

Updates to the Paycheck Protection: recent reforms from Congress and regulatory information from Treasury and SBA - By NCBA CLUSA

On June 5, President Trump signed the bipartisan Paycheck Protection Program Flexibility Act into law. The new law, led by Representative Dean Phillips (D-MN) and Representative Chip Roy (R-TX) passed the House of Representatives with near unanimous support last week, and passed the Senate by unanimous consent earlier this week.

The new law make several changes to the Paycheck Protection Program, including:

- Reduces the threshold that must be spent toward payroll to receive loan forgiveness from 75 percent to 60 percent and therefore increasing the amount that may be spent on other eligible uses like utilities and rent from 25 percent to 40 percent;
- Extends the covered period of the loan—that is, how long a borrower has to spend the money—from eight weeks to 24 weeks or December 31, 2020, whichever is earlier;
- Extends the June 30 rehiring deadline to December 31, 2020;
- Extends the two-year loan repayment restrictions for future borrowers to five years;
- Extends the deferment period to allow borrowers to defer repayment until they receive compensation for forgiven amounts; borrowers not applying for forgiveness will have 10 months from the program's expiration to begin making payments;
- Allows payroll tax deferment for PPP borrowers that receive forgiveness.

The legislation provides much needed flexibility to small businesses, but likely will raise more questions in the implementation process that will require additional guidance from Treasury and SBA or additional legislation from Congress.

More than \$510 billion in PPP loans have already been issued to more than 4.5 million businesses and non-profits. Approximately \$130 billion in funding remains available.

Meanwhile, additional regulatory guidance on PPP loans was released by the Small Business Administration and the Department of the Treasury last week on what borrowers should know about applying for loan forgiveness on your business's Paycheck Protection Program loans. The guidance included an application for loan forgiveness. You can view that application [here](#).

In addition, on June 1, the SBA released an Interim Final Rule: SBA Loan Review Procedures and Related Borrower and Lender Responsibilities, available [here](#).

NCBA CLUSA recommends consulting closely with your co-op's lender, accountant, and legal experts on what this means for your co-op.

The regulations make clear that the SBA may choose to review any loan of any size at its discretion. The regulations say that the reviews may be on the basis of borrower eligibility, loan amount, use of proceeds, or loan forgiveness amounts. If SBA believes a borrower to be ineligible, the administration will contact the lender to reach the borrower. Failure of the borrower to respond may result in SBA determining the borrower is ineligible for the PPP loan.

If a borrower is determined to be ineligible for PPP, the loan is no longer forgivable. The regulations also allow for SBA to seek repayment of the balance of the loan or other remedies.

Borrowers who are deemed ineligible for PPP may appeal the decision to SBA, the process for which is still forthcoming.

The borrower is responsible for calculating the amount of loan forgiveness using the application and providing supplementary materials.

Lenders will review the application and materials submitted by borrowers, and have 60 days to make a determination on forgiveness, which could include approval in full, in part, or a denial. Lenders must provide certain documentation based on the decision that is reached, and SBA has 90 days to approve or deny the lender's decision.

SBA, in coordination with the Department of Treasury also released an Interim Final Rule: Paycheck Protection Program—Requirements—Loan Forgiveness, available [here](#).

This guidance specifies that borrowers must have maintained the same number of employees when the amount of the loan was calculated to qualify for loan forgiveness. Borrowers who attempted to rehire and/or restore hours of employees will not face reduced forgiveness amounts if an employee declines a good faith offer to be re-hired or restored to full-time employment; however, the borrower must provide documentation to reflect that.

If a borrower applies for loan forgiveness but has not made a good faith effort to maintain the level of employees when the loan was calculated, the amount of loan forgiveness will reduce by the same percentage as the percent reduction in employees.

If a lender determines that a borrower is eligible for loan forgiveness, the lender must request payment in that amount from SBA. SBA will send payment of forgiveness plus any interest accrued through the date of the payment within 90 days of receiving notice from the lender.

If a borrower received an Economic Injury Disaster Loan Advance (sometimes referred to as an EIDL Advance or an Economic Injury Disaster Grant), the amount of the advance will be deducted from the forgiveness amount to be paid.

Once again, this is intended to be an overview of some of the regulations that were recently released by SBA and Treasury, and is subject to change pending further guidance from the agencies. This update is not intended to be taken as business or legal advice, and co-ops should consult with their lenders, accountants, and legal experts on specific information to their co-op.

The Department of Treasury keeps an updated list of regulations, reports and supplementary material available on their website [here](#).

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