

Are You Expecting PPP Loan Forgiveness? Don't Forget This Step

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One More Step Needed If You Want Forgiveness

Did you know that if you applied for and received a Payroll Protection Program (PPP) loan, there is another application you'll have to submit to meet requirements for having the loan forgiven? Certification requirements are more stringent than those you needed to qualify for the loan, and if you just observe how the landscape is evolving, more uncertainty is on its way.

On May 16, 2020 the SBA posted the [PPP Loan Forgiveness Application](#) form for borrowers to certify that funds were used for eligible payroll and nonpayroll costs.

PPP Legal Expertise

As lawyers Susan R. Huntington, Richard D. Harris, and Michael J. Dunne of Day Pitney, put it in "[You Have The Covid-19 PPP Loan-Know The Rules to Maximize Forgiveness](#)," there is a reason: "The guidance in the interim final rules issued by the Office of the Comptroller of the Currency, the Federal Reserve Board, and the Federal Deposit Insurance Corporation and [guidance issued by the Small Business Administration](#) appear to impose restrictions on the administration of the PPP that otherwise do not appear in the express language of the Act."

That creates a difficult, fluid and uncertain environment for businesses that are seeking certainty.

What Expenses Qualify For Forgiveness

While the loans may be used for payroll costs, mortgage interest, rent and utility costs, not all of these expenses qualify for forgiveness.

"Contrary to the position certain nationally recognized business associations have taken, the categories of allowable uses for a PPP loan listed in Section 7(a)(36)(F)(i) of the Small Business Act are clearly broader than the uses that are forgivable under Section 1106(b) of the Act," explain the Day Pitney lawyers. "Borrowers need to pay close attention to those differences."

Not only that, expect some differences between lenders, who are in charge of verifying documentation that borrowers will need to submit on how proceeds are used.

Another Application

What borrowers will need to be aware of is that there is another application that they will need to submit to the lender – an application to support their request for forgiveness.

Experts

While I don't have a list of firms that have done this, I can point to one that is thinking ahead. Day Pitney has come up with a loan forgiveness calculator to use "to model different scenarios in search of the most optimal level of loan forgiveness, weighing many different factors."

That calculator is available only to the firm's clients, but the idea is one that is worth thinking about; read more at [COVID-19 Resource Center](#).

Also check out Marcum LLP's Coronavirus Task Force for expertise on PPP loans. Consider signing up for a [webinar](#) on the topic of forgiveness scheduled for May 26.

What To Expect From Lenders

Take a look at how lenders are informing PPP recipients. For example, [here is a link](#) to Wells Fargo WFC's instructions, underscoring that recipients MAY be eligible for forgiveness and emphasizing that those interested in forgiveness need to come back to the posting to check on updates to requirements.

Wells Fargo Highlights

PPP recipients need to know that the PPP deposit they received is a loan; payments are deferred for 6 months; interest will accrue on the loan at a rate of 1% during the deferment period; after the six-months, the loan turns into an 18-month term loan that needs to be repaid monthly; the amount of the loan is the balance that is not forgiven (plus accrued interest); the interest rate is 1%.

If the PPP recipient wants to apply for forgiveness, the money needs to be used for "eligible expenses." Notably – this is important – there is a time limit – the money must be used for eligible expenses during the eight-week period after the funds are received. Only after that 8 week period, can the recipient apply for forgiveness.

Well Fargo will make the loan forgiveness application available online through Wells Fargo Business Online® or Commercial Electronic Office® (CEO®). Wells Fargo also emphasizes that it's important to check the [SBA site](#) to keep on top of the forgiveness requirements as they become available.

Don't Be Complacent

What we know for certain is that PPP borrowers cannot be complacent. They will need to check in with the SBA and their lender on an ongoing basis to see what expenses might qualify for forgiveness.

"Things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events," according to Day Pitney.

[That's a warning](#) if I ever saw one.