

## **PPP Forgiveness Timeline Under the New PPP Flexibility Act**

It is now possible to develop a timeline for the loan forgiveness process under the Paycheck Protection Program (“PPP”) due to the adoption of the PPP Flexibility Act (“Flexibility Act”), which amends the Coronavirus Aid Relief and Economic Security Act (“CARES Act”), and issuance of additional rules and guidance from the Small Business Administration (“SBA”) and U.S. Department of the Treasury (“Treasury”).

### **1. Determine Your “Covered Period”**

- a. As a result of the Flexibility Act, borrowers can choose either an eight-week or 24-week “covered period.”
- b. Borrowers who were able to use their PPP funds during the eight weeks and desire the certainty of a forgiveness determination can choose the eight-week period.
- c. Borrowers who can obtain greater forgiveness by extending the use of funds over a longer period can choose the 24-week period.
- d. It is possible that borrowers may be permitted to file a forgiveness application prior to the expiration of the 24 weeks if they have exhausted the loan funds.
- e. In addition, recent guidance permits certain borrowers to delay the start of the covered period until the commencement of a “pay period.” This alternative is available to those who use a weekly or bi-weekly pay period, so that the covered period can line up directly with pay periods for administrative convenience.

### **2. Repayment is Deferred Until a Forgiveness Determination is Remitted**

- a. Whereas the CARES Act provided for a six-month deferral period, the Flexibility Act provides that no payments are due on any non-forgiven principal until the forgiveness determination is remitted from the SBA to the lender.
- b. If no application for forgiveness is filed, then the deferral will expire 10 months after the end of the 24-week covered period.
- c. Filing the application apparently will be sufficient to defer the repayment obligation until the determination is remitted to the lender.
- d. Borrowers anticipating significant non-forgiven principal can defer payments for up to 16 months by using the 24-week period and 10-month deferral.

3. Complete and Submit the Loan Forgiveness Application

- a. The form has been revised to reflect the Flexibility Act.
- b. A streamlined “EZ” form is available for certain borrowers who are sole proprietors or who can certify that no reductions in workforce or payroll took place.
- c. The form is submitted to the lender.

4. Lender Review (Usually)

- a. In most cases for loans under \$2 million, the lender will make the initial review.
- b. The lender has 60 days from receipt of a complete application to make a decision regarding loan forgiveness and issue the decision to the SBA.
- c. Loans over \$2 million are likely to be reviewed by the SBA prior to a lender decision. Other loans may also be subject to such scrutiny.

5. SBA Review

- a. If the lender determines that forgiveness is appropriate, it will notify the SBA.
- b. If the SBA confirms the forgiveness, it will remit the appropriate forgiveness amount to the lender no later than 90 days after the lender issued its decision to SBA.
- c. If the SBA determines in the course of its review that the borrower was ineligible for the PPP loan, the loan will not be eligible for loan forgiveness and the lender is responsible for notifying the borrower.

6. Borrower Can Appeal a Determination of Non-Forgiveness

- a. The borrower has 30 days from receipt of the notice from the lender to request that SBA review the lender’s decision as to non-forgiveness.
- b. Additional guidance on the appeal process will be forthcoming.

7. Repayment of Non-Forgiven Principal

- a. Payments on the non-forgiven portion of PPP principal will become payable, pursuant to the Flexibility Act, upon remittance of the forgiveness amount from the SBA to the lender.
- b. Although the original rules provided for a two-year repayment period, the Flexibility Act extends the period to five years for new loans and authorizes lenders to extend existing loans to five years.
- c. The interest rate remains at 1 percent per annum.

Borrowers with questions about the forgiveness process can consult with Vandennack Weaver attorneys by calling 402-504-1300 and following updates at our COVID-19 page [here](#).