



SBA Issues Revised Paycheck Protection Program Regulations & Procedural Guidance on Economic Injury Disaster Loans - Includes Important Information Relating to Loan Forgiveness Resulting from Adoption of Payroll Protection Program Flexibility Act

Client Advisories

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The Small Business Administration (SBA) continues to release rules and guidance documents relating to the Paycheck Protection Program (PPP). This week, the SBA issued an interim final rule that revises previous rules by changing key provisions to conform to the recently enacted Paycheck Protection Program Flexibility Act (the "Act"). This official guidance contains important loan forgiveness information for borrowers and changes key provisions of the PPP to reflect those changes to the PPP set forth in the Act.

Important components of the revised rules include:

- The ability for loan recipients to utilize an expanded 24-month covered loan period or chose to retain their original 8-week covered loan period.
- Notice that borrowers must apply for forgiveness of a loan within ten months after the last day of the covered period or the loan will no longer be deferred and the borrower must begin paying principal and interest.

- A requirement that if a borrower applies for forgiveness before the end of the covered period - and has reduced any employee's salaries or wages in excess of 25% - the borrower must account for the excess salary reduction for the entirety of the covered period (8-week or 24-week). In essence, this provision extrapolates such salary reductions over the full covered loan period regardless of when forgiveness is sought. The SBA's regulatory guidance provides two examples of how borrower's should undertake this calculation.
- Language stating that borrowers seeking loan forgiveness - who have not restored their full-time equivalent (FTE) headcount - will not be able to avail themselves of PPP safe-harbor restoration dates otherwise available under the PPP.
- An update to reflect the new covered loan period (24-weeks) when determining when payroll costs are incurred/paid in order to be eligible for loan forgiveness.
- Caps on the amount of loan forgiveness available for owner-employees and self-employed individuals' compensation.
- Language reflecting the new 24-week covered loan period when determining those nonpayroll costs eligible for loan forgiveness.
- **Revised language reflecting a borrower's ability under the Act to exclude employees who declined to return to work or were not restored to work due to reduced business operations resulting from orders issued by government officials and health policy organizations.**

In addition to the interim final rule, the SBA has also issued procedural guidance related to the PPP for borrowers who received Economic Injury Disaster Loans (EIDL). This procedural guidance addresses when PPP loan proceeds must be used to refinance an EIDL. Specifically, the guidance states that PPP loan proceeds must be used to repay the full amount of an EIDL when the PPP borrower received funds from such EIDL during the period from January 31, 2020 through April 3, 2020 and the PPP borrower used any of those EIDL funds to pay payroll costs. The required EIDL refinance amount must be remitted by the PPP borrower to the SBA immediately upon notice from its PPP lender that such repayment is due. Clarifying a previously ambiguous point, the SBA guidance also confirms that the amount of an EIDL required to be refinanced with PPP loan proceeds does not include the amount of any EIDL "advance" (also referred to as an EIDL "grant") received by the PPP borrower, because the EIDL advance does not need to be repaid.

The SBA latest interim final rule can be found here: <https://www.sba.gov/sites/default/files/2020-06/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule-508.pdf>

The EIDL Procedural guidance can be found here: <https://home.treasury.gov/system/files/136/Guidance-on-Refinance-of-EIDL-Loans-with-PPP-Loan-Proceeds-and-Lender-Remittance-of-EIDL-Refinance-Proceeds-to-SBA.pdf>



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