

## Bank of America's Ongoing PPP Defrauding (My View) of Small Business

Imagine you're a small business owner at the outset of Covid and learn that you can keep your workers employed and stay in business thanks to the Payroll Protection Plan enacted by Congress. Further imagine your bank is the Bank of America. You comply fully with BofA's application process, receive, what for you, is a major loan -- all under the understanding that the loan will be forgiven if the funds are spent on your workers and on legitimate expenses. You then receive the loan and spend it as instructed.

Some ten months later, when everyone else is receiving forgiveness on their PPP loans, you start contacting the Bank of America for confirmation that your loan has been forgiven. What you get is months of stonewalling ultimately followed by a declaration that your PPP loan never qualified for forgiveness. You're further told you owe the money to the Bank and need to repay it immediately or on a schedule that includes substantial interest payments.

You're beyond outraged, if not bankrupted. Everything you found and can now find on the Small Business Association (SBA) website suggests you do qualify for forgiveness. Furthermore, if you didn't, why did the Bank of America issue the loan in the first place and not warn you at the time that it was unforgivable?

To make you yet more nuts, you learn that the Small Business Association has a site to adjudicate cases like yours. But your bank needs to connect electronically to the SBA site, which BofA refuses to do.

I wrote about this egregious bait and switch last [June](#) and [July](#), calling out BofA President, Brian Monihan, to take action. He's done nothing, making him, in my view, complicit in the fraud. Were I in his shoes, I'd have a hard time sleeping at night. He should be on his hands and knees asking these terrific people to accept his apology.

By the way, my strong language about the Bank of America prompted my editor at Forbes to point out that I couldn't objectively write about the bank because my company uses the bank. I want to make clear that my company is in the process of switching banks. We should be well rid of BofA in two weeks.

I did receive a call from a top person in BofA's media relations. He suggested there was some SBA legal language tucked at the end of a very long doc -- what I call tiny type fraud -- under which the bank was acting. He also claimed that if the Bank didn't defraud (my word) the small businesses in question, it could be sued by the SBA.

Since writing about BofA's financial malfeasance (I can think of no other description), I've received one email after another from small businesses who have been denied forgiveness. The Bank's rationale for its behavior differs from case to case.

In some cases, the Bank says they can't forgive the loan because it was spent on 1099 workers. But the Bank asked small businesses to upload their past 1099 payments and never warned them that 1099 payments made in 2020 would not be forgiven. Indeed, the size of the PPP loans issued, in these cases, was, from the perspective of the small businesses, predicated on 1099 uploaded payments. If the Bank was not prepared or authorized to issue *forgivable* PPP loans based on 1099 payments, it should have warned its customers in huge type not to borrow based on anything apart from payroll and other allowable expenses.

For others, the bank claims payments to employees can only be forgiven if the employees we're on the payroll in 2019. As you'll read in Jose Ramos' case, which he describes below, his 2020 employees were 1099 contractors in 2019. But the Bank issued his PPP loan based on his uploaded 2020 payments and he checked the box on the BofA site specifying he had no employees in 2019. Again, the Bank issued the loan with no warning that it wasn't forgivable. In yet other cases, the bank is not crediting what appear to be legitimate non-payroll expenses.

Clearly, the Bank of America won't fix this problem for what may be tens of thousands of small businesses without the intervention of the Small Business Administration, the Consumer Financial Protection Bureau, or Congress. Alternatively, if enough BofA-defrauded small business owners contact Jose at [Jose.Ramos@Kin-Keepers.com](mailto:Jose.Ramos@Kin-Keepers.com), a class action suit may be started. As I write, aggrieved small businesses are contacting Senators Warnen, Warren, and other members of Congress. As for the SBA and CFPB, they appear to be afraid of the Bank. If not, Rohit Chopra, head of the CFPB, and Isabella Guzman, head of the SBA would have held joint public hearings with the aggrieved parties and play-dumb, Brian Monyihan. Were I the President, I'd call them today to get them to do their job.

But let me ask you to listen to Jose's story and read some action items below.

*We have a small business near Richmond, VA, called Only One Globe Corporation. Our company creates solutions for people with Alzheimer's and Related Dementias to help them communicate their feelings and be better understood by loved ones and caregivers.*

*In April of 2020, we obtained a Paycheck Protection Program (PPP) loan for \$67,500. It was administered by Bank of America (BofA), our bank for over 15 years. The application process via BofA's web portal was cumbersome, but we made it through. Loan approved April 9<sup>th</sup> and funds received April 30<sup>th</sup>. We chose the 24-week period to use the money and pay our 6 employees. Everything went fine until it was time to apply for loan forgiveness.*

*We were ready to apply in January 2021. BofA emailed us to wait until February since guidelines were changing.*

*No communication from BofA in February; nothing in March; still no word of opening the forgiveness portal in April. We checked emails several times a day, also looked in junk mail folders. When by June 2021 we had not received any email, letter, or phone call inviting us to apply for forgiveness, we became worried, and began calling BofA every couple of weeks. They reassured us on every call that the email to apply should be "coming soon." We were not worried; we had spent 100% of the loan monies on payroll expenses. We were positive we would have no problem getting the entire loan forgiven. BofA just needed to open the portal.*

*Instead, in late July, we received a letter from BofA: They had not received our forgiveness application, our deferral period was ending soon, and our first loan payment was due September 30, 2021! How could this be happening?! We were not even given the chance to apply for PPP loan forgiveness! Very distressed, we started calling BofA every week, then twice a week in August and September.*

*On the calls, BofA's reps made excuses:*

*- There are so many loan recipients to process; your invitation to apply for forgiveness should be coming soon. Wait for the email.*

- You are not the only one experiencing the delay, we are trying to get to everyone; just wait for the email.
- Our servers crashed when PPP forgiveness guidelines were changed earlier this year; “tens of thousands of customers” like you are waiting to be contacted regarding forgiveness.
- We have escalated your request; you should be hearing from them in 10-14 days
- Your issue has been escalated to our remediation team. They take from 10-14 days. If you don’t hear from them, call back.
- Thank you for calling. We don’t recommend escalating this again. It seems you have a number of escalations. If you have too many, it may delay processing.

Even after these so-called escalations, still no communication at all from Bank of America. Then we heard news that SBA opened their own portal. Small businesses could apply directly for PPP forgiveness. We were relieved; we could finally submit our forgiveness application! However, our hopes were dashed --- BofA was not participating in the SBA direct forgiveness portal.

Frustrated, and back to square one, we decided to take a different approach – we contacted our Virginia representatives to Congress. Sen. Mark Warner was the first to respond. He assigned a caseworker who forwarded our case to the Consumer Financial Protection Bureau (CFPB). Very soon we received notification from CFPB they had communicated with BofA and they had 15 days to respond.

Very soon we received a letter from BofA stating they are still reviewing our PPP loan and will be assigning us a caseworker. They would defer PPP payment obligations until December 30, 2021. Finally, a response from Bank of America! Thank you, Senator Warner!

A few days later, someone from BofA contacted us. Not a case worker, but their debt collector, Angelica Roman, who wanted to confirm we were the business who contacted CFPB. We confirmed we were; however, we would only continue this conversation via written emails or mailed letters, not by phone. We never heard from her again.

On the 15<sup>th</sup> day Thez Douglas contacted us. She would be our point-of-contact for BofA. Apparently, they were missing one document when we initially applied for the loan back in April 2020! Why were they just telling us this now, in October 2021, when all the funds had already been spent an entire year ago in October 2020? And why would BofA approve our PPP loan if our documents were incomplete?

Despite our questions, we promptly complied, hoping the extra document would finally give us access to apply for forgiveness. She never communicated after we uploaded the document.

A week later, we were contacted by the manager of BofA’s Remediation and Escalation Dept, Beverly Kubalic. According to her, we did not qualify for the PPP loan. We were “overfunded” by \$67,500 (the entire amount of the loan)! Apparently, we did not have documents that prove we had employees in 2019. We responded we only had a 1099 contractor in 2019, but we did have employees on payroll first quarter of 2020. Kubalic told us PPP loans were meant for companies with employees in 2019. We had never read that anywhere; everything in SBA’s Interim Final Rules (IFR) and FAQs state that we can use 2020 as our payroll period to qualify for and calculate the amount of the loan we requested. Kubalic had no response. If BofA did not think we qualified for the loan in the first place, why did BofA approve our loan and issue the funds? Was there no due diligence on their part?

*Kubalic claimed they were rushing to get PPP loans distributed, so they did not have time to review everyone's loan documents during the application process. (Is that an excuse to be sloppy?) She said a follow-up review of our application revealed we did not qualify. When was this follow up review? August 2020. What?! No one at BofA bothered to communicate with us until 14 months after the follow-up review that there was a possible issue!*

*Kubalic reiterated that none of our PPP loan is forgivable. Could we appeal to SBA? Only if we agreed with BofA's decision of "zero forgiveness" could we then appeal to SBA. We agreed to consent to "zero forgiveness" if we include the statement: This is due to Bank of America's negligence, lack of due diligence, and total non-communication in a timely manner with regards to our PPP application. She said she could not add that statement.*

*Was all of this caused by BofA's negligence or incompetence or lack of personnel? Or was it the intent of Bank of America to give out PPP loans to small companies without a good faith review of their loan documents? Did they know that some or many may not qualify for complete forgiveness? And worse, not communicate with the customer until all the funds were spent? Having this loan forgiven was one of the reasons we all felt comfortable applying for the PPP loan. But now are we find ourselves obliged to pay back the loan to Bank of America.*

*SBA ultimately determines PPP loan forgiveness. Does BofA get to "pre-determine forgiveness" and deny us the opportunity to have our forgiveness application submitted to the SBA?*

*We had read about Ember Seaman's horrible treatment by BofA, as written by Laurence Kotlikoff in Forbes, August 5, 2021. We have seen comments on BofA's Facebook page from small businesses whose PPP loans were mishandled and how they were ignored or mistreated by BofA. How many more small businesses all over the country are receiving dismissive, negligent, or dishonest treatment from BofA?*

*If you are one of those victimized here are some things to do:*

- *Contact the SBA,*
- *your State Attorney General,*
- *your Congressional Representatives,*
- *your state's Bank Regulatory Board starting with the Office of the Comptroller of the Currency (<https://www.helpwithmybank.gov/file-a-complaint/index-file-a-complaint.html>).*

*There you will find listed*

- *the Consumer Financial Protection Bureau (CFPB),*
- *Federal Deposit Insurance Corporation (FDIC),*
- *Federal Reserve Board (FRB),*
- *National Credit Union Administration (NCUA) and*
- *the Conference of State Bank Supervisors (CSBS)*

*Also file a complaint with the SBA Capital Access Financial System to halt any loan guaranty the Bank of America may be depending on from the SBA.*

*If nothing else, consider bringing the matter to a Small Claims Court to force an examination of the terms your Promissory Note.*

*There must be something we can do as a group; perhaps someone can advocate for us small businesses wronged by Bank of America. Congress passed the PPP to help small businesses and their employees affected by the pandemic. Bank of America should not be taking advantage of small companies.*