

The Paycheck Protection Program Flexibility Act of 2020 (“Act”) was passed on June 5, 2020. The new law attempts to provide clarity to and address concerns over the SBA’s Paycheck Protection Program (“PPP”) that was created under the CARES Act to provide financial relief to small businesses during the COVID-19 global pandemic.

The following are the significant provisions and changes contained in the new bill. All of these provisions are effective retroactively and apply to all loans approved under the PPP.

1. Extension of Forgiveness Period. The forgiveness period was extended from eight weeks to the earlier of 24 weeks from the origination date of the loan or December 31, 2020. This should give borrowers more flexibility and allow borrowers to ensure that they are able to use all the funding. However it is also clarified that borrowers do not have to wait the whole twenty four weeks to apply for forgiveness; they can apply after the original eight week period. It is noted that this extension should not be construed to allow SBA to continue accepting PPP applications for loans after June 30, 2020.
2. Flexibility for Non-Payroll Expenses. The Act overrides previous guidance by the SBA that borrowers must use 75% of loan proceeds on payroll expenses. Now, borrowers are only expected to use 60% of loan proceeds of payroll expenses. If a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.
3. Change in Deadline to Rehire Workers. Under the Act, businesses now have until December 31, 2020 to rehire their workers or restore wages or salaries. Again this change should provide borrowers with more flexibility with loan forgiveness.
4. Easing Rehire Requirements. In addition to the rehire deadline extension, listed above, borrowers now have two more exceptions to the rehire provisions that require borrowers to restore their FTEs to the level they were on February 15th. Borrowers’ loan forgiveness amount will not be decreased if they can show:
 - a. they are unable to rehire former or similarly qualified employees; or
 - b. they are unable to return to the same level of business activity because of compliance with new government health or safety requirements as a result of COVID-19.
5. Extension of Maturity Date. Any loan made after the passing of the Act (June 5th), now has a maturity date of five years for any unforgiven loan amounts rather than the original two year deadline. Any loans made prior to the Act need to be modified individually with lender approval.
6. Allowing Payroll Tax Deferral. Now employers receiving PPP loan forgiveness may qualify for deferral of the employer’s share of payroll taxes available under the CARES Act.

Although the Act has provided clarity on many pending questions, there are still many outstanding issues. We expect there will be additional guidance and regulations in these areas. Theodora Oringer shall continue to share any such update.

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