ALBANY LAW SCHOOL
GOVERNMENT LAW CENTER

EXPLAINER

Paycheck Protection Program Flexibility Act of 2020

By Cheyenne Lufkin*

The Government Law Center's explainers concisely map out the law that applies to important questions of public policy.

The application deadline for the Paycheck Protection Program was extended on July 5, 2020. Applicants now have until August 8, 2020, to apply for federal relief funds under the program.

Introduction

The Small Business Act and the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, were recently passed to help small businesses in the wake of the COVID-19 pandemic, which has shut many businesses down. The Cares Act created a small business loan program called the Paycheck Protection Program (PPP) that originally gave loans to small businesses to cover the cost of payroll for eight weeks to prevent full-time equivalent (FTE) employees from going on unemployment. A small portion of that loan was also able to be used to cover mortgage, rent, or utilities. Businesses who received that loan had only eight weeks to use the funds and a short period of time to apply for forgiveness. Any portion of the loan that was not eligible for forgiveness had to be repaid in two years. Due to the strict regulations and the cloud of uncertainty surrounding this loan, many struggling businesses were afraid to use the funds and ended up returning their loans.

The Paycheck Protection Program Flexibility Act, which became law on June 5, 2020, was passed to make it easier for businesses to take advantage of the $659 billion in federal loans. By creating more flexibility in the program, more businesses should be able to receive loans from the program, and be granted forgiveness easily. The PPP amendment aims to greatly reduce the complexity of forgiveness and ensure many more borrowers have all (or substantially all) of their loans forgiven.

The first change is the extension of the minimum maturity date. Instead of paying the unforgiven funds back in two years, borrowers have five years to pay back the portion of the loans not forgiven. The extension of time will allow businesses more time to recover financially from the shutdown, thereby ensuring that more business owners are not afraid of using the money.

Next, businesses which received their loans before June 5, 2020, have the option to use either an eight-week or a 24-week expenditure period. Businesses which received their loans after June 5th, however, are required to use a 24-week expenditure period. This is the period during which borrowers can use the funds and remain eligible for forgiveness. A longer expenditure period gives businesses more time to meet the requirements for forgiveness. A 24-week period also allows businesses to have more time to expend the funds from their loan.

Another relief to businesses trying to meet the requirements for forgiveness is the addition of two new modifications to the proportional reduction requirement. The proportional reduction requirement mandates that businesses keep all of their FTE employees on payroll in order to be eligible for full loan forgiveness. So, if a business had to lay off employees, it would only get a reduction in forgiveness that was proportional to the number of employees it kept on. However, the amendment gives businesses more flexibility in two ways. One is that they can show documentation of an inability to rehire individuals who had been employees of the borrower on February 15, 2020, or document an inability to hire similarly qualified employees by December 31, 2020. The other allows a business to document that it is unable to return to the same level of business that it had conducted prior to the shutdown. This inability could be due to COVID-19-related precautions outlined by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration. Providing these loopholes allows borrowers to spend the loan knowing that even if they are unable to keep 100% of FTE employees on payroll, they can still be eligible for forgiveness if their business capacity is being hindered by new regulations on operations.

The last change in PPP loans is the 60/40 rule. Previously, 75% of the loan had to be used for payroll purposes, and only 25% could be used for mortgage, rent, utilities, etc. Congress changed that proportion so that 60% of funds must be used for payroll, and 40% can be used for mortgage, rent, utilities, etc. Furthermore, the Treasury Department announced on June 12, 2020, that this is not meant to be a "cliff." What this means is that even if a borrower does not comply with the 60/40 rule and cannot spend 60% of the funds on payroll, it can still be eligible for forgiveness. The amount will be based on the amount spent on payroll costs, plus up to 66% of the amount spent on the other eligible expense.

Resources

The revised loan forgiveness application for the Paycheck Protection Program (PPP) and a new EZ application for forgiveness of PPP loans are available at: Revised PPP Loan Forgiveness Application and instructions and EZ PPP Loan Forgiveness Application and instructions.

NY Empire State Development's Division for Small Business resources: https://esd.ny.gov/doing-business-ny/small-business-hub.

US Small Business Administration resources for small business: https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources.

Endnotes

* Cheyenne Lufkin is a 2020 Siena College Summer Legal Fellow at the Government Law Center at Albany Law School.