours was not accepted by employee (report to state employment agency) and can't hire similarly qualified by 12/31/20  
or
  - Inability of business to return to same level of business activity by 12/31/20 due to compliance with federal regulatory requirements or guidance related to COVID-19

## FTE REDUCTION EXAMPLE

<b><u>FTE Reduction Example</u></b>								
Reference Period Option 1:	2/15/19 - 6/30/19			average # FTEs/Month:			12	
Reference Period Option 2:	1/1/20 - 2/29/20			average # FTEs/Month:			10	
Average FTE employees during the covered period or alternative payroll covered period:							8	
Total eligible expenses:				\$	1,000,000			
Reduction due to FTE reduction:			20%		(200,000)			
Available for Forgiveness:				\$	800,000			

## COMPENSATION FORGIVENESS REDUCTIONS

- Forgiveness is reduced by the amount of any wage reduction more than 25% of any employee from the most recent full quarter
  - Not applicable if employee earns more than \$100k
- Exemption where compensation is reduced between February 15<sup>th</sup> and April 26<sup>th</sup>, but is restored by December 31
- No double-penalty of FTE and wage reduction for employee (limited)





# COMPENSATION REDUCTION EXAMPLE

Salary Reduction Example (assume all were full-time during reference period)									
Reference Period:	1/1/2020 to 3/31/2020								
	# Weekly Hours Worked during covered period	Bi-weekly wage during reference period	Bi-weekly wages limited	Bi-weekly wage during covered/alt payroll covered period	% wage rate reduction	Applied Reduction (in excess of 25%)	Total Eligible Wages Paid	Total Amount Reduced	
Employee A	40	6,400.00	3,846.15	4,000	N/A	-	46,154	-	
Employee B	40	2,000.00	2,000.00	1,400	30%	100	16,800	1,200	
Employee C	40	1,600.00	1,600.00	1,200	25%	-	14,400	-	
Employee D	20	1,600.00	1,600.00	560	30%	40	6,720	480	
Employee E	40	6,400.00	3,846.15	4,000	N/A	-	46,154	-	
Employee F	40	6,400.00	3,846.15	4,000	N/A	-	46,154	-	
Employee G	40	6,400.00	3,846.15	4,000	N/A	-	46,154	-	
Employee H	40	3,600.00	3,600.00	2,700	25%	-	32,400	-	
Employee I	20	1,400.00	1,400.00	700	0%	-	8,400	-	
						<u>140</u>	<u>263,335</u>	<u>1,680</u>	
Total Wages eligible						263,335			
Less: reduction in forgiveness due to salary reduction						<u>(1,680)</u>			
Wages eligible for forgiveness						261,655			

## PPP LOAN - REQUIRED DOCUMENTATION

- Payroll
  - Bank account statements or payroll reports documenting cash paid
  - Payroll tax filings
  - Payment receipts, statements for health insurance & retirement plans and invoices
- FTE
  - Average # of FTEs for various points
- Non-payroll Costs
  - Mortgage interest – amortization schedule, receipt or cancelled checks verifying payments
  - Rent & lease – copy of current lease agreement, receipt or cancelled checks
  - Utilities – copy of invoices, receipt, cancelled checks, or account statements



- Schedule A Worksheet
- Documentation supporting Schedule A Table 1 & 2
- Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by employees for reductions in work schedule
- Documentation around Schedule A Worksheet FTE reduction safe harbor



## REVIEW PROCEDURES

- Scope of review can include:
  - Eligibility
    - Assuming this will only be reviewed for loans > \$2mm based
  - Amount and use of proceeds
  - Forgiveness amounts
- Can be inspected anytime for up to six years after date loan is forgiven or paid in full
- Borrowers have opportunity to respond to SBA's questions in review
- Will be an appeal process related to eligibility – details to come in future interim final rule

## AFTER 24 WEEK SPEND PERIOD

After the 24 week spend period

- Use remaining funds only for qualified expenses by December 31, 2020
- Expenses incurred beyond the 24 week period will not be eligible for forgiveness
- Prepare final analyses and prepare required documentation and certifications for bank/lender
- Continue to defer payment of the 6.2% employer Social Security Tax under Section 2302 of the CARES Act



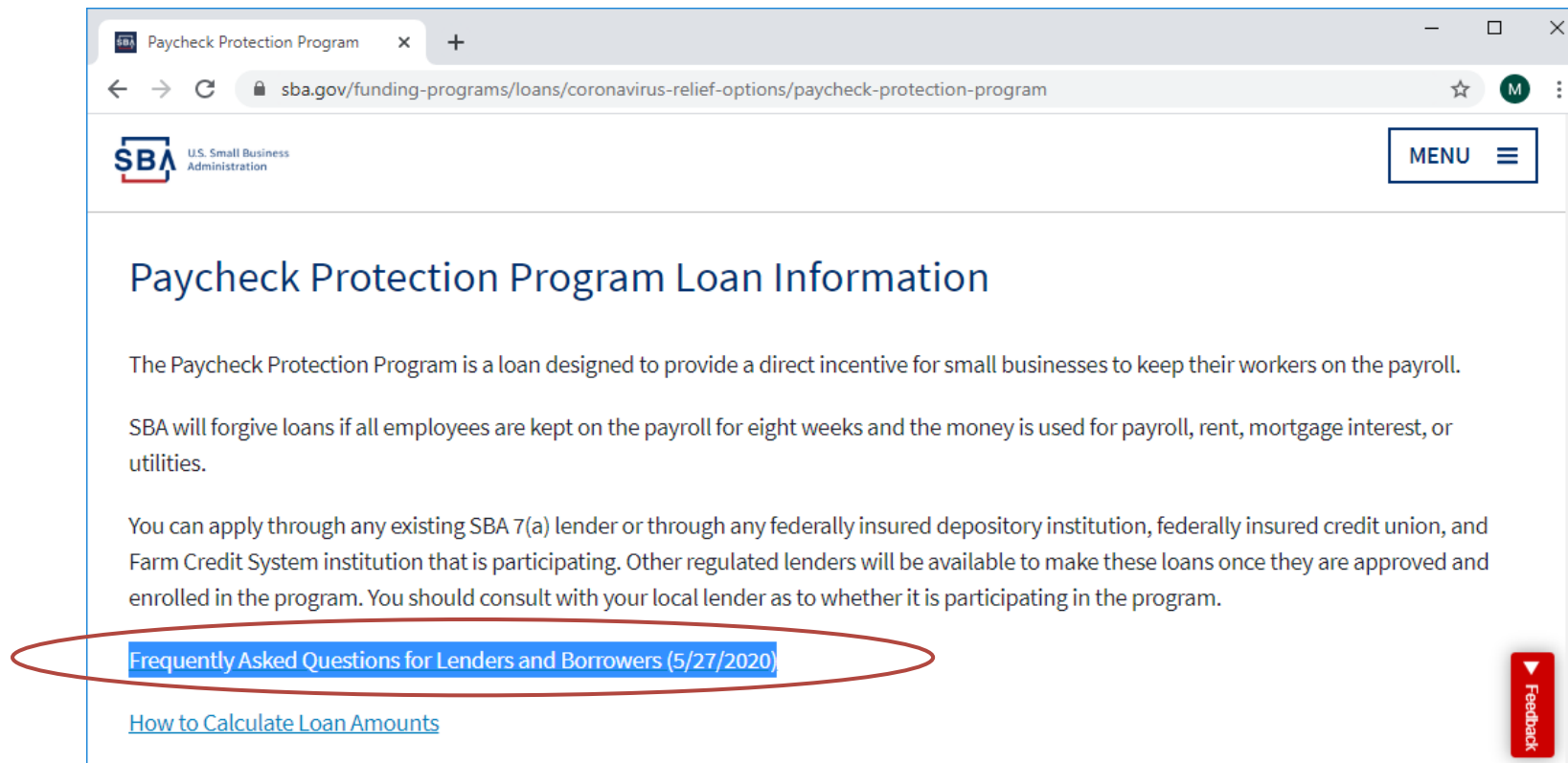


### Final considerations and forgiveness best practices

- Repayment to extent not forgiven (deferred until SBA remits to lender)
- Retain all information related to PPP Loan request including computations, supporting documents for at least seven years after loan repayment, or longer if required by law
- Forgiveness will be “other income” for financial statements under “Forgiveness of indebtedness income”
- Notice 2020-32 clarifies that you may not claim wages, rent, etc. as a tax deduction if the expenses were used to generate tax-exempt loan forgiveness. Results of forgiveness of a PPP Loan are not tax-deductible to prevent a “double tax benefit.”

# Let's Talk About It...

- SBA + Treasury Guidance Published:
  - Find updates at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>



## RESOURCES TO CONSIDER

1. Aldrich Advisors: <https://aldrichadvisors.com/coronavirus/>
2. Schwabe Attorneys: <https://www.schwabe.com/industries-covid-19> + <https://www.schwabe.com/industries-cares-act-resources>
3. Industry Coronavirus Resources: <https://www.acec.org/conferences/coronavirus/> + <https://www.agc.org/coronavirus>
4. The CARES Act: <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf>
5. SBA – Coronavirus Resources: <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>
6. Federal Reserve – Main Street Lending Program: <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>
7. AICPA Calculator: <https://www.aicpa.org/>

## WE ARE HERE TO HELP

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