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SBA Revises Interim Final Rules to Conform with the PPPFA

COVID-19 Resource

The [Paycheck Protection Program Flexibility Act](#) (PPPFA), which we covered [here](#), made significant changes to the Paycheck Protection Program (PPP) that override or moot the initial guidance the Small Business Administration (SBA) provided in its [first interim final rule](#) (IFR) for PPP loans. The SBA has issued its latest ([17th](#)) IFR, revising the first IFR and clarifying some open questions created by the statutory language of the PPPFA (Revised First IFR):

Deferral of Principal and Interest Payments

PPPFA extended the first payment date for PPP loans from six months after origination to the date the forgiveness amount is determined, provided that the business submits a PPP loan forgiveness application within 10 months after the end of the “covered period.” The covered period generally is 24 weeks from the PPP loan origination date (or the period from PPP loan origination to December 31, if shorter). However, a business may elect to use a period of eight weeks from loan origination. As we discussed in this [article](#), we believe that most businesses will benefit from the longer, 24-week period. A business that does not submit its PPP loan forgiveness application within 10 months after the end of the covered period must begin making payments on or after this 10 month date.

60-40 Split, Rather Than 75-25

Businesses obtain forgiveness for certain expenses (payroll costs, mortgage interest, rent and utilities) paid or incurred during the covered period. The CARES Act did not favor one forgivable cost over another. In the first IFR, the SBA announced its determination that Congress intended

that at least 75 percent of the forgivable amount be attributed to payroll costs. PPPFA changed this 75-25 split between payroll costs and nonpayroll costs to 60-40. The Revised First IFR incorporates this legislative change.

As we discussed in this [article](#), the text used by Congress appeared to create a threshold pursuant to which a business that spends less than 60 percent of the PPP loan on payroll costs would get no forgiveness. In a [joint press release](#), the Treasury and the SBA announced that they would interpret the PPPFA in a way that did not require the 60 percent minimum during the covered period. Revised First IFR 2.o confirms this guidance – a borrower needs to use at least 60 percent of loan proceeds on payroll costs to receive “full loan forgiveness” (i.e., forgiveness of 100 percent of the loan amount). If the borrower uses less than 60 percent, the maximum forgiveness amount will be reduced proportionately – that is, a cap on the forgivable amount is payroll costs divided by 60 percent. Pursuant to Revised IFR 2.r, a business must use 60 percent of the PPP loan amount on payroll costs over the term of the PPP loan (five years for loans issued on or after June 5; two years for loans issued before, unless the bank and the business amend the PPP loan to provide five-year term).

The revisions, particularly the clarification that a business can receive forgiveness even if it spends less than 60 percent of the PPP loan amount on payroll costs during the covered period, track a trend of general business-friendly guidance from the Treasury and the SBA. However, the Revised IFR does not extend the date on which the SBA can approve a PPP loan from June 30 to December 31 as contemplated by the PPPFA. In fact, consistent with the joint press release, the preamble to the (17th) IFR and the text of the Revised First IFR indicate that June 30 remains the last date for PPP loan approval. The PPPFA extended the end date of the “covered period” for purposes of Section 1102 of the CARES Act from June 30 to December 31. Further, in Revised First IFR 1.a the SBA discussed this change to Section 1102 and how it applies for purposes of “loan use, loan eligibility, and related requirements.” We believe this includes PPP loan approval, and frankly do not understand how the Section 1102 covered period can end on December 31 for some purposes, but June 30 for others. Perhaps there will be another revision forthcoming.

