

COVID-19 LEGAL ALERT

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SBA Publishes New Guidance on PPP Loan Forgiveness and Appeal Rights

By [Ivan H. Golden](#)

The U.S. Small Business Administration (“SBA”) last week began accepting Paycheck Protection Program (“PPP”) loan forgiveness applications and published new guidance on the loan forgiveness process and a new appeals process. But many borrowers are in no hurry to submit their loan forgiveness applications amid continuing confusion about the forgiveness process.

The PPP was designed to offer low-interest forgivable loans of up to \$10 million to small- and medium-sized businesses that maintained their payrolls during the coronavirus pandemic. Businesses that use at least 60 percent of their PPP loan proceeds for payroll and no more than 40 percent for rent, mortgage interest, and utilities during a 24-week period are eligible to have up to the entire amount of the PPP loan forgiven – making it, in effect, similar to a grant from the federal government.

The PPP has been plagued by conflicting guidance from Congress and the SBA, however, and the program quietly ended on August 8, 2020, with more than \$134 billion of loan funds remaining unused. Indeed, almost every detail of the program – from the amount that must be spent on payroll, to the period in which loan proceeds must be used, to what counts as a forgivable expense, to which businesses are eligible for loans in the first place – has changed since the PPP was enacted on March 27, 2020, leaving many borrowers confused about how, when, and even whether they can use the money.

The SBA attempted to clarify some of those questions on August 11, 2020, publishing a set of frequently-asked-questions that address, among other things, how and when borrowers can apply for forgiveness, which expenses are eligible for forgiveness, and how to calculate their payroll and nonpayroll expenses for loan forgiveness purposes.

At the same time, the SBA published an interim final rule establishing rules of practice for appealing SBA loan review decisions. The interim final rules generally provide that once the SBA has issued a final decision that a borrower was ineligible for a PPP loan or denying, either entirely or partially, a borrower’s forgiveness application, the borrower will have 30 days within which to request an appeal before an administrative law judge in the SBA’s Office of Hearings and Appeals.

While the frequently asked questions and interim final rule, together with earlier guidance, answer some questions about the loan forgiveness process, other questions remain unanswered, such as how to complete an application when a borrower has used all of its loan funds before the end of its 24-week covered period, whether particular expenses qualify as forgivable payroll or nonpayroll expenses, and what criteria the SBA will use to determine whether a borrower was eligible for a loan in the first place.

A further source of uncertainty for borrowers is that Congress and the SBA may still make further changes to the program. Proposed legislation in the U.S. Senate, for example, would simplify the loan forgiveness process for many borrowers and allow businesses to apply for additional PPP loans. Another bill introduced in the Senate would allow borrowers to deduct PPP loan funds used for

payroll and other expenses (the bill would legislatively overturn an IRS ruling that payroll costs cannot be deducted to the extent they are paid with PPP funds that are later forgiven). Neither bill appears likely to pass anytime soon amid a stalemate in Congress.

With so much uncertainty, it is not surprising many borrowers are waiting to file their loan forgiveness applications, or that many SBA-approved lenders are not yet accepting forgiveness applications.

Nevertheless, there are steps borrowers can take now to ensure their loan forgiveness applications have the greatest chance of being approved. Hahn Loeser regularly counsels clients on how to prepare their loan forgiveness applications to ensure that they benefit from loan forgiveness to the greatest extent allowable. For more information, please reach out to your primary Hahn Loeser attorney or to one of the attorneys listed below.

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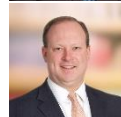
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