



**River City Bank**

PRESENTS

# Forgiveness

The CARES Act

Paycheck Protection Program

Bob Rubin, Boutin Jones

Riley Gardner, River City Bank

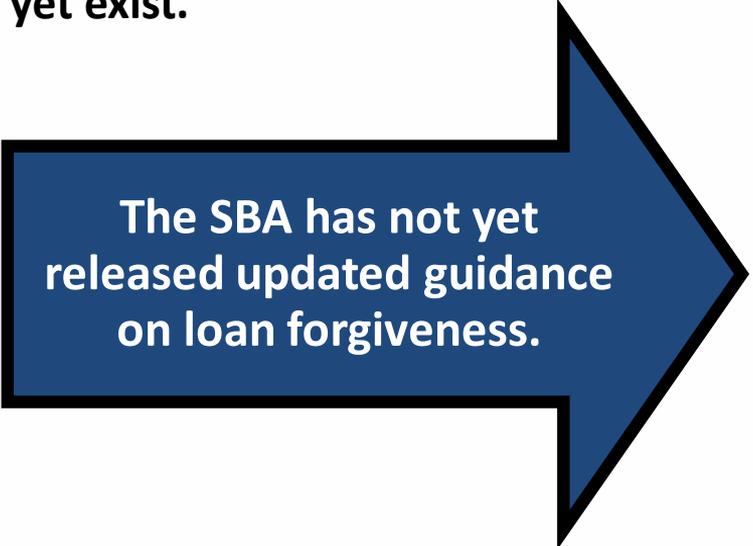
# Disclaimer

This webinar presentation is for educational purposes only and it not intended to be advice. Please consult your own business advisors for information specific to your family business.

The opinions expressed in this presentation represent those of the presenters and do not represent the official policy or position of River City Bank. In no way should this information be construed as advice or guidance from River City Bank.

# Evolving Guidance

**While awaiting more detailed SBA guidance (FAQs updated almost daily, 7 interim final rules as of 4/30), businesses must do their best with the information available, and watch for new information, to set themselves up for maximizing loan forgiveness. Comprehensive rules and guidance do not yet exist.**



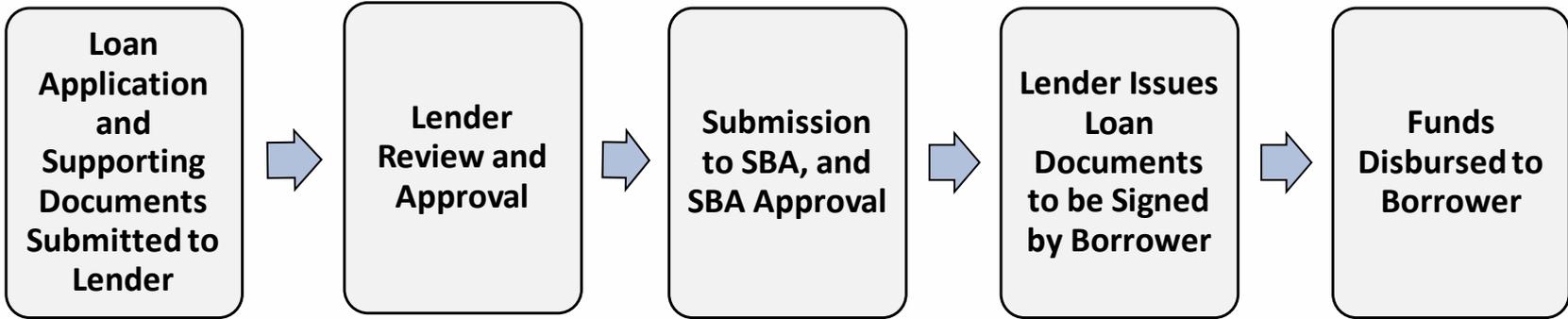
**The SBA has not yet released updated guidance on loan forgiveness.**



**Many businesses have already received funds, and need information ASAP.**

# How the Process Works

## Accessing to the Program



## Use of Funds and Loan Forgiveness



# Loan Forgiveness - Approved Uses

## Payroll Costs

- Employee salaries, commissions, or similar compensation
- PTO, sick leave, family leave, severance, (but no emergency sick or family leave)
- Health care, retirement (for 8 week period), and other benefits
- State and local payroll taxes

## Rent

- Rent obligated under a leasing agreement in force before Feb. 15, 2020

## Utilities

- Electricity, gas, water, transportation, telephone, or internet access, for service which began before Feb. 15, 2020

## Interest

- Payments of interest on any "indebtedness or debt instrument incurred in the ordinary course of business that (A) is a liability to the borrower; (B) is a mortgage on real or personal property; (C) was incurred before Feb. 15, 2020." Interest portion of capital leases.
- Does not include payment or prepayment of principal;

The loan is potentially 100% forgivable, provided (i) the funds are used on these approved uses during the 8 week period immediately after origination of the loan, (ii) applicable employee and salary retention requirements are met, and (iii) at least 75% of funds are used on payroll costs.

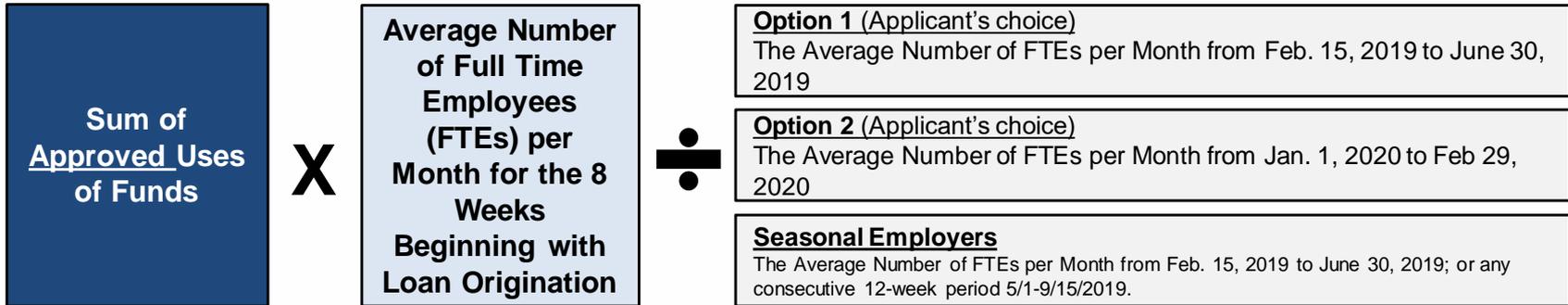
# Payroll Costs – More Detail

## **Per SBA Interim Final Rule Current as of 4-29-2020:**

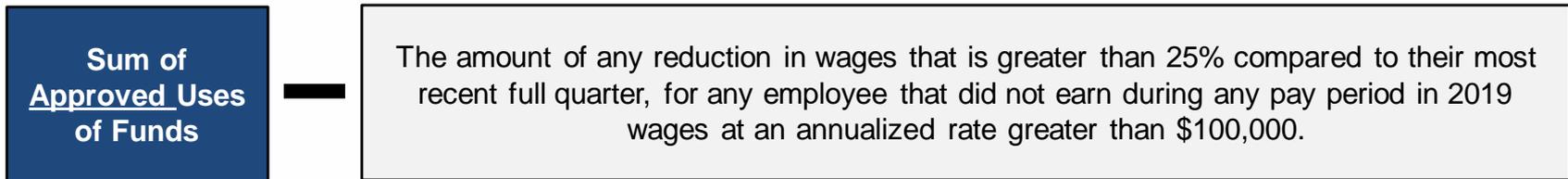
Payroll costs consist of compensation to employees (whose principal place of residence is the United States) in the form of salary, wages, commissions, or similar compensation; cash tips or the equivalent (based on employer records of past tips or, in the absence of such records, a reasonable, good-faith employer estimate of such tips); payment for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums, and retirement; payment of state and local taxes assessed on compensation of employees; and for an independent contractor or sole proprietor, wage, commissions, income, or net earnings from self-employment or similar compensation, but not emergency sick or family leave.

# Loan Forgiveness – Reduction Calculation Method

## Reduction in forgivable amount based on reduction in number of employees:



## Reduction in forgivable amount based on reduction in salaries:



Note: Reductions in employment or wages that occur during the period beginning on Feb. 15 2020, and ending 30 days after enactment of the CARES Act shall not reduce the amount of loan forgiveness IF the Borrower eliminates the reduction in employees or reduction in wages by June 30, 2020. *It would be imprudent to rely on this provision without further SBA guidance on the subject.*

## Certifications – Key Points Relative to Loan Forgiveness

- “Current economic uncertainty makes this loan necessary to support the ongoing operation of the Applicant.” Availability of alternative funding, financial projections, furloughs, pay cuts, shelter in place order.
- “The funds will be used to retain workers and maintain payroll, or to make mortgage, lease, and utility payments. If the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable, such as for charges of fraud.”

# Documentation

## Key Points

- Documentation of full-time employee numbers and salary levels.
- Documentation of approved uses of funds.
- Documentation of the economic uncertainty that made the PPP loan necessary to support ongoing operations.

## CARES Act Language

“An eligible recipient seeking loan forgiveness under this section shall submit to the lender that is servicing the covered loan an application, which shall include:

- (1) Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the [relevant periods], including:
  - (A) Payroll tax filings reported to the internal Revenue Service
  - (B) State income, payroll, and unemployment insurance filings
- (2) 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;
- (3) A certification from a representative of the eligible recipient... that:
  - (A) The documentation presented is true and correct, and
  - (B) The amount for which loan 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
- (4) Any other documentation the Administrator deems necessary.”

# Loan Size Distribution – First Round of PPP Funds

Loan Size					
Loan Size	Approved Loans	Approved Dollars	% of Count	% of Amount	
\$150K and Under	1,229,893	\$ 58,321,791,761	74.03%	17.04%	
> \$150 - \$350K	224,061	\$ 50,926,354,675	13.49%	14.88%	
>\$350K - \$1M	140,197	\$ 80,628,410,796	8.44%	23.56%	
>\$1M - \$2M	41,238	\$ 57,187,983,464	2.48%	16.71%	
>\$2M - \$5M	21,566	\$ 64,315,474,825	1.30%	18.79%	
>5M	4,412	\$ 30,897,983,582	0.27%	9.03%	

## Key Questions

- “Costs incurred” and “payments made”
  - Covered payments made before and after 8 week period.
- Documentation of approved uses of funds.
- Documentation of full-time employee numbers and salary levels.
- SBA interpretation of “economic uncertainty”

# Income Tax Issues

- **Expenses paid with loan amounts that are forgiven are not deductible for income tax purposes (IRS Notice 2020-32).**
  - Many politicians have stated this is contrary to the intent of the CARES Act, and have stated legislation overturning this IRS position could be introduced.
- **How will the forgiven amount be treated for tax purposes in California?**
  - Though California does not yet confirm to the version of IRC code that says PPP loan forgiveness shall be excluded from gross income, this should not be interpreted to mean California will not eventually conform.
    - CA conforms to the IRC effective as of 1/1/15. 1106(i), the provision that says PPP loan forgiveness shall be excluded from gross income, is not in the IRC. FTB announced, correctly, that CA does not conform to 1106(i), but this should not be interpreted to mean CA will not conform.

# Q&A



## Other Common Questions

- Definition of an FTE
- 401(k) plan contributions
- Workers comp insurance
- Union retirement contributions
- Mortgage interest rate swaps
- Post-funding realization max loan amount overstated
- How is wage reduction forgiveness amount determined (e.g., hours or dollars)?