

# Back to Business

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## Paycheck Protection Program Flexibility Act of 2020

President Trump signed into law the Paycheck Protection Program Flexibility Act of 2020 (the PPP Flexibility Act) on June 5, 2020 (the Effective Date). The PPP Flexibility Act amends certain provisions of the Coronavirus Aid, Relief and Economic Security Act (the CARES Act), extends the PPP through December 31, 2020 and provides borrowers of Paycheck Protection Program (PPP) loans additional flexibility in spending their loan proceeds.

### Changes to PPP Loan Forgiveness

The CARES Act provided that borrowers were eligible to receive loan forgiveness on amounts spent on eligible expenses in the eight-week period following the date on which the borrower's PPP loan was disbursed (the Forgiveness Period). The PPP Flexibility Act extends the Forgiveness Period to 24 weeks, provided that it may not run beyond December 31, 2020 (the New Forgiveness Period).

Notwithstanding the extension of the Forgiveness Period, a borrower who received a PPP loan prior to the Effective Date of the PPP Flexibility Act may elect to continue to use an eight-week Forgiveness Period if it so chooses.

### Loan Forgiveness

Pursuant to the CARES Act, a reduction in the average number of full-time equivalent (FTE) employees and/or a reduction in the salary or wages of an employee in excess of 25 percent (other than salary or wage reductions to employees who earned in excess of \$100,000 in 2019) resulted in a reduction to the amount of forgiveness a borrower was eligible to receive (the Reduction Rule).

### The Bottom Line

The Paycheck Protection Program Flexibility Act of 2020 (the PPP Flexibility Act) was enacted on June 5, 2020. The PPP Flexibility Act provides borrowers with additional flexibility in both the amount of time and the ways in which they are able to use their PPP loan proceeds.

Borrowers should review the reforms made by the legislation to the PPP in order to determine how they can best utilize their PPP loan proceeds.

The recent [Interim Final Rule on Loan Forgiveness](#) issued by the Small Business Administration (the SBA) clarified that borrowers would not be subject to the Reduction Rule to the extent they restored their average number of FTE employees and/or salary or wages by June 30, 2020. The PPP Flexibility Act extended this safe harbor to the Reduction Rule by giving employers until December 31, 2020 to rehire employees and/or restore wages.

Borrowers should note that if they wait until this extended deadline to restore their number of FTE employees, they will likely have to delay applying for loan forgiveness until after such date.

The PPP Flexibility Act also added an additional safe harbor to the Reduction Rule pursuant to which the amount of forgiveness a borrower is eligible to receive (the Forgiveness Amount) will not be reduced to the extent:

1. The borrower is unable to (i) rehire the individuals who were employees as of February 15, 2020 and (ii) hire similarly qualified employees for the unfilled positions on or before December 31, 2020; or
2. The borrower is unable to return to the same level of business activity at which it operated prior to February 15, 2020 as a result of compliance with COVID-19 related requirements and guidance issued by the Secretary of Health and Human Services, the Centers for Diseases Control and Prevention or the Occupational Safety and Health Administration.

The PPP Flexibility Act states that the borrower must be able to document its eligibility for the above safe harbor but does not specify the type of documentation that would be required.

Lastly, the PPP Flexibility Act amended guidance issued by the SBA stipulating that borrowers were required to spend 75 percent of their PPP loan proceeds on payroll costs. The new legislation specifies that in order to receive forgiveness, only 60 percent of the loan proceeds must be used on payroll costs, while the remaining 40 percent can be used to pay for other forgiveness eligible expenses. Should a borrower spend less than 60 percent of their loan proceeds on payroll costs, the borrower will be eligible only for partial loan forgiveness, subject to at least 60 percent of the forgiven amount having been spent on payroll costs.

## Changes to PPP Loan Terms

If, following the New Forgiveness Period, any portion of a PPP loan remains outstanding, the PPP Flexibility Act extends the maximum maturity for PPP loans from two years to five years. While the legislation only extends the maturity of only PPP loans made on or after the Effective Date, it specifies that borrowers and lenders of outstanding PPP loans can mutually agree to extend the maturity of such loans beyond the two years originally dictated by the CARES Act.



Additionally, borrowers are provided with enhanced repayment flexibility, as the PPP Flexibility Act permits a borrower to defer payment of principal, accrued interest and fees until the Forgiveness Amount is determined by the borrower and remitted to the lender. However, a borrower must begin repaying its loan ten months following the end of the New Forgiveness Period if it has not submitted its application for forgiveness prior to that date.

Under the PPP Flexibility Act, the last date on which a PPP loan can be approved remains June 30, 2020. As of the Effective Date, approximately \$150 billion remains available for loans under the PPP.

## Changes to Deferral of Employment Taxes

Under the [CARES Act](#), employers were permitted to defer the payment, until December 31, 2021, of all employer-side social security taxes (and certain deposits related to unemployment and other employee insurance funds) for periods through December 31, 2020, with: 50 percent of such deferred taxes paid on December 31, 2021; and 50 percent paid on December 31, 2022. Similarly, self-employed individuals could defer the payment of 50 percent of the self-employment taxes they owed for the period from March 27, 2020 through December 31, 2020.

A borrower who received a PPP loan could take advantage of this deferral only until the PPP loan was forgiven. The PPP Flexibility Act eliminates this limitation and permits PPP borrowers to take advantage of provisions relating to the deferral of payroll taxes regardless of when in 2020 a borrower's PPP loan might be forgiven.

Further guidance from the SBA will be required to synthesize some of the existing rules governing the PPP with the PPP Flexibility Act, but this legislation will enable many borrowers to maximize the benefit of their PPP loans.

## For More Information

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