

PPP Update: New Law, Flexibility

Today the President signed into law the “Paycheck Protection Program Flexibility Act of 2020”, which was passed by the Senate on Wednesday night. To move the bill more quickly (since many borrowers were nearing the end of their 8-week covered period this week), the Senate passed the House version of the PPP bill - so all the changes included in our previous 5/28 alert when the House passed the bill (“Forgiveness and Other PPP Terms Likely to Change”) are unchanged. Those changes are repeated below.

There is a drafting error in the bill, which is expected to be corrected. The wording appears to change the 60% rule for payroll (previously 75%) to an all-or-nothing cliff amount for forgiveness, which was not the intention.

Changes are:

- Extension of covered period for forgiveness to 24 weeks after loan origination
 - Borrowers that received the loan prior to enactment of these changes can elect to stay with the original 8-week covered period
- Changes the safe harbor dates from 6/30/20 to 12/31/20 (to give more time to correct reductions in FTEs or reductions in pay rates that occurred between 2/15/20-4/26/20)
- New exemptions based on employee availability – relaxes FTE forgiveness reductions if the borrower, in good faith, can document:
 - an inability to rehire individuals who were employed as of 2/15/20;
 - an inability to hire similarly qualified employees for unfilled positions on or before 12/31/20;
 - an inability to return to the same level of business activity from 2/15/20, due to compliance with requirements established by HHS, the CDC, or OSHA during the period from 3/1/20-12/31/20 related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19
- Reduces the 75% requirement for payroll costs down to 60%
 - The language in the law reads as follows: “To receive loan forgiveness under this section, an eligible recipient shall use at least 60 percent of the covered loan amount for payroll costs...” – this is the technical correction which is needed.
- Extension of loan terms from 2 years to 5 years (borrowers with existing PPP loans will need to negotiate terms with their lender)
- Extension of loan payment deferral period, replacing 6 months with “until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.” (if no application for forgiveness is made, then deferral is for 10 months after the last day of the forgiveness covered period)
- Removes the restriction against deferring payment of employer payroll taxes when also receiving PPP forgiveness (currently, deferral is only for amounts deferred through the forgiveness date)

We hope you can join us for our “Applying for PPP Forgiveness” webinar on Monday afternoon. In the meantime, please reach out if you have any questions.

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