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PPP RECIPIENTS CAN APPLY EARLY FOR LOAN FORGIVENESS, SBA SAYS

From the *Journal of Accountancy* by Jeff Drew

New Paycheck Protection Program (PPP) guidance released Monday night, June 22, 2020 declares that PPP recipients can apply for loan forgiveness early but that doing so could cost them money.

In a 34-page interim final rule (IFR) issued in consultation with Treasury, the U.S. Small Business Administration (SBA) addresses a number of issues related to the PPP, which was created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, to provide forgivable loans to small businesses, not-for-profits, and certain other entities hurt by the economic impacts of the COVID-19 pandemic and associated government-imposed quarantines.

Specifically, the new interim final rule makes revisions to previous guidance to reflect the Paycheck Protection Program Flexibility Act of 2020, which became law on June 5 and made significant changes to the PPP, most notably:

- Expanding to 24 weeks, from eight weeks, the covered period during which PPP loan recipients can spend the funds and still qualify for loan forgiveness. The 24-week period applies to all loans made on or after June 5. Borrowers that received loans before June 5 can choose to elect an eight-week period.
- Lowering to 60% from 75% the proportion of PPP funding that must be used on payroll costs to qualify for full forgiveness.
- Expanding the term for new loans to five years from two years. Borrowers with loans received before June 5 can extend their loan term to five years if their lender agrees.

Most of the changes implemented by the new interim final rule were covered in previous guidance and in the PPP loan forgiveness applications released last week. Chief among the new material is the explanation of the process for applying early for loan forgiveness.

Early loan forgiveness applications

Many small businesses have inquired about whether they can apply for PPP loan forgiveness before their covered period expires. The new interim final rule says that if a borrower applies for loan forgiveness before the end of the covered period and has reduced any employees' salaries or wages by more than the 25% allowed for full forgiveness, the borrower must account for the excess salary reduction for the full eight-week or 24-week covered period, whichever one applies to its loan.

Under that guidance, PPP borrowers that apply early for loan forgiveness forfeit a safe-harbor provision allowing them to restore salaries or wages by Dec. 31 and avoid reductions in the loan forgiveness they receive. For example, if a borrower has a 24-week period that ends in November but wants to apply in September, any wage reduction in excess of 25% as of September would be calculated for the entire 24-week period even if the borrower restores salaries by Dec. 31.

An example provided in the interim final rule shows how the calculations would work:

Example: A borrower is using a 24-week covered period. This borrower reduced a full-time employee's weekly salary from $1,000 per week during the reference period to $700 per week during the covered period. The employee continued to work on a full-time basis during the covered period, with an FTE of 1.0. In this case, the first $250 (25% of $1,000) is exempted from the loan forgiveness reduction. The borrower seeking forgiveness would list $1,200 as the salary/hourly wage reduction for that employee (the extra $50 weekly reduction multiplied by 24 weeks). If the borrower applies for forgiveness before the end of the covered period, it must account for the salary reduction for the full 24-week covered period (totaling $1,200).

Other interim final rule provisions

The interim final rule clarifies that it is the borrower's responsibility to provide an accurate calculation of the loan forgiveness amount. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents, but lenders do not have to independently verify the borrower's reported information provided that the borrower:

- Supplies documentation supporting its request, and
- Attests that it has accurately verified the payments for eligible costs.

The IFR reinforces previous guidance that the SBA will deduct Economic Injury Disaster Loan (EIDL) Advance Amounts from PPP forgiveness amounts. It also reiterates previous guidance, including:

- Employer health insurance contributions for S corporation owners cannot be included when calculating payroll costs; however, employer retirement contributions for S corporation owners are eligible costs.
- For owner-employees and self-employed individuals, including those who file Schedule C, Profit or Loss From Business, or Schedule F, Profit or Loss From Farming, forgiveness for owner compensation is calculated for the eight-week period as 8 ÷ 52 × 2019 compensation, up to a maximum of $15,385, in total for all businesses. For the 24-week period, the forgiveness calculation is limited to 2.5 months' worth (2.5 ÷ 12) of 2019 compensation, up to $20,833, also in total for all businesses.

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The PPP in brief

Congress created the PPP as part of the $2 trillion CARES Act. The legislation authorized Treasury to use the SBA's 7(a) small business lending program to fund forgivable loans of up to $10 million per borrower that qualifying businesses could spend to cover payroll, mortgage interest, rent, and utilities.

The loans are available to small businesses that were in operation on Feb. 15 with 500 or fewer employees, including not-for-profits, veterans' organizations, Tribal concerns, self-employed individuals, sole proprietorships, and independent contractors. Businesses with more than 500 employees in certain industries also can apply for loans.

Congress designed the loans to support organizations facing economic hardships created by the coronavirus pandemic and assist them in continuing to pay employee salaries. PPP loan recipients can have their loans forgiven in full if the funds were used for eligible expenses and other criteria are met.

Business swamped the PPP with loan requests when it launched in early April, claiming the initial $349 billion allocated to the program in less than two weeks. Congress allocated an additional $310 billion to the program, but applications for loans dropped dramatically amid concerns about the program's original loan forgiveness terms and backlash against well-capitalized businesses, including several that are publicly traded, that received PPP funds. Several of those businesses returned the funding after public and political outcry.

As of Monday, June 22, the SBA has approved nearly 4.7 million loans for a total of $515 billion. That leaves more than $130 billion available a week before the June 30 final deadline for getting a PPP loan.

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