

Paycheck Protection Program Flexibility Act of 2020

The Senate passed the Paycheck Protection Program Flexibility Act of 2020 (the “PPP Flexibility Act”) on June 3, 2020, and it is anticipated that the President will sign it into law. The PPP Flexibility Act will provide additional provisions to assist businesses that obtained “PPP Loans” under the SBA Paycheck Protection Loan Program.

Highlights of the PPP Flexibility Act include:

- The original 8-week Covered Period to use the loan proceeds on qualified expenses has been extended to 24 weeks, allowing borrowers additional time to spend their loan proceeds on qualifying expenses. This is designed to make it easier for more borrowers to reach full, or almost full, forgiveness. Extending the 8-week period is optional for borrowers who received proceeds before enactment of the PPP Flexibility Act.
- The original requirement that 75% of the forgivable PPP Loan proceeds be used for payroll costs has been reduced to 60%. However, the reduction to 60% appears to now be a “cliff,” meaning that borrowers must spend at least 60% on payroll or none of the loan will be forgiven.
- The loan term has been extended to five years on PPP Loans funded after the effective date of the PPP Flexibility Act. It also provides the ability for existing borrowers with PPP Loans to modify the term of the loan from two to five years.
- Borrowers can use the 24-week period to restore their workforce levels and wages to the pre-pandemic levels required for full forgiveness. This must be done by December 31, 2020, a change from the previous deadline of June 30, 2020.
- If a borrower attempts, but is unable, to rehire individuals who were employees as of February 15, 2020, and is unable to hire similarly qualified employees for the unfilled positions on or before December 31, 2020, such employee reductions will not impact the borrower’s loan forgiveness calculation if the borrower maintains documentation of such attempts. Further, a borrower’s loan forgiveness calculation will not be reduced by a reduction in headcount if the borrower is able to document an inability to return to the same level of business activity it was operating at before February 15, 2020, due to compliance with mandatory federal, state, and/or local guidelines.
- Borrowers may defer the employer portion of payroll taxes from March 27, 2020 through December 31, 2020. Previous regulations cut-off the deferral at the date a borrower's PPP Loan was forgiven. One half of the deferred employer payroll taxes will be due December 31, 2021 and the other half will be due December 31, 2022.