

Event Follow-Up Questions

Roundtable Conversation with Administrator Jovita Carranza
U. S. Small Business Administration
Friday, June 19, 2020 2:30 p.m.
Orrstown Bank, Harrisburg Regional Office Board Room

Time Period:

- Can the PPP recipient use any time period between 8 and 24 weeks instead of only using 8 or 24 weeks? This would spread out requests for borrowers, financial institutions and the SBA to process forgiveness requests.

Response: Yes. this was addressed in the [IFR that contains revisions to the Forgiveness and Loan Review IFRs that was released on June 22.](#)

- According to the revised rules and guidelines, it mentions that a borrower has up to December 31, 2020, to apply for loan forgiveness, then will have an additional 10 months before they are required to make a payment. This is causing issues with uploading loans to our system as the system requires actual dates to be identified. According to the guidance, we would not be able to identify first payment dates, etc. and, as a result, we have no set language to place in the promissory note. How should this be handled?

Response: Lenders should also rely on their own internal counsel to provide legal language for use as necessary. Lenders may include in their promissory notes for PPP loans any terms and conditions, including relating to amortization and disclosure, that are not inconsistent with Sections 1102 and 1106 of the CARES Act, the PPP Interim Final Rules and guidance, and SBA Form 2484 (FAQ 21).

- With regard to the safe harbor provisions that have now been extended to 12/31/20, are there any requirements related to how long those restorations in FTE's need to be maintained beyond 12/31/2020 in order to meet the FTE reduction safe harbor, and second, we would assume that if a borrower wants/needs to use the FTE reduction safe harbor that they would be unable to apply for forgiveness until AFTER 12/31/20, correct?

Response: Generally, borrowers are eligible to apply for forgiveness when they have expended all loans proceeds on payroll and other prescribed costs in accordance with program requirements. Safe harbor for reductions in a borrower's loan forgiveness amount based on reductions in full-time equivalent employees applies to borrowers that have eliminated the FTE reduction on or before December 31, 2020. Additional guidance on circumstances that may affect timing of forgiveness request is forthcoming.

Loan Modifications/Changes to Notes:

- Due to the expanded time frame in the PPP Flexibility Act, which could impact the original loan term and extend beyond the original six-month time period, will loan modifications be required for all loans? Will the SBA put out guidance to ease this process?

Response: The PPP loan maturity was changed from 2 years to 5 years for loans approved by SBA on or after 6/5 AND when mutually agreed to by lender and borrower for loans approved prior to that date. Generally, none of the updates in PPP Flex necessitate the extension of the original 2 year period. If the note term is modified by mutual agreement, the customary process is to do a modification/allonge to the Note. Bank/lender legal counsel can provide guidance specific to the institutions.

- Do PPP loans made prior to enactment and extended by mutual agreement with amended rates and terms still carry an SBA guarantee? If so, does the guarantee apply to principal or principal and interest?

Response: All PPP loans come with a 100% guarantee that covers the lender in the event of a default or loan purchase. Additional guidance on guaranty purchase of PPP loans is forthcoming.

Di minimis Exception:

- There have been many calls from those in Congress, accountants, the banking industry, and borrowers, to give blanket forgiveness to PPP loans under a certain threshold -- \$150,000 for example. Is there any movement on this? Do you foresee this happening?

Response: The CARES Act mandates documentation for any loan forgiveness amount. SBA will follow the laws that are enacted should there be a change to the statute.

Loan Forgiveness Process:

- Can you describe the loan forgiveness process? For example, will the ETran system be utilized for lenders to communicate forgiveness to the SBA? If not, what method will be utilized?

Response: SBA will be providing further guidance on the forgiveness process, including procedural notices that will explain how the lender will operationally submit requests for loan forgiveness.

- How can we, as lenders, make the forgiveness process easier for our clients? Are there any best practices recommended by the SBA?

Response: SBA is working to ease operational burdens for borrower and lenders in the forgiveness process. SBA will be providing further guidance on the forgiveness process, including procedural notices that will explain how the lender will operationally submit requests for loan forgiveness.

- How will lenders receive notification of approval for full forgiveness, partial forgiveness, or denial?

Response: SBA will be providing further guidance on the forgiveness process, including procedural notices that will explain how the lender will operationally submit requests for loan forgiveness.

- If a PPP forgiveness application has already been submitted, does an updated application need to be re-completed?

Response: No.

- There are specific line items from the forgiveness application that the lender must verify by matching the input with supporting documentation. This will be extremely time consuming as we may be reconciling months of mortgage statements, utility bills, and payroll. Is there a simpler way to do this? Could this step be eliminated for a loan amount of a certain threshold or all EZ application loans? If not, aside from these specific items, what does the SBA expect from lenders in terms of forgiveness review? For instance, FTE calculations are not mentioned as something the lender needs to verify.

Response: In addition to the revisions to the Forgiveness and Loan Review IFR, SBA will be providing further guidance on the forgiveness process, including procedural notices that will explain how the lender will operationally submit requests for loan forgiveness.

- Should the borrower's loan forgiveness amount be reduced or it is determined that the borrower is ineligible for the PPP loan, is the bank required to issue a declination notice to the borrower? If so, what format is considered appropriate?

Response: It is the lender's responsibility per IFR guidance on forgiveness posted 6/22/2020.

We know that PPP lenders perform a good faith of the of the borrower's calculations and supporting documents, and that PPP lenders can rely on borrower's certifications. Would the SBA be willing to provide a specific outline of lender responsibilities?

Response: In addition to the revisions to the Forgiveness and Loan Review IFR that was released on June 22, SBA will be providing further guidance on the forgiveness process, including procedural notices that will explain how the lender will operationally submit requests for loan forgiveness.

- In that same vein, would the SBA be willing to create a clear template/form that the PPP lender can complete to confirm they have completed their due diligence based on what SBA expects? If the SBA determines the borrower was not eligible for the PPP loan, the PPP lender will have to return the loan processing fee. A clearly outlined template/form that confirms due diligence steps to protect the PPP lender from borrower fraud/misrepresentation/error would be helpful. A template/form of this nature will also ensure the PPP lender will not be required to spend an inordinate amount of time to perform a vaguely defined due diligence review.

Response: SBA is working to ease operational burdens for borrower and lenders in the forgiveness process and will consider additional ways to do so based on lender input. SBA will be providing further guidance on the forgiveness process, including procedural notices that will explain how the lender will operationally submit requests for loan forgiveness.

Qualified Expenses for Loan Forgiveness:

Transportation and utilities have been referenced as an expense eligible for loan forgiveness. Can you clarify what that includes?

Response: Eligible business utility expenses include payments paid or incurred during the Covered Period, for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

- Interest on loans for personal property is included as a forgivable expense. What debt is included, and what debt is excluded? For instance, would vehicle or equipment debt be allowable?

Response: Business rent or lease payments that were paid or incurred for real or personal property during the Covered Period, pursuant to lease agreements in force before February 15, 2020, are eligible for forgiveness.

- For a lot of small business clients, the allowable non-payroll related eligible expenses are in their personal names versus the business name (i.e. cell phone plans, etc.). Will these still be eligible for consideration in determining their loan forgiveness?

Response: Generally, the borrower is only eligible for forgiveness on business property rent, interest and utilities. Additional guidance on guaranty purchase of PPP loans is forthcoming.

- What are the bank's obligations if/when it discovers that a PPP borrower has not used PPP loan proceeds for authorized purposes? Does it make a difference whether those unauthorized expenditures were knowingly made by the PPP borrower or inadvertently due to confusion over authorized uses?

Response: The purpose of the Paycheck Protection Program is to help small businesses pay their employees for a set period with the majority of PPP funds. Certain other non-payroll expenses are clearly provided in publicly available guidance. Borrowers sign many certifications during the application, under penalty of potential criminal or civil law, and are expected to adhere the intent of the program. Forgiveness of any loan, will be based in part on the amount used for allowable payroll expenses.

- Do business rent payments eligible for forgiveness include only base rent or does it also include reimbursement to the landlord for taxes, insurance, etc. under a net lease arrangement where the written lease requires those landlord reimbursements?

Response: Generally, this includes monthly rent expenses for the covered period. If those costs are included in the monthly rent payments and due and payable during the covered period, then they would be eligible for the forgiveness request.

Terms and Non-Forgivable Loans:

- Is the SBA encouraging us to amend any non-forgiven loan to 5 years?

Response: Since both lender and borrower must agree to modify terms, SBA does not consider it necessary, but permits lenders and borrowers to manage to their specific circumstances.

- If the lender and borrower mutually agree to extend the term to 5 years, would this impact the SBA guarantee?

Response: PPP loans with a 100% guarantee.

- Will loans that are not forgiven fully for whatever reason be serviced in accordance with standard 7a procedures?

Response: Yes. Additional guidance on lender servicing of PPP loans is forthcoming.

- We have a PPP borrower who may be selling their business during the period when their PPP loan is outstanding. In such a scenario, is a PPP loan assumable by the buyer, and/or how should an existing PPP loan be treated when the underlying business is sold before forgiveness is granted?

Response: Yes. A PPP borrower may sell their business during the period when the PPP loan is outstanding and before forgiveness has been granted. In such a scenario, the seller and buyer must work with the lender (or the Lender that is servicing the PPP loan) to have the buyer assume the PPP loan and continue to use any remaining PPP loan proceeds for payroll costs and other eligible payments of mortgage interest, rent and/or utilities in accordance with PPP requirements. If the buyer applies for loan forgiveness, the buyer will be subject to all applicable reductions and any issues related to eligibility that would have applied to the seller, including the possibility that forgiveness will be denied in whole or in part. (Only the buyer will be able to apply for forgiveness in this scenario.)

EIDL

- How will the EIDL and PPP process work if a client received an EIDL after they applied for the PPP loan and did not know the status of the EIDL at the time of application?

Response: Please see SBA Procedural Notice 5000-20032

<https://home.treasury.gov/system/files/136/Guidance-on-Refinance-of-EIDL-Loans-with-PPP-Loan-Proceeds-and-Lender-Remittance-of-EIDL-Refinance-Proceeds-to-SBA.pdf>.

An EIDL Loan May Not Be Refinanced with a PPP Loan When:

- The PPP Borrower received the EIDL loan before January 31, 2020 or after April 3, 2020.

An EIDL Loan is Not Required to Be Refinanced with a PPP Loan When:

- The PPP Borrower received funds from an EIDL loan from January 31, 2020 through April 3, 2020; and
- The PPP Borrower used the EIDL loan for purposes other than payroll costs.

A PPP Loan Must Be Used to Refinance the Full Amount of the EIDL Loan When:

- The PPP Borrower received funds from the EIDL loan from January 31, 2020 through April 3, 2020; and

- The PPP Borrower used the EIDL loan funds to pay payroll costs.

Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

- It appears that EIDL loan advances will be deducted from the PPP forgiveness amount. The EIDL provided grant proceeds of up to \$10,000. As a result, this is not a grant as many PPP Borrowers did not refinance the grant portion of the EIDL funds into the PPP loan. What approach should the bank take due to this issue?

Response: EIDL Advance amount would be deducted from the PPP forgiveness amount by SBA during the PPP forgiveness review process.

- If an EIDL borrower has received funds from another federal or state grant program, are they required to pay these other public funds back on the EIDL loan?

Response: Borrowers are responsible for understanding the terms of any assistance they receive from Federal or state program including the impact on tax obligations and duplication of benefits. Borrower should review loan agreements with their attorney and/or accountant to determine the net impact of receiving multiple benefits from various sources.

SBA Hotline & Tools:

- Will there be SBA hotlines for help with forgiveness questions? The hotlines for PPP questions were very helpful.

Response: Yes. The lender assistance hotline will remain operational.

- Is a lender permitted to add this CRA related question on the forgiveness applications: Are Borrower's annual revenues over \$1mm or are they \$1mm or less?

Response: PPP is an SBA program and CRA questions are not a basis for forgiveness or a requirement for loan forgiveness.

The information provided is for informational purposes only and is not intended as legal advice. You should seek advice from an attorney of your choice who can review your specific issues and provide recommendations based on your particular facts and circumstances.