



BLBB Entrepreneurial Financial Management

Paycheck Protection Program Flexibility Act of 2020 & SBA Interim Final Rule 2020-0035

On June 5, 2020 the President signed the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) into law. On June 11, 2020 the SBA released their Interim Final Rule (IFR) 2020-0035 which provided additional guidance, and in one material respect, frankly changed the written law.

The Flexibility Act is extremely helpful to recipients of the Paycheck Protection Program (PPP) Loans. The structure and definitions remain largely the same and consistent with prior guidance.

Below are some of the highlights:

- The greatest change, and by far the most helpful to PPP Borrowers, is lengthening the Covered Period from 8 weeks to 24 weeks from the date the Borrower first received funding, not to extend beyond December 31, 2020. This provides dramatic relief to businesses who did not find it economical to hire back all of the employees they had at the start of the Covered Period and trebles the time period for which payroll and non-payroll expenses can be accumulated for forgiveness. With this change, we would expect most businesses to be able to file a Loan Forgiveness Application that would cover their entire PPP Loan amount. (IFR Section III 1. c.)
- The second greatest change was reducing the threshold for the forgiveness amount for Payroll Expenses (defined as Gross Pay + Medical + Retirement subject to certain exclusions and limitations) from 75% of the amount forgiven to 60% of the amount forgiven. Curiously, the Flexibility Act set an absolute requirement that to receive ANY loan forgiveness one had to have eligible Payroll Expenses of AT LEAST 60% of the TOTAL LOAN. The SBA, with this week's IFR 2020-0035, has gone on record that their interpretation (controlling, as they will be administering the program) is that the 60% ratio is only a limitation on what would be forgiven, and it is NOT an "all or nothing" threshold as was in the Flexibility Act. (IFR Section III 1. d.)
- PPP Loans issued after June 5, 2020 have a 5-year term. PPP Loans issued prior to June 5, 2020 may be extended under mutual consent between the Lender and Borrower (IFR Section III 1. b.).
Planning Tip: If for some reason you are not able to get the entire PPP Loan amount forgiven,

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www.BLBB.com
215.643.9100

Mailing address
P.O. Box 1010, Montgomeryville, PA 18936

Street address
103 Montgomery Avenue, Montgomeryville, PA 18936

contact your Lender and seek the 5-year repayment period – 1% is very inexpensive and provides resiliency.

- The original CARES Act and SBA IFR/FAQ guidance called for PPP Loan payments to begin after a 6-month grace period. IFR 2020-0035 puts the start of loan repayments to commence after obtaining the SBA Loan Forgiveness determination, AND gives you 10 months to submit the Loan Forgiveness Application AFTER the Covered Period (now extended to 24 weeks). SBA cites an example: PPP Loan disbursed on June 25, 2020; the 24-week period ends December 10, 2020; the Borrower submits the Loan Forgiveness Application to the Lender by October 10, 2021; the Borrower must start making payments on, or after, October 10, 2021. (IFR Section III 1. c.)
- IFR 2020-0035 also notes on p. 10 that they are amending Part III.2.o. of the First IFR (85 FR 20811, 20813) which allows for the Loan Forgiveness to be BOTH the Principal AND ANY ACCRUED INTEREST. *Planning Tip: Submit your Loan Forgiveness Application for the principal AND accrued interest if you have eligible PPP Loan Forgiveness in excess of Loan principal.*
- The last date a Lender may obtain an SBA Loan number is June 30, 2020, which effectively closes the program down for new applicants the last week in June. (IFR Section II, p. 4)
- We have not seen the SBA change their IFR 2020-0032 prohibiting the income tax deductibility of expenses included in the approved Loan Forgiveness amount, but understand there is still great congressional pressure to provide the double benefit of excluding the Loan Forgiveness amount as taxable income (original CARES Act). Stay tuned.

- Additional material
 - BBLB SBA PPP Featured articles landing page: <https://blbb.com/features/>
 - BLBB bullet point summary of PPP forgivable expenses (as of 4/22/20): <https://blbb.com/blog/managing-sbas-paycheck-protection-program-debt-forgiveness-provisions/>
 - SBA Loan Forgiveness Application (5/15/20 pm):<https://www.sba.gov/sites/default/files/2020-05/3245-0407%20SBA%20Form%203508%20PPP%20Forgiveness%20Application.pdf>
 - BLBB Analysis of Loan Forgiveness Application & Tips (as of 5/22/20): <https://blbb.com/blog/paycheck-protection-program-loan-forgiveness-application-update/>
 - SBA IFR 2020-0032 Loan Forgiveness Clarifications (5/22/20 pm): <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>
 - SBA General SBA PPP landing page: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

As discussed, the program requirements are changing frequently and the Borrower should be mindful of this and periodically check to see whether there is new guidance; certainly, before submitting their Loan Forgiveness Application to their Lender.

BLBB does not provide tax advice nor practice law. Please see your licensed tax or legal professional who can advise you based on your particular facts and circumstances.