

In The News

Small Businesses Could Be Caught in PPP Loan Forgiveness Process Into 2022 — And Beyond

06.12.20

Washington Business Journal

Small businesses seeking loan forgiveness through the Small Business Administration's Paycheck Protection Program could be caught in a process dragging out to 2022 — or even later, according to experts.

"I think that this could extend beyond 2022, said Tenley Carp, a partner at law firm Arnold Golden Gregory LLP, adding the multiple layers of review and an as-yet undefined appeals process could take a while to settle. "I can see how a company could still be dealing with loan forgiveness issues into 2023."

Here's how the process looks right now.

1. Small businesses that had the eight-week covered period as part of their loan can apply for forgiveness in the coming weeks and be done much sooner. But companies that use the new 24-week covered period enshrined in the recently passed Paycheck Protection Program Flexibility Act will start applying for forgiveness after that's over — with the last possible date of the covered period being Dec. 31, 2020, for those who get loans on June 30, the last day applications will be approved.
2. Once the covered period is over, businesses have 10 months to apply for loan forgiveness to their lender. The lender has 60 days to make a decision. If the lender rejects forgiveness, a small business has 30 days to ask SBA to review the decision, but there is no timeline for an SBA review.
3. If a lender agrees the small business gets forgiveness, it passes its decision to the SBA, which then has 90 days to agree or reject that determination. Small businesses can then appeal the SBA decision, but that process has yet to be defined, although the SBA said it will issue guidance on the appeals process.

The appeals process could spell trouble for a smaller agency like the SBA, Carp said, adding the agency does not even do its own procurement for some IT services. That could create a bottleneck in the system that slows potential appeals or reviews of forgiveness decisions.

"I am not sure how SBA intends to manage this time intensive process," Carp said. "If even a small percentage of 4.5 million companies appeal, I think they are going to have way more work than they can handle."

Small businesses will need to hold onto all relevant documents far longer than even the already long forgiveness timeline.

"The SBA is requiring borrowers to retain documentation for six years after the date the loan is forgiven or repaid in full, and permit authorized representatives of the SBA, including representatives of its Office of Inspector General, to access such files upon request," said Sonia Desai, a director in forensics and litigation services in the Austin office of tax and advisory firm Weaver and Tidwell LLP.

It is likely fights over forgiveness will spill into the court system, said David Roth, a shareholder at law firm Munsch Hardt Kopf & Harr PC.

"I believe it is very likely we will see court fights," Roth said, adding there have already been court cases that have required the SBA to process loan forgiveness applications without applying the eligibility rules it created

early in the program. “While you can expect some deference to be paid to forgiveness decisions made by the SBA, there are so many gray areas, and for some businesses far too much at stake, to believe some of these cases won't be determined in a courthouse.”

Carp's advice? Apply for forgiveness sooner rather than later, to secure an earlier spot in the virtual line that will form as the SBA receives more and more forgiveness requests and appeals.

“If there are 4.5 million companies in the queue you want to be early, not late,” Carp said. “I think a lot of small businesses will be very surprised at what a long and involved process it is to obtain loan forgiveness.”

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