

Understanding PPP Loan Forgiveness

Greg Herring

The Herring Group

www.herring-group.com

If your company will not achieve 100% forgiveness in the 8-week period, the PPP Flexibility Act (PPFPA) brings good news. Now, your company will have 24 weeks to achieve 100% forgiveness. Because of this change, almost all landscape companies should receive 100% forgiveness. I suspect the SBA will modify the forgiveness application so there is no reason to start completing the application.

If your company is already going to qualify for 100% forgiveness, then nothing has changed. You can apply at the end of your 8-week period. You may want to delay your application if you are considering NOT applying for forgiveness because your company's need does not appear to be as significant as you thought it might be when you applied. The deadline for applying for forgiveness appears to be 10 months after the end of the 8-week or 24-week period. (It is not explicitly stated, just implied.) For the rest of the companies in the 100% forgiveness category, I recommend applying sooner rather later because of the possibility of changes after the election.

With respect to applying for forgiveness, I spoke with representatives of a smaller nation-wide bank. This bank made 24,000 PPP loans. They said that it was a huge effort to process the PPP loan applications. They are dreading the processing of the forgiveness applications because there is much more work to be done than for the original application. As of May 27, they still did not know how the loan forgiveness review process would work. They made no commitments as to how long the process would take.

There is one other potential benefit to landscape companies in the PPFPA. Companies can have both PPP loan forgiveness and company payroll tax deferral.

Here is how the deferral works:

- A company can defer the employer's portion of Social Security taxes (6.2%) incurred through December 31, 2020.
- One-half of the deferred amount is due on December 31, 2021.
- One-half of the deferred amount is due on December 31, 2022.

Frankly, I do not recommend payroll tax deferral in most cases because the IRS takes a hard line on payroll tax obligations. If the company is not able to pay the payroll taxes when the deferred payments become due, the company could have some significant legal issues.

Now you know the important information from the PPFPA.

Here are a few other details that are probably not relevant to most companies in the landscape maintenance and construction industry.

There is one adverse provision in the PPFPA which is likely not relevant to the landscape industry. It says that 60% of the loan must be spent on payroll costs during the 24-week period. It is a "cliff" provision. If your company has a \$100,000 PPP loan and spends \$59,000 (59%), then you get zero forgiveness of your PPP loan. Based on comments by members of Congress, I suspect that the SBA will fix this drafting error.

For any balance remaining after forgiveness, the maturity for existing PPP loans can be extended from two years to five years by mutual agreement between the bank and the borrower.

Interest on the PPP loan is deferred until the date the company's forgiveness amount is determined by the SBA, assuming the company applied for forgiveness within 10 months of the end of the 8-week or 24-week period.

Companies who laid off employees after February 15, 2020 now have until December 31, 2020 to restore those positions. (This provision should not be relevant for most landscape companies since a 24-week period to accumulate payroll costs will likely offset any FTE reduction penalty.)

Finally, if a company calculates a reduction in FTEs, there are two new exceptions when calculating the reduction. First, the company does not have to include reductions occurring after February 15, 2020 if it is unable to find qualified employees for the unfilled positions. Second, the company does not have to include reductions occurring after February 15, 2020 due to the company not being able to restore its operations to comparable levels of business due to COVID-19 related requirements. The language in the law is much more precise than that summary. If you need to rely on those exceptions, please consult the specific requirements of the law [here](#).

Greg

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