



Your Paycheck Protection Program (PPP) Loan Was Approved & Funded – What Happens Next?

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What are the PPP Loan Forgiveness Rules You Should Know?

By now you have probably heard about the Paycheck Protection Program (“PPP,” or the “Program”) incorporated into the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”), which took effect on March 27, 2020. PPP is one of the most important components of the CARES Act for small businesses—making \$349 billion worth of low-interest, forgivable loans available to [small businesses in immediate need of financial assistance](#) in the midst of the COVID-19 crisis.

The initial funding approved for the PPP was exhausted as of April 16, 2020. Despite the immediate exhaustion of the Program’s funding, the SBA and Treasury have indicated that 1.6 million small businesses successfully secured funds under the Program.

While there is hope that Congress will further fund and expand the Program to accommodate additional small business applicants, those businesses lucky enough to receive funds during this initial round must now focus their attention on maximizing loan forgiveness. After all, unlike traditional loans, having a PPP loan forgiven will not count toward a recipient’s taxable income, and it will result in the loan effectively becoming a grant.

The PPP Loan Forgiveness Rules: Key Actions to Ensure Your Loan is Forgiven

To obtain the maximum amount of PPP loan forgiveness, there are a number of considerations to keep in mind, as well as steps to take to ensure that, when the time comes, your business is ahead of the curve.

Know When Your Clock Started Ticking on Your Covered Period

Under the PPP, the forgiveness/measurement period is calculated as the eight-week period beginning on the date PPP loan funds are actually disbursed (the “Covered Period”).

Create a PPP Loan File

It is essential for businesses to document every dollar spent with the proceeds of a PPP loan and have supporting documentation ready to provide to its lender at the end of the Covered Period.

While we do not yet know what exact form (or forms) will be required at the time loan forgiveness is sought, for planning purposes, be sure to maintain all correspondence, evidence, receipts and supporting documentation related to your PPP loan funds.

In addition to the above, it is anticipated that the following items will be required when seeking forgiveness:

- Certification from the business borrower that all documentation provided in support of its forgiveness request is true and correct, and that amounts for which forgiveness is sought were actually used to retain employees and make eligible interest, rent, and utility payments.
- For payroll costs, Form 941 and state quarterly tax reporting forms or equivalent payroll processor records that most appropriately correspond to the covered period, with evidence of retirement and health insurance contributions.
- Evidence of business rent, mortgage interest payments, or utility payments (to the extent loan proceeds were used for non-payroll related items).

- If self-employed, 2019 Form 1040 Schedule C.

Track (and Know) Your Average Employee Count for the Covered Period

PPP loans are eligible for forgiveness if an organization's average monthly full time employees during the Covered Period is the same or higher than one of the approved comparison period dates.

Example:

Friendly Bob's, a parts manufacturer for an essential business, had 85 full time employees per month from February 15, 2019 to June 30, 2019. From January 1, 2020 to February 29, 2020, Friendly Bob's had 80 full time employees.

Friendly Bob's received a PPP loan originating on April 15, 2020. For the 8-week Covered Period starting on April 15, Friendly Bob's had an average of 70 full time employees. Friendly Bob's does not rehire any additional employees during the Covered Period.

Resulting Loan Forgiveness Percentage:

Based on the above facts, Friendly Bob's must choose the lower of 85 or 80 as its baseline full time employee count. Since 80 is lower, this is Friendly Bob's baseline full time employee count, against which its loan forgiveness percentage will be calculated.

Since Friendly Bob's average employee count during its Covered Period, was 70 employees, the maximum percentage of Friendly Bob's loan forgiveness is:

70 Covered Period employees ÷ 80 baseline employees = 87.5%

Tweaking the Facts to See a Different Outcome:

If Friendly Bob's were to rehire 10 full time employees before June 30, 2020¹—in addition to the 70 currently existing employees— then assuming the original decrease in full time employees happened before April 25, 2020, then 100% of the PPP loan amount would be forgiven since the resulting full time employee count during the Covered Period would be equal to the baseline employee count

of 80 full time employees.

Compensation Levels

Keep in mind: to remain eligible for loan forgiveness, at least 75% of the PPP loan proceeds must be used to cover payroll costs during the Covered Period.

Qualified Non-Payroll Costs

The remaining 25% of PPP loan proceeds can be used for non-payroll costs, such as:

- Mortgage interest (on loans originating before February 15, 2020)
- Rent (for lease agreements in force before February 15, 2020)
- Utilities (for services that began before February 15, 2020)

Be sure to keep a detailed log of these payments during the Covered Period as well as all related documentation, including payment remittances, statements, or invoices.

Consider Keeping PPP Funds in a Separate Bank Account

[Consult with your bank](#) to determine its specific requirements for where to keep PPP loan proceeds. Some companies may want to set up a separate checking account that receives and disburses the PPP loan proceeds. Even if your PPP loan has already been funded, you may nevertheless still be able to set up/transfer the funds to a new account.

Using a separate account will help streamline audit tracking, eliminate commingling and provide additional transparency during your loan forgiveness review with the bank and/or the SBA.

Spending the Funds

As mentioned above, the evaluation period for loan forgiveness is the eight-week period after the PPP funds have disbursed. As such, you should be sure to spend the money on authorized expenses during your Covered Period.

To the extent you have maintained employees and payroll during the Covered

Period, this should not be problematic. It may be the case, however, that your normal payroll periods will result in payments falling outside the Covered Period. Based purely on timing considerations, you may want to arrange for a special payroll with your payroll provider that will fall within the Covered Period.

Similarly, to the extent [profit share](#) or similar contributions are typically made at the end of the year, you may want to check with your benefits provider to see whether there are ways to make estimated in-year contributions and have those payments reflected as compensation for forgiveness measurement purposes. It is unclear as of the date of this article whether it will be just as effective to “accrue” these items as opposed to actually paying them, but actually paying the funds will make it unambiguous.

Applying for Loan Forgiveness

After the Covered Period runs, you will need to submit a formal forgiveness request to the lender servicing your loan. While guidance related to PPP loan forgiveness is still forthcoming (at least in part), a forgiveness request will certainly need to include all documents supporting how funds were spent and the number of full time employees and their compensation levels. Lenders will then have 60 days to actually process the forgiveness request. Since no payments are due under PPP loans for six months, the review should be completed in plenty of time.

Nevertheless—be prepared. You should contact your lender as soon as possible after PPP funds are disbursed to determine what documentation and forms it will be seeking when processing your loan forgiveness request, as well as the bank’s currently anticipated process related to loan forgiveness.

As was the case in establishing the eligible loan amount for PPP loans, there will likely be differing opinions and guidance regarding the required documentation and processes, especially in the near-term. It is certainly in your best interest to over-document and track everything in as much detail as possible so you are ready to comply with whatever requirements may be thrown at you in the future.

About Jeremy Waitzman

Jeremy chairs the Corporate Group at the Sugar Law Firm (Sugar Felsenthal), a national boutique serving the affluent and the companies they own or otherwise control. He advises his clients on significant transactions and operational issues in their businesses. Described by clients as "an essential business advisor" and "a partner in the success of my business," Jeremy has substantial experience representing businesses of all types and sizes from inception, guiding them through significant growth, and often through ownership's exit. His clients include privately-held middle market and emerging growth companies, family offices/funds, investors, C-level executives, boards of directors, family-owned businesses and entrepreneurs. Jeremy counsels clients in the areas of corporate law, mergers & acquisitions, private placements, and general contract law. He represents individuals, closely held businesses, start-up companies and serves as outside counsel to several large corporations. His work with companies often includes strategies for the creation of enterprise value.

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