Paycheck Protection Flexibility Act Update

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WELCOME

Mary Luehrsen
NAMM Director of Public Affairs and Government Relations
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To ask a question on today’s Webinar: Open the ‘Q&A’ tab at the bottom of your screen. Type your question into the Q&A box. Click ‘Send’. We will be addressing all questions asked in a FAQ document to be distributed to all registrants and posted along with a recording of this webinar on NAMM.org here https://www.namm.org/issues-and-advocacy/covid-19-updates-and-resources-business
What We Will Cover

• PPP Funding Update, PPP Loan Forgiveness Application, and Checklist
• Paycheck Protection Flexibility Act: House and Senate proposals
• NAMM Member Resources
Meet Our Special Guest

Chris Cushing

Managing Director, Federal Strategies Team, Nelson Mullins Riley & Scarborough
Live Comments
PPP Funding Update

- As of May 23rd, the SBA has processed 4.4 million loans for a total of $511 billion out of $659 billion in total funding, but 4.4 million is only a small portion of the estimated 30 million small businesses in the U.S.
- Unless Congress acts (more on this to follow) the PPP will end on June 30th
- There is still over $100 billion available
- If you have not applied for a PPP loan, contact your financial institution

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- There is still over $100 billion available
- If you have not applied for a PPP loan, contact your financial institution
PPP Forgiveness Top Line Items

• Confusing, incomplete guidance, and constantly changing
• On May 13th oversight relaxed: Loans below $2 million automatically deemed in compliance
• Borrowers must maintain careful documentation
• Application includes new exemptions
• Your lender is a valuable resource – stay in close contact
• Lender has 60 days to make a determination; SBA has an additional 90 days to fund the lender.

PPP Forgiveness Top Line Items

• PPP remains a morass of confusing rules, incomplete guidance, and constantly changing deadlines.
• On May 13th, the Administration relaxed its approach to the oversight of PPP loans. It stated that loans below $2 million will be deemed automatically in compliance with the program’s necessary requirements. Loans above $2 million will be subject to SBA audit, and if irregularities are found, the borrower will have the option to pay back the loan to avoid punishment.
• If you have a loan below $2 million, you should still keep careful documentation, including projections you made before deciding to take out the loan. In short, memorialize your analysis and decision-making process in real-time.
• The application includes a new exemption from the requirement for borrowers to maintain employee count by taking into account “good-faith, written offer[s] to rehire workers that [are] declined.” Some businesses have found it difficult to rehire workers who are now earning more in unemployment benefits. (In about 38 states, the combined state
unemployment insurance and $600 extra federal payment is greater than the average wage in that state.)

- As in the loan application process, stay in touch with your lender. Each lender may use its own version of the SBA forgiveness application. There is expected to be a good deal of “hand holding” by lenders working with customers to complete the application.
- The lender has 60 days after the receipt of the application to make a determination, and the SBA has an additional 90 days after the lender’s determination to fund the lender.
Screenshot – Source NFIB COVID-19 Small Business Survey
### PPP Forgiveness Application

[PPP Forgiveness Application](https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf)

### SBA Loan Forgiveness Application Summary, Guidelines and Instructions

PPP Forgiveness Application Highlights

- Step-by-step loan forgiveness calculation form
- Offers options for calculating payroll costs
- To calculate FTEs, the borrower may either:
  - Assign 1 for each employee over 40 hours and 0.5 for each employee under 40 hours; or
  - For each employee, enter the average number of hours paid per week, divide by 40, and round to the nearest tenth, up to a maximum of 1.0
- Wage reductions in wages in excess of 25% must be analyzed separately

Two weeks ago, the SBA released its form PPP Loan Forgiveness Application with a step-by-step forgiveness calculation form
- Offers borrowers with a biweekly (or more frequent) payroll cycle the option of calculating payroll costs using the eight-week period that begins on the first day of the first pay period following the PPP loan disbursement date
- To calculate FTEs, the borrower may either:
  - Assign 1 for each employee over 40 hours and 0.5 for each employee under 40 hours; or
  - For each employee, enter the average number of hours paid per week, divide by 40, and round to the nearest tenth, up to a maximum of 1.0
- Wage reductions in excess of 25% must be analyzed separately for each employee
Forgiveness Application continued

- Some costs incurred but not yet paid are eligible for forgiveness flexibility
- Loan forgiveness will not be reduced if a borrower is unable to fill vacated positions under specified criteria
- Borrowers must make several certifications: forgiveness amount used on eligible costs, etc.
- Forgiveness Application lists documents that must be submitted and maintained

Paycheck Protection Forgiveness and Flexibility

- Costs eligible for forgiveness incurred but not paid during the eight-week covered period may be included as long as they are paid on or before the next regular payroll/billing date
- Loan forgiveness will not be reduced if a borrower is not able to fill with new employees the positions of employees who rejected rehiring offers, were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction of hours
- Borrowers must make several certifications, including that the requested forgiveness amount was used on eligible costs and factors in all applicable reductions
- The application also lists the documents that each borrower must submit and maintain
Maximize Your Forgiveness

Seven Point Checklist for Businesses Receiving a SBA Paycheck Protection Program Loan

Checklist for Businesses receiving a PPP Loan – Maximize Your Forgiveness
https://www.jdsupra.com/legalnews/checklist-for-businesses-receiving-a-48690/
1. Review Your Lender’s Loan Forgiveness Application

- The SBA Application provides insight into its forgiveness requirements
- Your PPP lender may use its own version of the application
- Reach out your lender to obtain a copy of its specific application
2. Make Sure You and Your Affiliates Don’t Have More Than One PPP Loan

• You and your affiliates (per the SBA definition) are limited to receiving only one PPP loan
• “Affiliate” status can be created merely by certain powers being included in a contract between two entities
• Check with your legal counsel to make sure you have properly identified your affiliates

Paycheck Protection Forgiveness and Flexibility
3. Do Not Claim Employee Retention Credits (ERC)

• The CARES Act provides a fully refundable employee retention payroll tax credit (ERC)
• The ERC is based on certain qualified wages that eligible employers pay to their employees between March 13, 2020, and December 31, 2020
• The ERC is not available to you if you receive a PPP loan, except if you repaid the loan by May 14th
• If you or your affiliates receive a PPP loan (and do not repay it), neither you nor your affiliates are eligible for the ERC

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4. Do Not Delay Payment of Social Security Taxes

- Employers and self-employed individuals may temporarily delay payment of the employer share of Social Security taxes
- May delay payment of 50% of the deferred payroll taxes until December 31, 2021, and the remaining 50% until December 31, 2022
- NOTE: This delay in tax payment is not available if you or your affiliates claim any forgiveness of your PPP loan
- This may change as the House legislation allows delayed payment for PPP recipients

Paycheck Protection Forgiveness and Flexibility
5. Track Your Eligible Expenses: Payroll Costs

- Up to $100,000 in annual cash compensation for each U.S. employee
- Costs incurred but not paid may be eligible for forgiveness under certain criteria
- Employer retirement plan contributions, employer group health plan premiums, and employer state and local taxes assessed on compensation
- Might be able to include 401(k) match, profit sharing, or ESOP contributions in payroll costs incurred during the Forgiveness Period
- What you claim as payroll costs needs to be consistent with the annual contributions you made in 2019
- Alternative Payroll Covered Period
- You may choose whether to use the eight-week period commencing on the date of your PPP loan disbursement or the Alternative Payroll Covered Period

Payroll Costs

- Up to $100,000 in annual cash compensation for each U.S. employee, including:
  - Salary, wages, commissions, cash tips, vacation/PTO, and parental, family, medical, and sick leave (excluding qualified sick and family leave wages if a credit is claimed under the Families First Coronavirus Response Act)
  - Maximum of $15,385 per employee over the eight-week period
- Costs incurred but not paid during the covered period are eligible for forgiveness if paid on or before the next regular payroll date
- Employer retirement plan contributions, employer group health plan premiums, and employer state and local taxes assessed on compensation
- Might be able to include 401(k) match, profit sharing, or ESOP contributions in payroll costs incurred during the Forgiveness Period
  - Consult your legal counsel
• It appears that what you claim as payroll costs needs to be consistent with the annual contributions you made in 2019
• Alternative Payroll Covered Period
  • You may measure payroll costs for the eight-week period beginning on the first day of the first pay period following your PPP loan disbursement
• You may choose whether to use the eight-week period commencing on the date of your PPP loan disbursement or the Alternative Payroll Covered Period
5a.

Track Your Eligible Expenses: Non-Payroll Costs

• Include mortgage interest, rent, and utilities - must be dated before February 15, 2020
• Costs incurred but not paid during the covered period are eligible for forgiveness if paid on or before the next regular billing date
• May not exceed 25% of the total loan forgiveness, unless Congress changes the law
• If you took the up-to-$10,000 advance of an EIDL loan, the full advance amount will be deducted from your permissible loan forgiveness

Non-Payroll Costs

• Include mortgage interest, rent, and utilities
  • To be eligible, mortgage obligations, leases, and utility service agreements must be dated before February 15, 2020
• Costs incurred but not paid during the Covered Period are eligible for forgiveness if paid on or before the next regular billing date
• May not exceed 25% of the total loan forgiveness, unless Congress changes the law
• If you took the up-to-$10,000 advance of an EIDL loan, the full advance amount will be deducted from your permissible loan forgiveness
6. Determine If You Need to Take Steps to Rehire or Reinstate Wages

- Forgiveness may be reduced if, during the Covered Period, you reduce your number of full-time equivalent employees (FTEs) or reduce wages of any employee earning $100,000 or less by more than 25% - The Application describes two methods to calculate FTEs
- Can avoid forgiveness reduction by rehiring FTEs or restoring wages by June 30, 2020
- No FTE reduction penalty for employees who decline good faith written offers of rehire, were fired for cause, voluntarily resigned, or voluntarily requested and received a reduction in hours

Paycheck Protection Forgiveness and Flexibility
requested and received a reduction in hours

Collect records that substantiate your claim that your PPP loan was necessary and show that you used the disbursed amounts for approved purposes. You should collect:

- IRS Form 941;
- State quarterly wage reporting and unemployment insurance tax filings;
- Payroll processing records;
- Evidence of retirement and health insurance premium payments and information/elections;
- Canceled checks or other evidence of business rent, and the underlying dated rental agreement;
- Canceled checks or other evidence of payments on covered mortgage obligations, and the underlying dated mortgage contract and lender amortization schedule;

Thusly, to support your application, you should collect:

- IRS Form 941;
- State quarterly wage reporting and unemployment insurance tax filings;
- Payroll processing records;
- Evidence of retirement and health insurance premium payments and information/elections;
- Canceled checks or other evidence of business rent, and the underlying dated rental agreement;
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Paycheck Protection Forgiveness and Flexibility
7a.

**Document, Document, Document**

- Canceled checks or other evidence of payment of utilities, copies of bills, and evidence of when the utility service agreement was entered into;
- Documentation regarding any wage decreases that could trigger a reduction in forgiveness, along with evidence that such wages were later returned to their prior level to avoid any reduction in forgiveness; and
- Documentation regarding any employee job offers and refusals, firings for cause, voluntary resignations, and written requests by any employee for reductions in work schedule

All of this information should be retained for a minimum of six years after the date the loan is forgiven or repaid in full.
Paycheck Protection Flexibility Act

The House and the Senate are considering changes to the PPP to make the money last longer, especially for small businesses that are opening slower.
Legislation Passed Today - House

Would:
• Extend the current eight-week period to 24 weeks or December 31, whichever comes sooner
• Allow repayment over five years rather than two
• Change the Treasury rule that 75% must be spent on payroll to 60%
• Allow full payroll tax deferment – opposed by the Administration

Legislation Just Passed in the House

Would:
• Extend the current eight-week period to 24 weeks or December 31, whichever comes sooner
• Allow repayment over five years rather than two
• Change the Treasury rule that 75% must be spent on payroll to 60%
• Allow full payroll tax deferment – opposed by the Administration
Legislation Being Considered - Senate

Would:
• Extend the deadline to apply for a loan from June 30th to December 31st
• Extend the current eight-week period to 16 weeks
• Allow for the purchase of personal protective equipment and safety related changes to the business

The two chambers will need to reconcile their different approaches

Legislation being considered in the Senate

Would:
• Extend the deadline to apply for a loan from June 30 to December 31
• Extend the current eight-week period to 16 weeks
• Allow for the purchase of personal protective equipment and safety related changes to the business

The two chambers will need to reconcile their different approaches

Host’s Dialogue:

Mary – What’s the forecast for further relief for Small Business (4th relief act) or other?

Chris – It’s a possibility…. The HEROS Bill had $1 Trillion to support state
and local government to address COVID-19 and to address budget shortfalls. It looks like there will be legislation regarding federal support for State and Local governments hopefully by the July 4th recess – details TBD.

The second issue that’s being discussed currently, especially regarding universities, is the issue of Liability Protection. Organizations will need liability relief in case someone contracts COVID-19. Currently, the Senate is pushing for this - the House is less keen on this issue.

A third issue is Unemployment Insurance which sunsets under current law on July 31. There is a shared belief that the current increased UI payments can be a disincentive for getting back to work since in some states, the UI weekly payment is more than the average weekly wage – ultimately the challenge is “how to we help businesses to come back on-line without over incentivizing employees to stay on the ‘sidelines’” – we’ll have to wait and see how this develops, likely within a few weeks from now.

Mary – Support for state and local government is so important as it relates to backfilling state budget shortfalls which we all know is where public education receives much of its funding. We encourage all to join us on June 16 for our NAMM Advocacy Summit; an advocacy briefing and training program to prepare to contact Members of Congress as well as state and local officials about the essential role music learning plays in every child’s education. Now more than ever, music and arts education are vital for children’s social and emotional well-being, growth and development. register at namm.org/issues-and-advocacy/2020-advocacy-summit
Final Thoughts

Chris Cushing

• PPP funds are still available – spread the word to colleagues who have not yet applied

• Advocacy on the state and local level is very important right now. Key point: while current relief has not impacted cities and counties with populations smaller than 500,000. Potential new funding will support smaller local governments – it is crucial that our voices are heard as this legislation is being debated.

Joe Lamond

• What we are dealing with (COVID-19 et al) is super serious, but we will get through this. It may not look the same, it will be very different, but we will get through this. Music will be her long after we remember what COVID-19 was.

• Keep this in context. This will pass and we will get through this together. There will be a recovery and you will be a part of it.
NAMM Member Resources

www.namm.org

Updated Regularly
Share in advocacy briefing and training to prepare to contact Members of Congress as well as state and local officials about the essential role music learning plays in every child’s education. Now more than ever, music and arts education are vital for children’s social and emotional well-being, growth and development. register at namm.org/issues-and-advocacy/2020-advocacy-summit
**Recorded Webinars**
- COVID-19 Small Business Relief: SBA Loans, Medical Leave, UI and Tax Relief
- COVID-19 Small Business Relief: CARES Act
- COVID-19 NAMM Members Share Fed. Aid Application Experience
- COVID-19 Independent Contractors and Gig Workers
- COVID-19 Small Business Relief: CARES Act 3.5

**Updates**
- CARES Act
- PPP, EIDL Loan Guidelines
- Paid Sick and Family Leave
- US Treasury and IRS Relief

**Resource Links**
- Employer Resources
- Employee Resources
- Global Resources
- Instrument Cleaning Guidelines

Making Music Webinars

Virtual Choir 6: Sing Gently, a Conversation with Eric Whitacre
Watching the events unfold around the world, Composer Eric Whitacre has been inspired to write a new piece to share through the Virtual Choir: Sing Gently.

Making Music Online: How To's for Ensembles
This webinar offers practical tips, how-to's and motivation to move your ensembles online.

Making Music Online: How To's for Private and Group Lessons
Discover online group lessons and therapeutic music making for children and adults, and business models to move in-store music lessons online to keep students connected and making music.

Bridging the Gap: Teaching and Learning Music Online
The power of music is amplified through the events we share. Teaching and learning music can thrive through the remarkable tools, resources and people that are engaging in music online.

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NAMM U Webinars

COVID Retail Recovery: How to Reopen for Business
How do you navigate reopening your retail business in the time of COVID-19? How do you re-engage customers who’ve been hunkered down? How will you manage and communicate with your...

Website Strategies in the New Normal
What are the latest web strategies for music businesses? In this pre-recorded webinar from April 22, Inbound AV’s Peter Malick and Madison Revell look at how people’s online behavior has...

NAMM welcomed global business expert Marcus Sheridan for a special online education series on sales and marketing in the time of COVID-19. The third and final part, “Timeless Sales,” was...

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Reminder

All information and resources mentioned in this webinar are available here:

namm.org/issues-and-advocacy/covid-19-updates-and-resources-business

Let Us Hear From You
Erice@namm.org

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Let us hear from you - email erice@namm.org
Thank You
WE ARE ALL IN THIS TOGETHER

COVID-19

Resources and Updates to Support Our Members