

PPP Loan Forgiveness – An Up-to-Date Perspective

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Now that both the Paycheck Protection Program second draw loan application process and the Restaurant Revitalization Fund are officially closed, lenders and the SBA are focused almost entirely on loan forgiveness. The deadline for submitting loan forgiveness applications for the earliest loans is fast approaching, so if you haven't applied for forgiveness yet, it's time!

So where are we with PPP loan forgiveness?

- Between PPP1 and PPP2, there were approximately 11.8 million loans totaling nearly \$800 billion granted to 8.5 million borrowers by nearly 5,500 lenders.
- 3.3 million loans totaling \$279 billion have been forgiven; \$1 billion of loans have been denied forgiveness in whole or in part. This computes to a forgiveness rate of over 99.6 percent.
- Approximately 8.3 million loan forgiveness applications totaling \$438.5 billion have not yet been received by the SBA.

Note: This data is based on information published as of May 24, 2021 and included in an SBA press release dated June 1, 2021.

When is the PPP loan forgiveness application due?

In order to receive forgiveness, a borrower's PPP loan application must be submitted any time before the maturity date of the loan. However, if a borrower does not apply for loan forgiveness within 10 months after the last day of the maximum 24-week covered period (approximately 468 days from the loan disbursement date, or mid-to-late July for the earliest borrowers), the borrower will need to begin repaying the loan. Once forgiven, any payments made on the loan (including interest) will be refunded.

When is a loan forgiveness application considered to be "submitted"?

The SBA has not clarified this. It could be when the borrower submits their application to the lender or when the lender has made a decision and forwarded the application to the SBA. Assuming it is when the application is submitted to the lender, it is almost certain that the application and supporting documentation must be complete before it will be considered submitted. Different lenders have different views on what constitutes a complete application. What is acceptable to one lender is not necessarily acceptable to another. We have even seen the same lender ask for different documentation from different borrowers, likely depending on who reviews the application or which office or department is reviewing it. So don't wait until the last minute to submit your application. Leave some time for questions.

How long does it take to receive a decision on forgiveness?

The lender has 60 days from the time they receive a complete forgiveness request to make a decision and pass it along to the SBA. The SBA, in theory, then has 90 days to make their decision. Early on, the forgiveness process – even for smaller loans – was taking a long time; three months, often more. Lenders seemed not to have worked out all the kinks in their systems and processes, and the SBA was focused on processing loan applications, not forgiveness applications.

Forgiveness requests for loans under \$2 million are moving much quicker now; generally, just a few weeks to a couple of months. However, for loans over \$2 million, the process is taking quite a bit longer. Until a few weeks ago, very few loans over \$2 million had been approved for forgiveness by the SBA despite the fact that the forgiveness applications had been with the SBA for far longer than the 90-day review period specified by the CARES Act. Over the last few weeks, however, we have seen several loans over \$2

million now forgiven. The forgiveness process for loans over \$2 million will likely continue to be longer than for the smaller loans, but we are hopeful that most will be processed within the prescribed 150-day window.

What expenses must borrowers include on their forgiveness applications?

As a result of the covered period being extended from 8 weeks to 24 weeks, most borrowers have enough wages (*cash compensation*) over 24 weeks to support full forgiveness, even without including other payroll costs such as employer health insurance or retirement costs. Submitting a forgiveness application with just cash compensation is the simplest approach and the approach used by the large majority of borrowers. Cash compensation is readily available, relatively easy to verify, and avoids the hassle of having to submit loads of additional documentation.

Not all borrowers are able to support full forgiveness using wages alone. These borrowers must include additional expenses in order to maximize forgiveness, typically starting with health insurance and retirement costs and then moving on to other large, relatively easy to document expenses such as lease payments and mortgage interest. Some borrowers are forced to include other eligible expenses, but these can be difficult and tedious to document.

What documentation is required to be submitted with your forgiveness application?

Documentation to be submitted depends on the forgiveness application form being submitted and the lender processing the request. Form 3508S, for loans of \$150,000 or less, does not require any documentation to be submitted with the forgiveness request – although you may be required to support your forgiveness application at some point in the future. Form 3508EZ, for use by borrowers that qualify for certain safe harbors, does not require documentation to support the number of full-time equivalent employees (FTEEs), but does require the following:

- Bank account statements or third-party payroll service reports documenting compensation paid;
- Federal and state payroll tax forms overlapping the covered period;
- Payment receipts, cancelled checks or account statements documenting health insurance, retirement contributions and eligible non-payroll expenses; and
- For non-payroll expenses, copies of invoices or agreements evidencing that the loan, lease or service was in place before February 15, 2020.

The regular Form 3508 requires all of the above, plus a schedule reflecting the number of full-time equivalent employees during the borrower's covered period and reference period. In addition, borrowers with loans over \$2 million (including affiliates) will be required to complete a *Loan Necessity Questionnaire* (Form 3509 or 3510). This questionnaire is not submitted with the forgiveness application; the SBA will ask for it once they receive the approved forgiveness application from the lender. Once requested, borrowers have just 10 days to complete the questionnaire, so we recommend that borrowers prepare a draft and compile the required documentation at or before the time they submit their forgiveness application to the lender.

In practice, as noted above, we have found that different lenders have different requirements. Many lenders are asking for FTEE information from Form 3508EZ filers in order to prove they are eligible to file the form (which completely defeats the purpose of Form 3508EZ). Some lenders insist on having payroll provider prepared PPP reports, even though not all payroll providers have useful reports. Additionally, the large majority of reports we see contain errors, often significant errors, especially with regard to owners' compensation and FTEEs. Even the reports themselves contain disclaimers that say they shouldn't be relied upon. We suggest that payroll provider reports be carefully reviewed and reconciled, and any identified errors be corrected, before submitting them to your lender.

Should borrowers use the full 24-week covered period?

It depends. We generally suggest that borrowers extend their covered period in order to maximize forgiveness using wages alone before they start adding non-wage and non-payroll expenses because it greatly simplifies the documentation process and reduces the likelihood of questions. This approach may not mean using the entire 24-weeks, but it might mean extending from, perhaps, 12 weeks to 16 or 20. We also advise clients to leave themselves a buffer; extend the number of weeks in your covered period (all

the way up to 24 weeks) rather than cutting off with just enough expenses to cover the loan amount. There is no harm in reporting more expenses than you need, but cutting it too close could leave a borrower short of full forgiveness if any expenses are questioned or disallowed.

There are many reasons we've seen for cutting off the covered period before 24 weeks. Perhaps the most common reason is to avoid running over into the next payroll quarter and having to submit another quarter's worth of payroll returns. Other reasons include wanting to reserve more payroll for the employee retention credit or, particularly for borrowers with loans over \$2 million, reducing the period of time that will be subject to scrutiny through the *Loan Necessity Questionnaire*.

What if I need to amend my forgiveness application after I submit it?

The simple answer is, *you can't*. The SBA has not provided any process for amending submitted forgiveness applications. That's why you really want to get it right up front. If the SBA denies forgiveness, in whole or in part, you will have an opportunity to appeal their decision. This will require that you hire an attorney, but it is unclear whether you will be able to amend your application at that time or simply to appeal their decision based solely on the information already submitted.

Is there anything else borrowers should consider when preparing and submitting their forgiveness applications?

We have worked with a number of borrowers that have unique, one-off issues that need to be considered in developing a forgiveness strategy. However, there are two common issues that often require special planning: the Employee Retention Credit (ERC) and cost reimbursement grants. Borrowers cannot use the same payroll dollars for the ERC or cost reimbursement grants that they are using for PPP loan forgiveness (*no double-dipping*). Borrowers that may be eligible for the ERC or that have cost reimbursement grants should carefully plan their forgiveness strategy in order to maximize their overall benefits.

Contact Us

We have assisted hundreds of borrowers in planning their forgiveness strategies and preparing their forgiveness applications. If you have questions or require assistance, please reach out to your PKF O'Connor Davies client service team or email LoanForgiveness@pkfod.com.

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