

Summary of Paycheck Protection Program Flexibility Act

Passed by House and Senate - [Click here](#) to view the bill.

Awaiting President's signature to enact into law (as of 11:00 AM June 4, 2020)

Current borrowers have the option to extend the 8-week period to 24 weeks

- Provides flexibility for borrowers that may make it easier to achieve full or near-full forgiveness if current conditions aren't conducive to bringing back employees. However, the 60% payroll requirement discussed below is important to consider when planning for forgiveness.

New borrowers have a covered period of 24 weeks after the loan proceeds are received or December 31, 2020, whichever is earlier.

- The deadline for PPP loan applications continues to be June 30, 2020.
- Based on "[Congressional Intent for H. R. 7010](#)" letter.

The 75% payroll expenditure requirement is reduced to 60% but becomes a cliff.

- In the original CARES Act, 75% of eligible costs are to be used for payroll and if not, there is a reduction in loan forgiveness.
- This Act provides that borrowers shall use at least 60% of the covered loan amount for payroll costs. The word "shall" indicates this is a minimum threshold and if not met, none of the loan is eligible for forgiveness.
- Because the loan amount is based on 10 weeks of payroll, borrowers may have a good chance of meeting the 60% requirement with the covered period extended to 24 weeks.

Opportunity to avoid FTE Reduction penalties if headcount is restored by December 31 instead of June 30

- Borrowers have a longer period of time to restore workforce
- It is unclear if the safe harbor date is as of Dec. 31 or if the borrower can claim the safe harbor was met prior to Dec. 31. Additional guidance is needed.

New exceptions for FTE reduction provided if borrower in good faith is able to document an inability to:

- Rehire individuals who were employees of the eligible recipient on February 15, 2020;
- Hire similarly qualified employees for unfilled positions on or before December 31, 2020;
- Return to the same level of business activity as before Feb. 15, 2020, due to compliance with requirements established or guidance issued ...related to COVID-19.

Repayment period extended to five years for new loans

- Existing PPP loans can have maturity extended if lender and borrower agree
- Interest rate to remain at 1%



PPP Borrowers can now qualify for the deferral of employer's share of payroll taxes available under the CARES Act

- Deferral of Social Security payments (6.2%)
- 50% due in 2021, remainder due in 2022

Loan Payments are deferred until the SBA determines the amount of loan forgiveness and remits to the lender

- Had been a 6-month deferral
- However, if borrower doesn't apply for forgiveness within 10 months after the last day of the covered period, payments will be required at that 10th month.

This legislation does not address tax deductibility of expenses paid with a forgiven PPP loan.

Questions:

- Can a current borrower use the June 30, 2020 FTE Reduction safe harbor instead of December 31, 2020?
 - Additional guidance is needed.
- Does anything change with the Salary and Hourly Wage Reduction calculation and Safe Harbor?
 - Additional guidance is needed.
- Does the limit on cash compensation change to \$100,000 x 24/52 from \$100,000 x 8/52?
 - Additional guidance is needed.

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