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SBA Issues Update First PPP Interim Final Rule Following PPP Flexibility Act

On June 10, 2020, the Small Business Administration (SBA) issued an updated interim final rule for the Paycheck Protection Program (PPP) in response to the PPP Flexibility Act passed on June 5, 2020. The updated guidance accounts for revisions made to the covered period, usage of funds changes, extended safe harbors, and more.

Here is a quick rundown of the changes made by the PPP Flexibility Act.

Criteria	Prior Guidance	Current Guidance
Covered Period*	8 weeks from PPP loan disbursement	The earlier of 24 weeks from date of loan disbursement or Dec. 31, 2020 .
Usage of Funds	Minimum of 75% of funds must be used for payroll to with a maximum of 25% for non-payroll costs to achieve forgiveness	Minimum of 60% of funds must be used for payroll with a maximum of 40% used for non-payroll costs to achieve forgiveness. If 60% of loans are not used for payroll, forgiveness is calculated on a sliding scale.
Extension of Safe Harbor for Compensation & FTE Reductions	Salary or hourly wage reductions must be reinstated by June 30, 2020 , to avoid reduced forgiveness	Salary or hourly wage reductions have until Dec. 31, 2020 , to be restored to avoid reduced forgiveness
Deferral of Loan Payments	6 months from loan origination date	Earlier of 10 months after the last day of Covered Period or when SBA remits the loan forgiveness funds to lender
Loan Maturity	2 years	Loans originated after June 5, 2020 – 5 years Loans originated prior to June 5, 2020 – Borrowers and lenders may mutually agree to extend the maturity date of loans to 5 years

Criteria	Prior Guidance	Current Guidance
Safe Harbors Based on Employee Availability, Rehiring, New Hires	None	Forgiveness would not be reduced if borrowers can document in good faith: -Inability to rehire individuals employed on Feb. 15, 2020 -Inability to hire similarly qualified employees by Dec. 31, 2020
Safe Harbors Based on Employee Availability in Compliance with HHS, CDC, or OSHA guidelines	None	Forgiveness would not be reduced if borrowers can document in good faith the inability to return to same level of business activity as before Feb. 15, 2020, due to compliance with requirements issued by HHS, CDC, OSHA from the period of March 1, 2020, to Dec. 31, 2020

Also, of note:

- *Borrowers may elect to stick with the 8-week covered period for loans originating prior to June 5, 2020. However, it is not clear if the June 30, 2020, safe harbor deadline still applies.
- The amount of any Economic Injury Disaster Loan (EIDL) refinanced will be factored in when determining the percentage of proceeds for payroll costs.
- It is unclear whether compensation limits formerly prorated based on 8 weeks are now prorated based on 24 weeks.
- It is unclear if the covered period may end prior to 24 weeks if funds have been used.

Further guidance and instructions are anticipated especially as they relate to the [PPP Loan Forgiveness Application](#). Stay tuned for updates and contact us for assistance with your loan forgiveness application.