The clock is ticking, yet widespread confusion remains on PPP spending deadlines

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What are the deadlines to keep in mind to get full PPP loan forgiveness? We asked some experts.

The shifting terms and guidance around the Small Business Administration's Paycheck Protection Program are raising confusion about nearly all aspects of the stimulus plan — including when and how long recipients have to draw down their funding.

One thing is clear: Businesses are faced with two important deadlines.

Per one deadline, a business must spend all of its PPP money within eight weeks of receiving it in order to maximize the program's loan-forgiveness guidelines. But the other is to spend the money on eligible expenses and rehire workers no later than June 30, a deadline established in the first $349 billion PPP round created by the CARES Act in late March. It leaves little time for businesses that are receiving funding in the program's second $310 billion round, still underway, to reach maximum loan forgiveness.

What remains unclear is how those dual deadlines will work together. That leaves individual businesses to make the call until the SBA sets more definitive terms or revises its requirements.

As currently written, the PPP loan, of which 25% can be used for overhead costs with the rest going to payroll, is for expenses incurred from Feb. 15 through June 30 of this year. But it's unclear whether an eight-week period that starts in the middle of May can run past the June 30 deadline for rehiring workers.

So what should a business do? To be safest, it should spend that money by June 30, at least barring any new SBA guidance, per the CARES Act's stipulation, said David Cole, partner at law firm Holland & Knight LLP, with offices around the country.

"Practically, we see that this could create logistical problems for some borrowers closing loans during phase two of the PPP," Cole said. "We hope that new SBA regulations concerning forgiveness of PPP loans will address this question. The new regulations have been due for some time, but are not yet released."

Several groups have pushed for changes to that eight-week forgiveness window. The Small Business & Entrepreneurship Council, a business advocacy group based in Vienna, Virginia, said Congress should extend that period to at least 24 weeks, among other fixes.

The patchwork of SBA guidance thus far, as well as the PPP's ins and outs, are “very complex” and subject to interpretation, said Stephen Klein, managing member of the bankruptcy and restructuring group at Atlanta accounting and consulting firm Bennett Thrasher LLP. But he said he believes businesses can spend the money past the June 30 deadline, so long as it's within the prescribed eight weeks.

“We realize there's a contradiction in that — you can restore the employee, but you can't get loan forgiveness on paying that restored employee if (it's) outside of the eight weeks. Makes no sense, but we elected these folks,” Klein said. “If the borrower receives the first disbursement on May 7, then they would have until July 1 to spend the proceeds.”

Others disagree.

“There is no written support for that opinion,” said Tenley Carp, a partner at law firm Arnall Golden Gregory LLP, based in Atlanta and D.C. "SBA 'may' ultimately do that because it’s impossible for any small business who obtains the funds after today

to meet that deadline — so it would be only fair — but has not done so yet."

Regardless, lending and legal experts are in agreement on at least one aspect of the PPP: It is crystal clear about what those funds can be used for. Anyone who strays from those approved expenses may invite scrutiny from the SBA and certainly won't be eligible for full forgiveness thereafter, no matter whether the funds are used up before June 30.

"Recipients of PPP loans have eight weeks to spend the loan proceeds on qualifying expenses, which include payroll costs, rent, utilities and interest on loans secured by real or personal property," but not on things like principal payments on loans, said Phil Busenitz, principal of Matthews, Carter & Boyce, an accounting firm based in Fairfax, Virginia. "The intent of the CARES Act was to help small businesses maintain operations and keep employees on the payroll, not to help business owners improve their balance sheets by paying down debt."

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