

New Law: Key Modifications to the Paycheck Protection Loan Program

On June 5, President Trump signed the Paycheck Protection Program Flexibility Act of 2020 (“PPP Flexibility Act”) into law. The PPP Flexibility Act modifies provisions and terms of the Paycheck Protection Loan Program (“PPP”) in order to give recipients of the PPP Loans additional opportunities to obtain forgiveness. A brief summary of the PPP Flexibility Act is as follows:

EXTENSION OF FORGIVENESS PERIOD

The most significant impact of the PPP Flexibility Act is that it extends the period that a PPP Loan recipient may use its funds for qualifying expenses, that are forgivable, from 8 weeks from the date the recipient received its funds, to the earlier of 24 weeks from when the funds were received or December 31, 2020. This extension applies to all loan recipients, even if the loan recipient has already received its funds. If, however, the PPP Loan recipient wishes for its covered loan to end 8 weeks’ from when it received its funds, it may keep the 8-week period.

EXPANSION OF LOAN PROCEEDS USAGE

Another significant change the PPP Flexibility Act made to the PPP is that it gives loan recipients more latitude in utilizing loan proceeds. The PPP Flexibility Act raised the non-payroll portion of the forgivable loan amount from 25% to 40%. Thus, a small business may allocate more of its loan proceeds to nonpayroll expenses such as covered mortgages, covered rent, or covered utilities and still have such expenditures forgiven.

EXTENSION OF DEADLINES

The PPP Flexibility Act also extends the deadlines for the following PPP provisions:

1. **Deferral Period.** PPP Loan recipients may defer payments until the recipient receives its compensation for the amount of its PPP Loan which was forgivable. This is changed from the current deadline of 6 months. Additionally, even if PPP Loan recipients do not qualify for forgiveness, the recipient does not need to make payments until at least 10 months after the last day of the covered period.
2. **Application.** The deadline for small businesses to apply for PPP Loans is extended from June 30, 2020 to December 31, 2020.
3. **Additional Forgiveness.** The period when an employer must rehire or eliminate its reduction in wages, salary, or employment, which otherwise would reduce the recipients forgivable amount is extended from June 30, 2020 to December 31, 2020. However, this extension is only available if the loan recipient is, in 'good faith' able to document (a) an inability to rehire its former employees or to hire similarly qualified employees for unfilled positions, or (b) that compliance with federal guidance or requirements related to COVID-19 prevented the business from returning to the same level of business activity as it was before February 15, 2020.

ADDITIONAL RELEVANT PROVISIONS

The Act also amended the CARES Act to give PPP Loan recipients the ability to take advantage of its payroll tax deferral provisions and extends the minimum maturity of new PPP Loans to 5 years from its current 2-year deadline. While extension to 5 years only applies to new borrowers, current borrowers and lenders may agree to extend their deadlines to 5 years if both parties agree.

If you have any questions about the PPP Flexibility Act and how it affects you or your business, please contact one of our attorneys or visit our website.