



PPP Loan Forgiveness: Challenges for Lenders

By Jodi L. Avergun, Anne M. Tompkins, Christian Larson, Kendra L. Wharton, Kathryn Rock, CPA and Christopher Sicuranza

Since April 2020, more than 5,400 lenders across the United States have faced common challenges arising from the Paycheck Protection Program (“PPP”). Participating lenders have been charged with interpreting a slew of evolving regulatory guidance while vetting millions of borrower applications. Participating lenders have also been tasked with responding to information requests from Congress, federal regulators and law enforcement authorities investigating potential fraud and abuse in the emergency loan program. Yet another challenge looms on the horizon as lenders determine whether and to what extent disbursed PPP loans are eligible for forgiveness.

At first glance, the forgiveness process appears simple. A PPP borrower must complete an application for forgiveness and submit the application to its lender. The lender is then responsible for approving or denying the borrower’s forgiveness application by verifying certain documentation and calculations and then requesting payment from the SBA, as applicable. However, because the lender stands between the PPP borrower requesting forgiveness and the federal government making payment, lenders face a number of challenges and risks in connection with PPP loan forgiveness.

The complexity for lenders arises in the details of PPP loan forgiveness. Outlined below are several challenges and risks lenders face in the coming weeks and months.

1. PPP originations reviews

Cognizant of the high volume of PPP loans they issued in a short time frame, lenders are conducting reviews of origination loan documentation and other data points as they prepare to receive and process applications for forgiveness. These reviews have identified a variety of issues with borrower eligibility, loan amounts, missing documents, and invalid signatures. They have also identified challenges with data integrity, as lenders implementing loan forgiveness processes may pull required data from multiple systems with compatibility issues.

2. Regulatory change management

Since the inception of the PPP, the SBA has issued 23 Interim Final Rules, at least 75 Frequently Asked Questions (“FAQs”), and at least 15 procedural notices and lender forms. Lenders may wish to consider whether they have put in place systems, policies, and procedures that adequately respond to existing regulatory expectations but also remain flexible enough to adapt to further changes in law, regulations and guidance. The June 1, 2020 Interim Final Rule on loan forgiveness requirements and the June 26, 2020 Interim Final Rule revising those requirements are particularly relevant, but always subject to change. Even with those rules, lenders continue to wait on clarifying procedural guidance related to SBA reviews and borrower appeals which they will need to quickly digest and build into their existing processes.

3. Requests for information

At the same time that lenders are conducting originations reviews and preparing for loan forgiveness, lenders are responding to subpoenas and other inquiries from Congress and law enforcement agencies investigating fraud. Many of these inquiries are focused on borrower eligibility, borrower communications with the lender, and borrowers' use of loan proceeds. Other inquiries have focused on the locations and demographics of a lender's PPP borrowers, and what steps, if any, lenders took to ensure that PPP loans were issued to small businesses, to borrowers in underserved and rural communities, and to women- and minority-owned businesses.

4. Anti-money laundering obligations

Lenders have access to an increasing volume of information about PPP borrowers. They are acquiring this information through reviews of existing documentation, inquiries from investigators, forgiveness applications, and ongoing monitoring of customers' use of funds. Lenders may wish to consider whether they are adequately incorporating that information into their systems for suspicious activity monitoring and reporting. It appears that many of the early enforcement actions against fraudulent PPP borrowers were triggered by SARs that lenders filed with FinCEN; in time, regulators are likely to evaluate whether lenders adequately met their anti-money laundering obligations when participating in the PPP.

5. Communications with borrowers

As the SBA continues to issue evolving rules and guidance, borrowers often look to their lenders with questions. Borrowers are asking lenders to explain the criteria for forgiveness, the process for applying for forgiveness, and the amount and timing of payments that need to be made while a forgiveness application is pending. A lender's ability to effectively communicate answers, and changes in its answers, is crucial to maintaining the customer relationship. There is even anecdotal evidence that some businesses have moved their banking away from lenders that were unable to approve a PPP loan request; lenders do not want to lose customers who are dissatisfied with the lender's loan forgiveness process.

Lenders will undoubtedly face unique circumstances as they navigate these common challenges and risks. Our professionals are well-prepared to assess questions and concerns that may arise during the forgiveness process.

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AUTHOR INFORMATION



Jodi L. Avergun
Partner – Washington
+1 202 862 2456
jodi.avergun@cwt.com



Anne M. Tompkins
Partner – Charlotte
+1 704 348 5222
anne.tompkins@cwt.com



Christian Larson
Associate – Washington
+1 202 862 2402
christian.larson@cwt.com



Kendra L. Wharton
Associate – Washington
+1 202 862 2333
kendra.wharton@cwt.com



Kathryn Rock, CPA
Director
+1 202 973 6541
krock@guidehouse.com



Christopher Sicuranza
Partner
+1 202 973 6545
csicuranza@guidehouse.com