

Paycheck Protection Program Flexibility Act – Updates to the PPP

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Overview

On June 5, 2020, the President signed the [Paycheck Protection Flexibility Act of 2020](#) (the “Act”), which modifies certain provisions of the Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) enacted on March 27, 2020. The Act makes certain terms of the Paycheck Protection Program (“PPP”) more favorable to borrowers. As discussed in our [previous alert](#), the PPP provides forgivable loans up to \$10 million to small businesses.

Key Points

- **Extension of Maturity Date for PPP Loans.** The Act extends the maturity date from two years to five years for the portion of PPP loans that are not forgiven. These periods begin when the borrower applies for forgiveness of its PPP loans advanced after the date of enactment. For PPP loans advanced prior to enactment, lenders and borrowers may extend the maturity date to the same five-year date.
- **Extension of Payment Deferral Period.** The Act extends the period during which no interest or principal payments are due from six months to the date on which the lender determines the amount of loan forgiveness. However, the deferral period ends if the Borrower fails to apply for loan forgiveness within 10 months after the loan forgiveness covered period.
- **Changes in Loan Forgiveness.**
 - ▶ **Extension of Covered Period.** For loan forgiveness purposes, the Act extends the end date for the “covered period” during which PPP loan proceeds must be applied to payroll, rent, mortgage interest and utilities from June 30, 2020 to December 31, 2020 (or 24 weeks after the PPP loan is advanced, if earlier). A borrower who received a PPP loan prior to the date of enactment may elect to continue to use the period ending June 30.
 - ▶ **Increase in Percentage of Non-Payroll Costs.** For loan forgiveness purposes, the limitation on use of PPP loan proceeds for non-payroll costs increased from 25% to 40%; only 60% of the loan proceeds must now be used for payroll costs to be eligible for loan forgiveness.
 - ▶ **Extension of Time to Rehire Employees and Restore Compensation.** In calculating the relative number of employees and compensation reductions for purposes of loan forgiveness, the Act permits a borrower to include (A) employees who are rehired by December 31, 2020 in determining the borrower’s restoration of terminated employees, and (B) restoration of previous compensation reductions that occurs by December 31, 2020, an extension from the existing June 30, 2020 deadline.
 - ▶ **Exemption for Inability to Rehire Employees.** The Act creates a loan forgiveness exemption for borrowers who terminate employees between March 1 and December 31, 2020 if the borrower is able to document in good faith that it is unable to rehire individuals who were employees on February 15, 2020 and is unable to hire similarly qualified employees by December 31, 2020.
 - ▶ **Exemption for Inability to Return to the Same Level of Business Activity.** The Act creates another loan forgiveness exemption for borrowers who terminate employees between March 1 and December 31, 2020 if the borrower is able to document in good faith that it is unable to return to the same level of business activity as in effect before February 15,

2020 as a result of the compliance requirements 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 March 1 through December 31, 2020 related to the maintenance of standards for sanitation, social distancing or other safety requirements related to Covid-19.

- [Payroll Tax Deferrals](#). The Act allows borrowers whose PPP loans have been forgiven to defer payroll tax payments under Section 2302 of the CARES Act.

For more information on these topics, please contact [Jennifer Audeh](#), [Robert Sawyer](#), [Malcolm Henderson](#), [Thomas Draper](#) or [Heekyoung Lee](#).

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