



Paycheck Protection Program Flexibility Act

Signed into law June 5th, the Paycheck Protection Program Flexibility Act modifies the original PPP loan provisions of CARES Act. Among other items, the law addresses some of the concerns borrowers have regarding loan forgiveness.

Loan Forgiveness Provisions:

- The 8-week period for using PPP loan proceeds is extended to 24 weeks. PPP loan borrowers having already received loans prior to enactment, may choose to retain their 8-week period.
- Borrowers can use the 24-week period to restore employment and wages to February 15th levels. In addition, the date for doing so is extended from June 30, 2020 to December 31, 2020.
- The 75% expenditure requirement for payroll costs is reduced to 60%. Up to 40% of the loan may now be used for mortgage interest, rent and lease payments, and utility expenses.

Previously, to have full forgiveness of the loan, 75% of the loan had to be used for payroll costs. The forgivable amount was reduced (but not eliminated) if the 75% threshold was not met.

Even though the PPP Flexibility Act is not specific, the Treasury Department has made this clear: failure to reach the new 60% threshold will reduce, but not eliminate, the forgivable amount just as under the previous law.

- There are 2 new safe harbors from reduction in loan forgiveness due to reductions in Full-Time Equivalency (FTE) employees:
 - (1) The employer is able to document an inability either to rehire individuals employed on February 15, 2020 or to hire similarly qualified employees to fill vacant positions by December 31, 2020.
 - (2) The employer is able to document an inability to restore business activity to February 15th levels due to compliance with COVID-19 safety requirements as established by the federal government between March 1, 2020 and December 31, 2020.
- The six-month deferral period for payments of accrued interest, principal, and loan fees on unforgiven loan amounts is extended to either: (1) the date the SBA remits the borrower's loan forgiveness amount to the lender, or (2) if the borrower does not make an application for forgiveness, 10 months after the end of the borrower's loan period.

Changes to Loan Terms:

The PPP Flexibility Act increases loan terms to five years for all new PPP loans issued after June 5, 2020. Loans issued before that date will retain their original two-year term unless borrower and lender can agree to a five-year term. The interest rate remains at 1%.

Expansion of Payroll Tax Deferral:

The new law allows borrowers with forgiven PPP loans to defer payment of the employer's 2020 Social Security taxes with 50% of the deferred tax due December 31, 2021 and the remainder due December 31, 2022. Previously, under the CARES Act, borrowers with forgiven loans were not permitted payroll tax deferral after the loan was forgiven.

Some Pending Issues:

- The PPP Flexibility Act does not address the final date for PPP loan applications. A letter was drafted by members of the House and Senate directing the SBA not to accept new loan applications after June 30, 2020. Presumably, the SBA will follow this direction.
- The law does not address the tax treatment of expenses paid with PPP loans. The IRS previously announced that the underlying expenses paid by a forgiven PPP loan would not be deductible for tax purposes. Congress will take up this issue in the next COVID-19 related legislation.
- Does the increase in the covered period raise the compensation cap on persons who earned more than \$100,000 in 2019? If it does, the forgivable compensation for such persons will be expanded from \$15,385 for 8-weeks to \$46,153 for 24-weeks.
- Finally, it is not clear that a borrower can choose a loan forgiveness period of less than 24-weeks. The way the law reads currently, 24-weeks has simply been substituted for 8-weeks.

We will address the issues and others as more information from Congress, the SBA, and Treasury becomes available.

In a joint press release dated June 8th, SBA and the Department of Treasury announced they "will promptly issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application" in order to implement the new PPP provisions as listed above.

Again, we will keep you updated as new forms and guidance become available.