



Treasury Releases Guidance on New Loan Forgiveness Options

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On June 5, Congress passed the Paycheck Protection Program Flexibility Act of 2020 (“Flexibility Act”). The Flexibility Act included substantial changes from the prior legislation:

- For loans taken out prior to June 5, you have an option of choosing an 8 week or 24-week covered period. For loans taken out after June 5, you must use the 24-week period.
- While previous guidance stated that no more than 25% of a borrower’s forgivable costs may be non-payroll costs, the Flexibility Act increased this to 40%. Partial forgiveness is allowed if the 60% payroll/40% non-payroll split is not met.
- The safe harbor that was provided to restore headcount by June 30, 2020 in order to eliminate a forgiveness reduction was extended to December 31, 2020.
- Additional safe harbors for headcount reduction were provided for (i) an inability to rehire individuals who were employees on February 15th, (ii) an inability to hire similarly qualified employees for unfilled positions before December 31, 2020, and (iii) an inability to return to the same level of business pre-February 15th due to COVID-related social distancing, sanitation, and other safety requirements or guidance from the CDC, Health and Human Services, or Occupational Safety and Health Administration issued between March 1, 2020 and December 31, 2020.
- For borrowers that do not attain 100% loan forgiveness, the loan maturity has been extended from two to five years. If you received a loan prior to June 5 and have a two-year maturity, you may contact your lender and mutually agree to extend the loan period to five years.

This morning, the Treasury issued the Interim Final Rule on Revisions to the Third and Sixth Interim Final rules with respect to the Paycheck Protection Program (“PPP”). The guidance highlights some interesting opportunities to the 8-week vs 24-week covered period.

If the 24-week covered period is selected in lieu of 8 weeks, employee wages paid during the covered period are capped at \$46,154 instead of \$15,385 for the 8-week period. This presents an opportunity for Companies that were not achieving the full forgiveness due to the salary limits.

There are, however, a few restrictions:

- Compensation paid to an owner during the 24-week covered period is increased to 2.5/12 of the 2019 compensation limited to \$100,000, which amounts to \$20,833, an increase from \$15,385.
- For self-employed persons electing the 24-week covered period, the maximum amount that can be included in the forgiveness calculation is the full 2.5 month of compensation limited to \$100,000, or \$20,833.

The loan program still has available funds if you have not already applied. The application must be submitted to your lender by June 30, 2020 when the program expires.

If you took out a PPP loan prior to June 5, 2020 and have already attained 100% forgiveness based upon your qualified costs within the 8-week covered period, you should proceed with applying for the forgiveness once your financial institution has the application process available. There is no requirement that you must wait until the end of the 24-week covered period. Loan forgiveness applications must be submitted within ten months of the end of the covered period.

The new guidance gives you additional opportunities to explore the best solution for your Company. Weighing on this decision is the forecasted success of your business and head counts during the 8 week and 24-week covered periods. Both full time equivalent measurements and compensation adjustments also affect your forgiveness. As always, SKP is here to discuss your options for various covered periods and all other PPP loan forgiveness questions.