

THE PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT OF 2020

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (the PPP Flex Act) was signed into law following near-unanimous support in both chambers of Congress. This bill is intended to provide more flexibility to Paycheck Protection Program (PPP) borrowers and ultimately increase the opportunity for forgiveness of PPP loans by making targeted improvements to the program.

Below is a summary of the key provisions of the PPP Flex Act. Additional guidance and clarifications are expected from the SBA following the passage of the bill.

- PPP borrowers may elect to extend the original eight-week forgiveness period to 24 weeks, or they can retain the original eight-week period to calculate forgiveness.
- The payroll expenditure requirement drops to 60% from 75%, thus increasing the nonpayroll limit on forgiveness from 25% to 40%. In a joint statement issued by the SBA and the Treasury following the enactment of the PPP Flex Act, clarification was provided that the amount eligible for forgiveness would be reduced, but not eliminated entirely, if less than 60% of PPP proceeds were used for eligible payroll costs.
- For PPP loans issued on or after June 5, 2020, the maturity date will be a minimum of five years for any unforgiven amounts. There is no change to the interest rate of 1%. For existing PPP loans, borrowers and their lenders can mutually agree upon extending the maturity date.
- The full-time equivalent (FTE) restoration deadline for the FTE Safe Harbor has been extended from June 30, 2020 to December 31, 2020.
- There are two new exemptions for the calculations of FTE reduction on forgiveness. If the borrower, in good faith is able to document either of the following:
 - The borrower is unable to rehire employees that were employed as of February 15, 2020 and unable to hire similarly qualified employees for unfilled positions by December 31, 2020.
 - OR, the borrower is unable to return to the same level of business activity that the borrower was operating at prior to February 15, 2020, due to government restrictions related to COVID-19.
- The deferral period for principal, interest, and fees was revised from six months to the date on which the forgiveness is remitted to the lender.

- If a PPP borrower fails to apply for forgiveness within 10 months following the covered period, payments of principal, interest, and fees must commence after such 10-month period.
- PPP borrowers may delay payment of the employer portion of social security taxes through December 31, 2020. Half of the deferred payroll taxes are due on December 31, 2021 with the other half due on December 31, 2022.

Revised June 9, 2020