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Nellie Akalp • Nov. 28, 2020

**PAYCHECK
PROTECTION
PROGRAM**



Although the CARES Act Payroll Protection Program's (PPP) loan application period closed last August, you most likely have clients who received funding and now need to plan for loan forgiveness. The rules changed since the program began. On June 5, 2020, the Flexibility Act was signed into law amending the CARES Act, changing PPP loan terms and loan forgiveness. Here's what you need to know.

Good Intentions

Because the PPP loan was designed to provide incentives for small businesses to keep their workers on the payroll when the pandemic first erupted, the entire loan is forgivable if the retention criteria are met, and the funds are used for eligible expenses. If the whole loan is not used during the maturity period, the borrower

must repay the unused portion at an interest rate of 1%. If the borrower uses the loan

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Initially, the PPP required borrowers to use the allocated funds within eight weeks of disbursement. Clearly, most people underestimated how long the pandemic would last and how devastating it would be for many small businesses. For loans issued before June 5, the Flexibility Act expanded loan forgiveness for up to two years. For loans issued after June 5, loan forgiveness lasts up to five years after borrowers receive the funds.

In addition, the original PPP stipulated 75% of the loan had to be used strictly for payroll costs, such as salary, wages, commissions, tips, employee benefits such as health care, retirement, vacation pay, and family leave. Costs are capped at \$100K per employee. The Flexibility Act changed the amount to 60%, which helps businesses still struggling under pandemic conditions.

Finally, the PPP Flexibility Act extended the deferral period for the borrower's payments of principal, interest, and fees on all PPP loans to the date the SBA remits the borrower's loan forgiveness amount to the lender. If the borrower doesn't apply for loan forgiveness, the deadline is 10 months after the end of the borrower's loan forgiveness-covered period. Before the amendments, the deferral period could end after six months.

There's no need to have the lender modify the promissory note as the extension period is automatically applied to all PPP loans. However, the lender will notify your client of the change.

The Forgiveness Application

In early October, the SBA released a revised, simpler PPP Loan Forgiveness Application, which is available from your clients' lenders. The forms your client should receive are either SBA Form 3508, SBA Form 3508EZ, SBA Form 3508S, or the lender's equivalent form. The instructions include some notable items, such as:

- Health insurance costs for S Corp owners should not be included when calculating

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Your clients have three reference periods available to calculate the number of full-time employees to the number employed after receiving the PPP.

- February 15, 2019, to June 30, 2019
- January 1, 2020, to February 29, 2020
- Twelve consecutive weeks between May 1, 2019, and September 15, 2019 (this accounts for seasonal employers)

If your client reduced the number of employees since their PPP disbursement, the SBA offers two safe harbors to avoid having their loan forgiveness amount reduced.

1. Businesses required to partially or fully shut down
2. Businesses trying to restore the number of full-time employees but finding it difficult can find safe harbor if the employee numbers were reduced between February 15, 2020, and April 26, 2020. In addition, businesses may find safe harbor if they can get their employee numbers back up by December 31, 2020.

The forgiveness application has a PPP Schedule A Worksheet to help your client determine if they qualify for safe harbor.

Finally, if your client tried, in good faith, to rehire the correct number of employees to meet the forgiveness requirements, but was unable to do so due to factors like not being able to find qualified workers or their laid-off employees refused to be rehired, your client may still qualify for forgiveness. Make sure your clients keep all documentation supporting their efforts, such as job offers, refusal letters, resignations, or firing an employee for cause.

Another stipulation to receive PPP forgiveness is to ensure employees' salaries weren't lowered by more than 25% of what they were paid as of February 15, 2020. However, if your client can raise the impacted employees' average annual wages by

December 31, 2020, or by the loan forgiveness application date (whichever is earlier)

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