

ALERT

SBA Clarifies Payroll Cost Forgiveness Limitation for PPP Loans

June 11, 2020

As outlined in our prior alert, the Paycheck Protection Program Flexibility Act (PPP Flexibility Act) was enacted on June 5, 2020, and eased some of the requirements of the Small Business Administration's (SBA's) Paycheck Protection Program (PPP). As expected, the SBA issued guidance implementing the new law in the form of an Interim Final Rule (IFR) on June 11, 2020.

The IFR provided one significant clarification, but otherwise generally restated some of the changes to the PPP that were set forth in the PPP Flexibility Act.

- Relaxed Payroll Cost Requirement: The PPP Flexibility Act contained what was generally believed to be a drafting error – it provided that if 60% of a borrower's loan was not spent on payroll costs, then the borrower would not be eligible for any forgiveness. However, the SBA's rule provides for partial forgiveness if less than 60% of a borrower's PPP funds are used for payroll costs, based on the proportionate amount of the shortfall.
- Extension of Loan Forgiveness Period: Extended the loan forgiveness covered period from 8 weeks to 24 weeks from the date of disbursement of PPP funds. Borrowers with PPP loans issued prior to June 5, 2020 may elect to use the 8-week period.
- Longer Maturity Date: Increased the maturity date for new PPP loans (i.e., those made after June 5, 2020) from two years to five years. The IFR confirmed that borrowers and lenders may mutually agree to extend the maturity date to five years for existing loans made prior to that date.

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- Extension of Rehire Safe Harbor: Extended the deadline by which a borrower can re-hire employees to pre-COVID (February 15, 2020) levels in order to qualify for the forgiveness “safe harbor” from June 30, 2020 to December 31, 2020.
- Longer Deferral Period: Changed the outside date for deferring payments of principal and interest to 10 months after the end of the loan forgiveness covered period (interest continues to accrue on any unforgiven amounts during the deferral period).

SBA updated the PPP loan application on June 11, 2020, to reflect the changes made in the PPP Flexibility Act and the IFR. SBA also indicated that it will be updating the loan forgiveness application form in accordance with these changes.

As a reminder, the last day to apply for a PPP loan is June 30, 2020. Given that more than \$100 billion is still available under PPP, eligible borrowers who have not received PPP loans should consider doing so before the deadline.

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