From the desk of
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Partial PPP Loan Forgiveness if 60% threshold not met

The SBA has announced that borrowers who obtained funds under the Paycheck Protection Program (PPP) can qualify for partial loan forgiveness if less than 60% of the PPP loan is used for payroll.

The lowered 60% criteria from the 75% requirement for the minimum percentage of PPP funds borrowers were required to spend on payroll costs to have the loans forgiven was unclear as to the requirements.

The legislation which allowed for partial forgiveness under the original PPP rules under the new bill passed by Congress had language that was confusing as has been the case with most everything that has been done in regards to the PPP loan program.

The new legislation appeared to state that if a borrower did not spend at least 60% of the PPP funds on payroll costs none of the loan would be forgiven.

The SBA clarified that partial loan forgiveness will also be available under the 60% threshold.

Specifically if a borrower uses less than 60% of the loan amount for payroll costs during the forgiveness covered period the borrower will continue to be eligible for partial loan forgiveness to the extent that payroll costs were incurred.

New Rules, Guidance, and Applications are to be issued

The SBA has announced as of yesterday that it will issue new rules and guidance sometime after August 10 along with a modified borrower application form.

The SBA also has stated that a modified loan forgiveness application implementing the amendments to the PPP made in the new law will be issued.

The SBA itself seems to be in a state of confusion itself in that they stated in the same news release that June 30, 2020 remains the last date on which a PPP loan application can be approved despite the fact that loan applications are still being accepted by the banks through mid-August.

The new rules are as follows:

- Extend the covered period for loan forgiveness from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement, providing substantially greater flexibility for borrowers to qualify for loan forgiveness. Borrowers that have already received PPP loans retain the option to use an eight-week covered period.
- Provide a safe harbor from reductions in loan forgiveness based on reductions in full-time-equivalent (FTE) employees for borrowers that are unable to return to the same level of business activity the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued between March 1, 2020, and December 31, 2020, by the secretary of Health and Human Services, the director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration related to worker or customer safety requirements related to COVID-19.
- Provide a safe harbor from reductions in loan forgiveness based on reductions in FTE employees, to provide protections for borrowers that are both unable to rehire individuals who were employees of the borrower on February 15, 2020, and unable to hire similarly qualified employees for unfilled positions by December 31, 2020.
- Increase to five years the maturity of PPP loans that are approved by the SBA (based on the date the SBA assigns a loan number) on or after June 5, 2020.
- Extend the deferral period for borrower payments of principal, interest, and fees on PPP loans to the date that the SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period).

The PPP in brief

The PPP launched in early April with $349 billion in funding that was exhausted in less than two weeks. Congress provided an additional $310 billion in funding thereafter but demand for the program soon waned due to controversies over publicly traded companies and other large enterprises being awarded loans.

Concerns about the attainability of loan forgiveness under the program's rules also contributed to small businesses and other eligible entities casting a wary eye to the program.

Congress established the PPP to provide relief to small businesses during the coronavirus pandemic as part of the $2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act, P.L. 116-136.

The legislation authorized Treasury to use the SBA's 7(a) small business lending program to fund loans of up to $10 million per borrower that qualifying businesses could spend to cover payroll, mortgage interest, rent, and utilities.

PPP funds are available to small businesses that were in operation on February 15 with 500 or fewer employees, including tax-exempt not-for-profits, veterans' organizations, tribal concerns, self-employed individuals, sole proprietorships, and independent contractors.

Businesses with more than 500 employees also can apply for loans in certain situations.

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