

SBA Releases First Round of Guidance After PPP Flexibility Act

Today, the Small Business Administration (SBA) in consultation with Treasury released an Interim Final Rule addressing the recently-enacted Paycheck Protection Program Flexibility Act (the “Flexibility Act”). SBA’s guidance generally hewed closely to the statutory text of the Flexibility Act, without providing additional detail on implementing the changes of the Flexibility Act. See our detailed summary of the [Flexibility Act](#).

Key highlights include:

- Most importantly, the text of the Flexibility Act indicated a potential that the 60% payroll cost requirement could be viewed as “gating.” That is, a borrower had to spend 60% of the *total amount of the loan proceeds* on payroll costs in order to achieve any loan forgiveness. The Treasury and SBA confirmed in this IFR that the requirement is 60% of the *total amount spent* by a borrower must be on payroll costs.
- The Treasury and SBA confirm that the loan term for a PPP loans made after June 5, 2020, is 5 years. A PPP loan is considered “made” the date the SBA assigns a loan number to a PPP loan. For loans origination prior to June 5, 2020, borrowers and lenders may mutually agree to extend 2-year loans.
- For borrowers who submit their loan forgiveness application within 10 months after the end of the covered period (which, for loans made prior to June 5 can be the original 8 weeks or 24 weeks), no payment of principal or interest is due until the SBA remits the forgiven amount to the lender (or informs the lender that no loan forgiveness is allowed). If the borrower does not submit a forgiveness application within 10 months after the end of the covered period, the borrower must begin making payments toward principal and interest at the end of that 10-month period. This means that existing loan documents inconsistent with this deferral requirement will be deemed to be modified by the Flexibility Act and its regulations.
- The covered period is extended from 8 weeks to the earlier of: (a) 24 weeks from the date of the first PPP loan disbursement; or (b) December 31, 2020. For borrowers of PPP loans originating before June 5, 2020, there is an election to be made for the covered period to be eight weeks.

The SBA’s guidance only addresses a few threshold issues under the Flexibility Act. The SBA and Treasury have promised additional guidance regarding loan forgiveness and loan review procedures under the Flexibility Act.

The SBA’s guidance can be found here: [Flexibility Act Interim Final Rule](#).

Also released today is a [new borrower application form](#) and a [new lender application form](#).

Contact Us

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