

Revised SBA Rules Clarify Repayment and Loan Forgiveness Terms for PPP Loans

Client Alert

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The Small Business Administration (SBA) has issued revised Interim Final Rules on the Paycheck Protection Program (PPP) to address questions raised by the recent passage of the Paycheck Protection Program Flexibility Act of 2020.

This Client Alert summarizes the provisions of the revised Rules, as follows:

Covered Period. The Rules confirm that the definition of 'covered period' for purposes of loan use, loan eligibility and related requirements is extended from June 30, 2020 to December 31, 2020. The meaning of 'covered period' governing loan forgiveness is unchanged and remains 8 weeks or 24 weeks at the borrower's option.

Maturity Date. The Rules clarify that the maturity date is extended to 5 years for loans made on and after June 5, 2020. For loans made before June 5, 2020, the maturity date remains at 2 years; however, borrowers and lenders may mutually agree to extend the maturity of such loans to 5 years.

Deferral Period. The Rules confirm that the deferral period for payment of principal and interest is extended from 6 months to 10 months. If the loan forgiveness application is submitted to the lender within 10 months after the end of the 8-week or 24-week covered period, then the borrower will not have to begin principal and interest payments before the date on which SBA remits the loan forgiveness amount to the lender (or notifies the lender that no loan forgiveness is allowed). The Rules provide the following example: "if a borrower's PPP loan is disbursed on June 25, 2020, the 24-week period ends on December 10, 2020. If the borrower does not submit a loan forgiveness application to its lender by October 10, 2021, the borrower must begin making payments on or after October 10, 2021."

Loan Forgiveness. The Rules confirm the reduction in amount required to be expended on payroll costs from 75 percent to 60 percent of the loan and eliminate any ambiguity as to whether that 60 percent is a threshold for

receiving any loan forgiveness. The Rules confirm that in order to receive full loan forgiveness, a borrower must use at least 60 percent of the PPP loan proceeds for payroll costs and not more than 40 percent of loan proceeds may be used for nonpayroll costs, but the borrower will still receive partial forgiveness proportionate to the amount actually expended on payroll costs. The Rules provided another helpful example: "If a borrower receives a \$100,000 PPP loan and during the covered period the borrower spends \$54,000 (or 54 percent) of its loan on payroll costs, then because the borrower used less than 60 percent of its loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is \$90,000 (with \$54,000 in payroll costs constituting 60 percent of the forgiveness amount and \$36,000 in nonpayroll costs constituting 40 percent of the forgiveness amount)."

The Rules indicate that the SBA will be issuing additional guidance on loan forgiveness and loan review procedures. We will continue to monitor the PPP regulations and guidance documents and provide updates as they arise.

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