

SEO DETAILS:

Page Title: Further Updates to the Paycheck Protection Program | [INSERT RELATED SERVICE] | [INSERT FIRM NAME]

Meta Description: [NAME OF FIRM] provides updates on the Paycheck Protection Program and the loan forgiveness process.

Headline: Further Updates to the Paycheck Protection Program

BODY COPY:

Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March 2020 and it allocated \$669 billion in funds to assist 5.5 million small businesses through the Paycheck Protection Program (PPP). It enabled businesses to borrow up to \$10 million under the Small Business Administration (SBA) 7(a) loan program. The PPP allowed loaned funds to be forgiven if they were used to cover payroll, mortgage interest, rent and certain utilities during the covered period, and within the correct percentages.

The legislation was passed quickly and left many open questions, so the SBA and Treasury have issued interim regulations and FAQs throughout the year about the loan application and loan forgiveness application processes. Unfortunately, this has caused considerable confusion and frustration among business owners who are trying to adhere to guidance while keeping their companies afloat.

To complicate matters further, many banks required different paperwork for the loan process to be submitted along with the standard SBA loan application and they categorized allowable expenses differently. Some banks gave preferential treatment to their larger customers, and applicants for smaller loans felt overlooked. Many small borrowers found the process offered by online alternative lenders such as Kabbage and Lendio to be easier than those available from conventional lenders.

Additional Relief Gained With the PPP Flexibility Act

By early June it was clear that businesses would require more relief. The PPP was scheduled to expire on June 30, so Congress enacted the PPP Flexibility Act to enhance and extend the PPP through August 8, 2020. It eased the pressure on businesses to spend funds quickly and enabled them to use loan proceeds more responsibly. It also made it easier for small business owners to have their loans completely forgiven.

The PPP Flexibility Act extends the covered period to 24 weeks from the original eight-week period. It requires that at least 60% of the loan must be used for payroll costs, down from the 75% requirement under the original legislation. This means that up to 40% of the loan can be used for non-payroll expenses. The Act also raised the minimum loan maturity from the initial two-year period to five years.

Two Safe Harbor options were added to help businesses struggling to achieve the full-time equivalent (FTE) employee headcount necessary for full loan forgiveness:

- For businesses unable to return to the same level of business activity due to government orders, Safe Harbor 1 allows them to be fully exempt from FTE counts. Restaurants and hair salons are examples of businesses that may use this option.
- Safe Harbor 2 pushed back the measurement date for benchmarking Safe Harbor FTEs from June 30 to December 31, 2020. This allows more businesses to achieve 100% forgiveness even if they were unable to rehire their original employees or hire new talent quickly.

Update on the Loan Forgiveness Process

In early October, the SBA announced the creation of a new Form 3508S which was designed to streamline the loan forgiveness process for small loan recipients. The one-page form allows businesses that received loans of less than \$50,000 to skip the FTE requirements. Businesses still must prove that they used the funds on allowable and forgivable expenses, but paperwork requirements are significantly reduced. The SBA decided to use the low threshold of \$50,000 because 67% of all loans (and 12% of all loaned funds) fell into this category.

For businesses that received more than \$50,000 in loan proceeds, they may be able to use simplified Form 3508EZ. It should be used by businesses that did not experience a reduction in their FTEs or a 25% wage reduction across all employees. Businesses that experience a decline in FTEs or a 25% wage reduction must use Form 3508, the long form of the loan forgiveness application (LFA).

Many banks have created PPP loan forgiveness application portals, but not all banks are ready or able to begin the process. Approximately 100,000 applications have been submitted to the SBA by banks since mid-August and at this writing in early December, none have received approval. The SBA has 90 days from the submission date to approve or reject the bank's recommendation.

Due to the many questions that continue to arise, we anticipate that LFAs will be subject to scrutiny for many years to come. The SBA has six years to audit the files at their convenience. Though some banks have opened up their forgiveness portals, not all banks are prepared to deal with covered periods that differ from the standard eight or 24 weeks (such as a borrower who wants to seek forgiveness for 13 weeks). The SBA issued guidance at the end of August 2020 regarding an appeals process in the event that an expense is challenged. However, the appeals process has not yet been tested as of this writing.

Other Issues of Concern Regarding PPP Loan Forgiveness

The taxability of forgiven PPP loan proceeds has become an issue of concern for some borrowers. In the original CARES Act legislation, many congressional representatives stated that they intended for the PPP forgiveness to be a nontaxable event. However, the IRS has taken a contrary stance and has stated that associated expenses will be disallowed, effectively making the loan proceeds taxable.

Business owners also are concerned about financial statement presentation of the PPP loan and its subsequent forgiveness. Although there is no formal guidance in US GAAP, the Financial Accounting Standards Board (FASB), in conjunction with the American Institute of

CPAs (AICPA), has developed Technical Question and Answer (TQA) 3200.18. It essentially requires PPP loans to be reported as a liability until there is reasonable assurance that any conditions attached to a loan will be met and the forgiveness will be received.

Related party rentals have emerged as a topic of concern as well. At the end of August, the SBA and Treasury released additional information which disallows businesses that rent their buildings from related parties to deduct their rent payments on the LFA. Instead, business owners may deduct the portion of mortgage interest paid to the related person or entity. Because this guidance was contrary to prior guidance, it caught many businesses by surprise.

The SBA also clarified how much forgiveness a business can seek on behalf of its owners, according to the indicated covered periods:

- 8 weeks – Maximum owner compensation is \$15,385, with a further limited by (8/52) of 2019 compensation (or self-employment earnings).
- 24 weeks – Maximum owner compensation is \$20,833, with a further limited by (2.5/12) of 2019 compensation (or self-employment earnings).

Depending on the entity type, owner-employee and self-employed owner compensation limits and includable costs vary:

- **C Corporation** – The caps for payroll, health insurance and retirement plans contributions are limited to 2019 amounts. For example, if health insurance premiums increased in 2020, only the 2019 amount is included in eligible costs. Health insurance and retirement contribution caps are in addition to the compensation limits.
- **S Corporation** – The caps for payroll and retirement are limited to 2019 amounts. Health insurance is included in wages, so it is not eligible to be added to compensation limits. Retirement contributions are in addition to compensation limits.
- **Schedule C** – Forgiveness is limited to 2019 Schedule C net income times (8/52) or (2.5/12). No additional retirement contribution or health insurance is eligible.
- **Partnership (LLC, LP, etc.)** – Limited to 2019 self-employment income minus Section 179 depreciation, unreimbursed partnership expenses (UPE) and depletion, multiplied by 92.35% (capped at \$100,000 after the math). No additional retirement contribution or health insurance is eligible.

Considerations for Businesses Considering M&A Activity

Merger and acquisition (M&A) activity has resumed and with it brings new concerns about PPP loan forgiveness. Businesses with PPP loans considering M&A must take care not to violate loan covenants which would jeopardize the business's ability to receive full PPP forgiveness at the conclusion of the covered period. To guide business owners in navigating the interaction of a PPP loan with ownership changes, the SBA issued a Procedural Notice on October 2. It states that the PPP borrower, as well as the successor entity in the event of a merger, will remain subject to all obligations of the PPP loan. Additionally, if funds are used inappropriately, the SBA will have recourse against either the original borrower, the acquirer or both, as the circumstances warrant.

As the PPP program continues to unfold, additional guidance is issued regularly. For this reason, many businesses are often waiting to seek loan forgiveness to take advantage of all new guidance and clarity.

CLOSE:

Please contact [NAME] in our [DEPARTMENT] at [NUMBER/EMAIL].

SUGGESTED IMAGERY:



https://stock.adobe.com/images/ppp-word-on-a-white-sheet-against-a-table-with-numbers-banknotes-and-calculator/385960117?prev_url=detail