

UPDATE: Paycheck Protection Program Flexibility Act of 2020 Amends the CARES Act to Provide Borrowers Relief under the PPP

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On June 4, 2020, the Paycheck Protection Program Flexibility Act of 2020 (PPPFA) was signed into law to provide relief to borrowers under the Paycheck Protection Program (PPP). The PPPFA amends the original Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to loosen restrictions placed on PPP loans, making loan terms more favorable for borrowers. In particular, the PPPFA provides for the following changes to the PPP:

- extends the loan forgiveness period from 8 weeks following loan disbursement to 24 weeks following loan disbursement, provided such new loan forgiveness period may not extend past December 31, 2020;
- reduces the amount of loan proceeds to be spent on payroll costs to qualify for forgiveness from 75% of proceeds to 60% of proceeds. However, subject to further guidance from the SBA, the statutory language appears to require that borrowers spend at least 60% on payroll to obtain any loan forgiveness.
- revises the payment deferral period from 6 months after loan origination to the date on which the approved loan forgiveness amount is remitted to the lender, provided that if a borrower does not submit its loan forgiveness request within 10 months after the end of the applicable loan forgiveness period, then such borrower will be required to begin making principal and interest payments after such 10-month period;
- extends the safe harbor cutoff date for rehiring full-time equivalent (FTE) employees and eliminating prior salary/wage reductions from June 30, 2020 to December 31, 2020, providing PPP borrowers with more time to return to pre-pandemic payroll numbers;
- provides an exception to the requirement that loan forgiveness be reduced if there is a decrease in FTEs, if the borrower, in good faith, documents (A) its inability to rehire an individual who was an employee of the borrower on or before February 15, 2020; and its inability to hire a similarly qualified FTE employee on or before December 31, 2020 or (B) its inability to return to the same level of business activity at which such business was operating prior to February 15, 2020 due to compliance with government requirements or guidance relating to standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19;
- requires that the minimum maturity of a PPP loan made on or after enactment of the PPPFA be 5 years. The PPPFA also provides that a borrower and lender may agree to amend a PPP loan originated prior to enactment of the PPPFA to reflect a 5-year maturity; and
- amends the CARES Act to allow a borrower that obtains loan forgiveness to take advantage of the CARES Act provision that permits a business to defer payment of the employer's share of Social Security taxes over a two-year period.

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