

Paycheck Protection Program Flexibility Act of 2020 Amendment to the Paycheck Protection Program

Congress' \$2.2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020. The Act included an array of financial assistance for individuals affected by the COVID-19 crisis. On June 3, 2020, an amendment to this program, the Paycheck Protection Program Flexibility Act (PPPFA) of 2020, was signed into law to give borrowers additional time and flexibility to use the Paycheck Protection Program (PPP) loan proceeds. Note that as of June 12, 2020, there was still over \$130B in available funding for this program.¹

Below are highlights of the PPPFA and the adjustments made to the CARES Act²:

Repayment Term

The repayment term of the PPP loans has been extended from 2 years to 5 years.

- For loans made before June 5, 2020, the borrower and lender may mutually agree to extend the maturity to 5 years.
- All loans made after June 5, 2020 will have a 5-year maturity.

Loan Forgiveness

- Full loan forgiveness is available for those who use 60% of PPP funds on payroll costs and 40% of funds on allowable nonpayroll costs. Partial forgiveness is available if allowable costs do not meet that percentage.
- The timeframe in which employers had to spend the PPP money to be eligible for forgiveness increased from 8 weeks after the loan proceeds were received to 24 weeks. A borrower whose loan was made before June 5 may elect to apply the original 8-week covered period instead of the new 24-week covered period if desired.
- Safe Harbor was added for employers who were unable to hire back employees causing loan forgiveness to be reduced based on the reduction of full-time equivalent employees.
 - Safe harbor was extended for borrowers to rehire employees or reverse salary reductions from June 30, 2020 to December 31, 2020.
 - The amount of forgiveness a borrower can receive will not be affected by a reduction in employees if the borrower can document:
 - An inability to rehire individuals who were employees of the borrower on February 15, 2020; and
 - An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
 - The borrower is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

¹ Paycheck Protection Program (PPP) Report, 6/12/2020.

² Federal Register, 6/16/2020.

Deferral Period for loan payments

- A borrower who submits their loan forgiveness application within 10 months after the end of their covered period will not have to make payments of principal or interest on their PPP loan.
- If an application for forgiveness is not filed 10-months after the covered period, the borrower will need to start paying principal and interest.
- Note, interest accrues during this deferment.

Deferral of payroll taxes

- Employers who receive the PPP loan can now defer the employer portion of employment taxes. This deferral does not include employees' withholdings.
- 50% of 2020 the employer portion of payroll taxes will be due by December 31, 2021 with the remaining 50% due December 31, 2022.

More changes may come to offer continued assistance to small businesses.

These are some things to keep watch on:

- Will the June 30th PPP application deadline get extended?
- Will there be industry specific tax incentives (for both large and/or small businesses)?
- Will the Prioritized Paycheck Protection Program (P4) bill pass?
 - This covers new lending under PPP to businesses with less than or equal to 100 employees that have already exhausted their original PPP loan proceeds and have lost revenue of 50% or more.
- Will the Small Business Expense Protection Bill pass?
 - This bill would allow expenses used with PPP proceeds to maintain their tax deductibility status (while still not including the PPP proceeds as income).