

FOR THE EXCLUSIVE USE OF JGOLDMAN@CPABR.COM

From the Baltimore Business Journal:

<https://www.bizjournals.com/baltimore/news/2020/05/12/hold-sba-treasury-may-change-forgiveness-rules.html>

PPP Analysis

SBA, Treasury may change forgiveness rules, 8-week period for PPP borrowers, after all

May 12, 2020, 1:25pm EDT Updated: May 12, 2020, 2:28pm EDT

The growing tension between lawmakers and federal agencies that oversee the historic business bailout program may be coming to a head.

As Washington lawmakers put their own spin on labeling the success, failure and challenges surrounding the U.S. Small Business Administration's \$660 billion Paycheck Protection Program (PPP), one thing is becoming more clear with every passing day: there is a growing reluctance among small-business owners on the sidelines who are contemplating getting a PPP loan.

These business owners have been reading about and hearing from other businesses that received PPP loans, and now they are having second thoughts about keeping the money and asking for forgiveness. Moreover, with the May 14 deadline looming for businesses to return the money without any federal scrutiny, thousands of entities are contacting their lenders to return the PPP loan.

Industry watchers agree that the initial furor over big companies such as AutoNation (NYSE: AN), Shake Shack (NYSE: SHAK), Ruth's Hospitality Group (Nasdaq: RUTH) and many others taking the money, and then returning it, has made many businesses wonder if the forgiveness process will be worth the trouble should the government ask for additional documents.

The PPP program disbursement went out in two tranches – \$349 billion and \$310 billion. The \$349 billion pot vanished in less than two weeks. The \$310 billion pot is in Week Three and there is more than \$100 billion left to disburse.

So, what exactly is going on?

The SBA and the U.S. Department of the Treasury, the agency that is helping the small business arm of the federal government with rules and regulations, believe businesses are being cautious about asking for a PPP loan.

While it may be true that businesses are beginning to realize that lenders are likely to be very diligent in asking for documentation before submitting the forgiveness papers, the slow state of business means it makes very little sense for most businesses to hire back their entire staff.

And that's where the May 8 report from the SBA Inspector General offers light that Treasury Secretary Steven Mnuchin could soon be forced to issue clarifying guidelines relating to forgiveness, the eight-week covered period, and loan maturity clauses to satisfy existing borrowers and Washington lawmakers. Those tweaks to the rules could also push businesses on the fence about the PPP to take the leap and draw on the loan. What won't be a surprise is if the remaining \$100 billion goes out in a matter of days after SBA/Mnuchin's new order.

Many in Washington are now pointing to the flash report completed and released by the SBA Inspector General, which addresses the need for the SBA to give guidance to banks on how to prioritize PPP borrowers in underserved markets. But the report's conclusion on the confusion relating to the forgiveness terms and loan-maturity dates is getting the most attention.

In the SBA Inspector General's 40-page report, the watchdog group starts by saying the CARES Act, signed into law in late March, did not specify that the forgiveness qualification of payroll expenses must be at least 75 percent of the loan. This was the doing of the SBA and the Treasury. "It may be important to consider that many small businesses have more operational



ANNA MONEYMAKER/THE NEW YORK TIMES

Treasury Secretary Steven Mnuchin may have no choice but to tweak the PPP loan guidelines. (Anna Moneymaker/The New York Times)

expenses than employee expenses," the SBA Inspector General's report stated. "Our review of data from the first round found that tens of thousands of borrowers would not meet the 75-percent payroll cost threshold and would therefore have to repay the amount of non-payroll costs in excess of 25 percent in less than two years."

For his part, Mnuchin argued Congress has to change the PPP terms despite the IG's report stating otherwise. But for the first time, he admitted on Monday that he is open to changes to the program because he is sympathetic to the restaurant industry.

Mnuchin and the SBA are likely to have little choice other than to bring down the spending percentages before lawmakers from both parties come down hard on them – especially if the country's unemployment rate breezes past 20 percent by next month. Already, nine "interim final rules" have been added to the original PPP guidelines. So, a few more will be far from a surprise.

Also, tied to the payroll percentage threshold is the allowable time to spend the PPP money. And U.S. Sen. Thom Tillis, from North Carolina, is trying to change that.

"One of the most frequently asked questions our office has received is about the eight-week period (when the PPP needs to be spent)," says Daniel Keylin, Tillis' communications director. "Tillis is very open to extending that period through new legislation, especially since many small businesses will remain closed over the next several weeks as the economy gradually begins to reopen and the goal of the PPP is to serve as a bridge for small businesses to get through this difficult time until they fully reopen."

The other element in the report that surely would please the PPP borrowers has to do with the loan maturity date. The IG's report states the CARES Act did not specify the maturity term of the loans – it was the work of the SBA and the Treasury. "In addition to the 75-percent payroll criteria, the maturity term established by the (SBA) administrator and the (Treasury) Secretary would require borrowers to repay any amount not eligible for forgiveness within the remainder of the initial 2-year term," the report reads, adding "The Act, however, allowed for a maximum maturity of up to 10 years."

If the maturity dates are changed, it would not make the 5,400-plus lenders happy, as they would be left with millions of 1 percent interest loans on their books that would require servicing since there will be monthly payments.

Perhaps that's why some of the country's largest banks such as Bank of America (NYSE: BAC), Wells Fargo (NYSE: WFC), JPMorgan Chase (NYSE: JPM) are really not pushing for more loans through their systems.

Raleigh's Dogwood State Bank CEO Steve Jones says the bank will work with customers if word comes down from Washington that the loan maturity date is being extended. "We worked with customers to come up with an amount that we believe will be forgivable under the current terms," Jones says. "So, we were a little less aggressive in filling out the loan amount. In the end, with all this confusion, it was the right call."

Sougata Mukherjee
Editor-in-Chief
Triangle Business Journal

