



PPP Rules and Guidance: Best Practices for Utilizing PPP Loans and Avoiding Pitfalls

May 26, 2020

2:00 p.m. – 3:00 p.m.

**CT Bar Association
Webinar**

CT Bar Institute, Inc.

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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Faculty Biographies

Michael J. DiPiro, Guilmartin DiPiro & Sokolowski LLC

Michael J. DiPiro is a U.S. Navy veteran and a 1981 cum laude graduate of Central Connecticut State University with a Bachelor of Science Degree in Accounting. He passed the CPA exam in November 1981 and has been the tax and small business partner in the firm of Guilmartin, DiPiro & Sokolowski, LLC since 1985. Michael is the tax partner on all engagements and is knowledgeable in all aspects of business, estates and trusts and nonprofit tax reporting. He has 35 years of public accounting experience. He has given many presentations to business, civic and professional organizations.

Michael has prepared many business and pension valuations for marital dissolutions, buy/sell issues and estate and gift tax matters. He is a Certified Valuation Analyst and has attended numerous courses related to business valuations. He has testified in court on tax, pension and business valuation matters in Middlesex, Hartford and Tolland counties.

Professional Associations & Activities

- Member of the Connecticut Society of Certified Public Accountants (CTCPA), the American Institute of Certified Public Accountants (AICPA), the National Association of Certified Valuators and Analysts (NACVA) and the Institute of Business Appraisers.
- Commissioner, past Chairperson and Treasurer of the Middletown Downtown Business District (a separate taxing authority created by Statute). Board member of the Middlesex County Chamber of Commerce and Secretary of the Middletown Road Race Committee.

Wendy Estela, Estela Law

Wendy Estela is Principal Attorney and Founder of Estela Law, a 100% woman and minority-owned law practice located in West Hartford, Connecticut. In this role, Wendy partners with clients, learns their business, builds relationships and provides trusted counsel on various legal issues including business law, risk management, real estate, construction, general practice (family/probate/wills), with a focus on supplementing in-house legal departments. She has also built a reputation as a trusted advisor to c-suite executives and communicates at all levels within an organization.

Prior to starting her own business, Wendy spent more than 20 years working with a diverse client base managing legal issues including complex business deals, procurement and supply chain, environmental matters, insurance and alternative risk management, and risk analysis and mitigation. She partners with Fortune 100 companies, small start-ups, non-profits, state and federal regulatory agencies, individuals and families to navigate the challenging landscape of legal issues impacting business and everyday life. Wendy was also appointed by Governor M. Jodi Rell to the State Contracting Standards Board, where she and fellow Board Members were tasked with overhauling the contracting process for the state of Connecticut.

Wendy holds a Bachelor of Arts in Spanish and Minors in Communications and International Studies from Boston College. After graduation and while working full-time, Wendy continued her education and earned an LL.M. in Environmental Law from Pace Law School and is currently completing her studies toward an LL.M. in Insurance Law from University of Connecticut School of Law.

As the mother of two daughters, Caroline and Victoria, Wendy is deeply engaged in her community as a Girl Scout Troop Leader and supporter of the Estela Wilderness Education Fund, which provides supports for camperships, program development and trail maintenance at the Environmental Learning Centers of Connecticut. She is also an adjunct professor at the University of Phoenix. A native of Bristol, Conn., Wendy is the daughter of a Filipino immigrant and a first-generation Polish American mother. She was the first woman on both sides of her family to graduate from college.

Jonathan M. Shapiro, Aeton Law Partners LLP

Jonathan Shapiro joined Aeton Law Partners LLP as a partner in 2019. From 2014 to 2018, Attorney Shapiro was recognized as a Connecticut Super Lawyer, and from 2017-2018, he was named to the Top 100 attorney list in New England. He is the Immediate Past President of the Connecticut Bar Association after serving as the 95th president of the CBA from 2018-2019.

Attorney Shapiro represents individuals and businesses on a wide variety of litigation and corporate matters. He also provides outside general counseling services for small and mid-sized, privately held companies including medical practices, technology companies, restaurant groups and contractors.

On the litigation side, Attorney Shapiro has extensive experience in federal and state courts in Connecticut and New York, and before arbitration and mediation panels. He has tried numerous cases to verdict. His litigation practice focuses on commercial and complex matters including trade secrets, copyright, trademarks, securities, partnership and shareholder disputes, noncompetition, tax, employment, business torts, insurance coverage, securities, contract and property disputes. Attorney Shapiro also regularly serves as “local counsel” for non-Connecticut-based firms that are admitted to practice *pro hac vice*. Representative matters include:

- Obtained judgments of dismissal on behalf of Stephen King accused of copyright infringement in [*Acker v. King*, 46 F.Supp.3d 168 \(D. Conn. 2014\)](#), *appeal dismissed*, 14-3908 (2d Cir. Feb. 26, 2015) and 2019 WL 1558623;
- Obtained judgment on behalf of taxpayer challenging tax assessments issued against him by Department of Revenue Services in *Sobel v. Nicholson*, 2017 WL 1240119 (under appeal);
- Obtained judgment on behalf of insured in case brought by insurer seeking a declaratory judgment that it had no duty to defend its insured in *Seneca Insurance Company v. Q Sono et al.*, 2018 WL 2760356;
- Obtained judgment on behalf of in-store couponing business in claim that it breached the terms of a \$3.9 million promissory note by continuing to engage in couponing business which was the subject of a sale, *Alerion Investment Partners I, LP v. Valassis Communications, Inc.*, 2013 WL 5969059.

On the corporate side, Attorney Shapiro regularly represents and advises clients in the purchase and sale of businesses, contract negotiations, corporate governance, intellectual property matters, employment matters, risk management and blockchain technologies. As outside general counsel for numerous companies, Attorney Shapiro is available to provide day-to-day input on the many legal issues businesses encounter on a daily basis.

Attorney Shapiro is admitted to practice in Connecticut and New York, as well as before the United States District Courts for the Southern and Eastern Districts of New York and the District of Connecticut. He was honored by the Fairfield County Business Journal at the 2011 40-Under-40 Awards Dinner, and was named as a “New Leader in the Law” by the Connecticut Law Tribune in 2012.

In addition to being the Immediate Past President of the Connecticut Bar Association, Attorney Shapiro also chairs the Connecticut Bar Association Rule of Law Committee and Legislative Policy and Review Committee. He is also currently serving as a delegate for Connecticut to the American Bar Association House

of Delegates and the New England Bar Association. He previously served as Assistant Treasurer-Secretary, Vice-President, President-Elect, Membership Chair and Young Lawyers Section Chair for the Connecticut Bar Association.

Attorney Shapiro is very involved in the community. He is the current President of Congregation Adath Israel in Middletown and is a Corporator and Philanthropy Advisory Counsel Member of Middlesex Health. He is a past Chair of the March of Dimes Connecticut Chapter State Board.

Attorney Shapiro regularly speaks at seminars on a broad range of topics and has authored several articles, including:

- Moderator, Succession Planning and Leaving the Practice of Law, Connecticut Legal Conference 2019
- Moderator, What is Blockchain, and Why Should I Care, Connecticut Legal Conference 2018
- Moderator, *Executive Orders*: The Good, the Bad, and the Constitution, Connecticut Legal Conference 2017
- Moderator, The Battle Behind the Scenes: Handling Difficult Clients, Hostile Judges and Unethical Attorneys During Litigation, American Bar Association Litigation Section Annual Conference (New Orleans 2015);
- Co-Author, "Hold It! Avoiding Electronic Discovery Disasters with Effective Litigation Holds" (Elizabeth S. Fenton & Diana Rabeh, Reed Smith) and moderator on corresponding program at American Bar Association, Litigation Section Annual Conference.
- Author, "Extra-Territorial Application of Unfair Trade Practice Claims," American Bar Association Business Torts Journal
- Moderator, Going Commando: Lessons from the Field on Starting Your Own Practice, Connecticut Bar Association Young Lawyers Section
- Panelist, Career Transitions, University of Connecticut School of Law Alumni Association
- Panelist, CAPABA Lunar New Year/Networking, Connecticut Asian Pacific Bar Association
- Panelist, Contract Negotiations, Meeting Planners International-Connecticut River Valley Chapter

Attorney Shapiro earned his B.A. in History from Boston College in 1998 and his J.D. degree from the University of Connecticut School of Law in 2001. He lives in Middletown with his wife and children. In his spare time, he enjoys running, biking, reading, and spending time with his family.

GUIDE TO PPP LOAN FORGIVENESS



Under the Paycheck Protection Program (PPP) created by the CARES Act, loans may be forgiven if borrowers use the proceeds to maintain their payrolls and pay other specified expenses.

The Treasury Department and Small Business Administration recently released the application form and instructions for loan forgiveness. The forgiveness forms, instructions, and worksheets can be downloaded [here](#).

PPP borrowers must apply for loan forgiveness with the lender that processed the loan. This guide is designed to help borrowers understand the process by which their loan forgiveness amount will be calculated and the overall approach of the loan forgiveness process.

HOW MUCH will be forgiven?

The process to calculate the amount of loan forgiveness requires three steps:

1. Determine the maximum amount of possible loan forgiveness based on the borrower's expenditures during the 8 weeks after the loan is made;
2. Determine the amount, if any, by which the maximum loan forgiveness will be reduced because of reduced employment or reduced salaries and wages; and
3. Apply the 75% rule that requires that at least 75% of eligible loan forgiveness expenses go towards payroll costs.

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Determine the maximum amount of possible loan forgiveness

1A. Expenses Qualifying for Loan Forgiveness:

The following expenses incurred or paid by the borrower during the 8 weeks following loan origination (see below for determining the 8-week period) are eligible for forgiveness:

- Payroll Expenses, defined as:
 - Compensation (not exceeding \$15,385 per employee) in the form of:
 - gross salary, gross wages, gross commissions, and gross tips,
 - 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.

Note: For an independent contractor or sole proprietor, payroll costs only include wages, commissions, income, or net earnings from self-employment, or similar compensation.

- Non-Payroll Expenses, defined as:
 - Mortgage interest payments for the business on real or personal property (debt incurred before February 15, 2020);
 - Rent or lease payments for the business on real or personal property (lease in force before February 15, 2020); and
 - Utility payments for the business for electricity, gas, water, transportation, telephone, or internet access (service began before February 15, 2020).

Note: For an independent contractor or sole proprietor, you must have claimed or be entitled to claim a deduction for these expenses on your 2019 Form 1040 Schedule C in order to claim them as expenses eligible for PPP loan forgiveness in 2020

1B. Identifying Your 8-Week Period:

The 8-week period during which expenses must be incurred or paid:

- The 8 weeks (56 days) beginning on the day the PPP loan was disbursed or
- For borrowers with a biweekly (or more frequent) payroll schedule, the 8 weeks (56 days) beginning on the first day of the first pay period following the PPP loan disbursement.

Tip: If you are using an online date calculator, remember to count the date of the disbursement of the loan as part of the 56 days. For example, if the loan was disbursed on April 20, the last day of the 56 days would be June 14).

Determine the amount, if any, by which the maximum loan forgiveness will be reduced

2A. Determine loan forgiveness reduction based on a reduction in salaries or wages of more than 25%:

For employees who earned \$100,000 or less in 2019 (or were not employed by the borrower in 2019), the borrower's loan forgiveness will be reduced for each employee whose average pay (salary or hourly wage) during the 8-week period is less than 75% of their average pay from January 1 to March 31, 2020. The amount of the reduction in loan forgiveness is based on the amount of the reduction in pay.

Safe Harbor: Borrowers can avoid having their loan forgiveness amount reduced if they restore an employee's pay. Specifically, if the employee's annual salary or hourly wage on June 30, 2020 is equal to or greater than their annual salary or hourly wage on February 15, 2020, the borrower's loan forgiveness is not reduced.

2B. Determine loan forgiveness reduction based on a reduction in the average number of employees.

The borrower's loan forgiveness will be reduced if the average number of weekly full-time equivalent employees (FTEs) during the 8-week period is less than the average number of FTEs during the borrower's chosen reference period. Borrowers can choose between the following reference periods:

- February 15 to June 30, 2019,
- January 1 to February 29, 2020, or
- In the case of a seasonal employer a consecutive 12-week period between May 1 and September 15, 2019

Exceptions: Borrowers will not be penalized for any FTE reductions if either of the following occurred:

- The borrower made a good-faith, written offer to rehire the employee during the 8-week period that was rejected by the employee
- The employee was fired for cause, voluntarily resigned, or voluntarily requested a reduction in hours

Safe Harbor: There is no reduction in the forgivable loan amount for borrowers who reduced their FTEs during the period beginning on February 15 and ending on April 26, 2020, but who by no later than June 30 restored the FTEs to the level that existed on February 15.

Apply the 75% Rule

A borrower's maximum loan amount could also be reduced if the borrower's eligible non-payroll expenses exceed 25% of the total eligible expenses. The maximum eligible loan forgiveness is payroll expenses divided by 0.75.

Example: If your payroll expenses for the 8-week period equal \$75,000, your loan forgiveness cannot exceed \$100,000. Any more than \$100,000 would mean your non-payroll expenses represent more than 25 percent of the total forgiveness amount

LOAN FORGIVENESS AMOUNT

Borrowers' loan forgiveness will equal the smallest of the following:

1. Your PPP loan amount
2. The maximum loan forgiveness amount from Step 1 less any reductions from Step 2
3. The maximum loan forgiveness amount where eligible payroll expenses equals or exceeds 75% of the total forgiveness (i.e. your eligible payroll expenses ÷ 0.75)

What happens to loan amounts NOT FORGIVEN?

For any loan amounts not forgiven, the original loan terms—two-year maximum loan at 1% interest rate with payments deferred for the first six months—will apply.

There are no prepayment penalties or fees.

What are the record keeping REQUIREMENTS?

Borrowers will be required to submit certain documentation with their loan forgiveness application:

Payroll Documents:

- 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.

Full-Time Employees (FTEs):

- Documentation showing the number of FTEs for the reference period from Step 2. Documents may include payroll tax filings (typically Form 941) and state quarterly wage reporting and unemployment insurance tax filings.

Nonpayroll Expenses:

- 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

POTENTIAL CONGRESSIONAL CHANGES

Congress is currently considering a number of changes to the PPP program, including eliminating the 75% rule and extending the 8-week period to up to 24 weeks. However, enactment of these changes is not guaranteed.

Until any changes are enacted into law or until the Treasury Department and SBA change any regulations and guidance, the current rules apply to all borrowers.

Additional Resources

- https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application%20FINAL_Fillable.pdf
- <https://www.sba.gov/sites/default/files/2020-05/IFR%20Forgiveness%20FINAL.pdf>