

CARES Act Paycheck Protection Program: SBA Regulations and New Legislation

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June 4, 2020

PPP Loan Forgiveness

The SBA released updated Treasury Regulations on May 22, 2020 which added a few nuances including:

- Details about the safe harbor for loans under \$2,000,000
- Timing details about the loan forgiveness process
- Clarifying Borrower's responsibility for forgiveness calculation

PPP Loan Forgiveness; Loan Review

Clarification about safe harbor for loans under \$2,000,000

- The Application provided a safe harbor presumption that representations that the loan was necessitated by economic uncertainty were made in good faith for loans with principal under \$2,000,000
- Regulations clarified that SBA may review a PPP loan of any size at any time in the SBA's discretion
- For example, the SBA may review a loan if the loan documentation or any other information indicates that the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower. 13 CFR 120.524(c)

PPP Loan Forgiveness; Loan Review

Clarification about safe harbor for loans under \$2,000,000

- This eligibility test refers to the “credit elsewhere” or “liquidity” tests
- Thus, the SBA can review a loan to determine whether the borrower had other funds or access to credit and require the borrower to repay the loan on that basis
- SBA can also withhold fees due to the lender

PPP Loan Forgiveness Timing

- Once the Application is filed, your bank has 60 days to review the application and give you an initial forgiveness amount
- The SBA has 90 days to review and approve the decision
- SBA may request more information from the borrower or lender.

PPP Loan Forgiveness Timing

- SBA can request repayment of loan or pursue other remedies
- Borrowers do have the right to appeal rejections
- Borrowers must retain PPP documentation in its files for six years and permit the SBA and its representative to access them upon request

PPP Loan Forgiveness Calculation

- Borrowers have responsibility for calculating forgiveness and providing necessary documentation.
- Lender must make a good faith review of the application, which would include checking a payroll report from a third-party provider or cancelled checks, lease agreements, and utility bills.

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

- On May 28, 2020 the U.S. of Representatives approved H.R. 7010, the Paycheck Protection Flexibility Act (the “Bill”)
- The Bill had bipartisan support in the House of Representatives
- The Bill needs to be passed by the U.S. Senate and signed by the President to become law

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

The Bill includes a lot of pro-business changes to the PPP loans including:

- Extension of the term of the loan from the current 2 years to 5 years

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- Extension of the term of the loan from the current 2 years to 5 years
- Extension of the “Covered Period”
- Extension of 6-month payment deferral period to either: i) date on which amount of forgiveness is determined; or ii) 10 months after the last day of the covered period if Borrower fails to apply for forgiveness within 10 months

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- The extension of the “Covered Period” from the earlier of i) 8 weeks to 24 weeks; or ii) December 31, 2020
- The borrower also has the election to chose the 8-week period if the borrower received the loan prior to the Bill’s enactment

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- The Safe Harbor period for rehires measurement date is changed from June 30, 2020 to December 31, 2020

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- Adding a new exemption for rehiring during February 15, 2020 and December 31, 2020, indicating that loan forgiveness is not reduced if borrower can document in good-faith: i) inability to rehire individuals who were employed by Borrower on February 15, 2020; and ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- Adding a new exemption if the Borrower can document in good faith an inability to return to the same level of business activity as February 15, 2020, to compliance with requirements of or guidance from the CDC, Health and Human Services, or OSHA during March 1, 2020 – December 31, 2020, related to standards for sanitation, social distancing, or other worker/customer safety requirement related to COVID-19

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- Permitting Borrowers who apply for PPP forgiveness to also delay the payment of payroll taxes
- Section 2302 of the CARES Act allows employers to defer their 6.2% share of Social Security tax incurred between March 27, 2020 and December 31, 2020 and pay half at the end of 2021 and half at the end of 2022

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Proposed terms in the Bill include:

- Reduction of the 75% payroll requirement to 60%
- This increases the amount for other eligible expenses (rent, mortgage interest, utilities, and interest on secured loans) from 25% to 40%
- However, 60% is now a cliff

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

Status of the Bill in the Senate:

- Senate Minority Leader Charles Schumer endorsed the Bill
- Senator Marco Rubio is the Chairman of the Senate Small Business and Entrepreneurship Committee
- Senator Rubio supported a different bill, which extends the rehiring deadline to only 16 weeks and does not ease forgiveness without rehiring employees
- Ultimately, the Senate passed the Bill unanimously, without edits

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

The Bill will become law when it is signed by President Donald Trump

- The Senate was concerned that if the Bill was amended and went to the Conference Committee with the House of Representatives it would cause too much delay.

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

What now?

- The Bill was pushed through the Senate with the expectation that there will be additional legislation
- Republicans have specifically expressed desire that the legislation be edited to prevent loan proceeds from going to businesses that do not need financial help

PPP Loan Forgiveness: Proposed Changes in H.R. 7010

What now?

- The Consumer Bankers Association and the Bank Policy Institute have requested the Congress automatically forgive loans under \$150,000 to be forgiven in order to remove the burdens the PPP loans place on Borrowers.
- This would benefit 86% of PPP Borrowers, but impact less than 26% of loan funds
- Reduction of tens of millions of paperwork hours and save \$7 billion
- Other advocates have requested that the entire program is transformed into a grant program.

PPP Loan Forgiveness: Current Program Statistics

Program Status as of May 30, 2020

- Total loan value of PPP loans issued thus far is \$510.2 billion (reduced from the amount first reported)
- Round 2 was funded with \$310 billion in funds
- One month into Round 2, there is still about \$120 billion in funds available
- Average Loan size is \$114,000 (a significant decrease from Round 1)
- In total, 4.4 million loans have been made

Questions?

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