



## **Paycheck Protection Program Flexibility Act Makes Loan Forgiveness Easier**

President Trump has signed bipartisan legislation to modify the U.S. Small Business Administration (SBA) Paycheck Protection Program (PPP).

The Paycheck Protection Program Flexibility Act of 2020 includes several significant updates affecting both borrowers and lenders participating in the program.

### **Key Changes**

#### ***Availability of Loans***

- The Flexibility Act extends the deadline to apply for a PPP loan from June 30 to December 31, 2020. Approximately \$130 billion of the second round of PPP funds approved by Congress remains.

#### ***Loan Forgiveness Flexibility***

- One of the most significant changes in the Flexibility Act is to the existing 75%/25% rule.
- Prior to the Flexibility Act, borrowers were required to use at least 75% of their PPP loan proceeds during the covered period for Payroll Costs to qualify for loan forgiveness. The SBA's forgiveness application seemed to indicate that a failure to meet that threshold could result in a reduction in the non-Payroll Costs eligible for forgiveness.
- The Flexibility Act changes the threshold to 60% but all indications are that a failure to use at least 60% of PPP loan proceeds for Payroll Costs will render a borrower ineligible for forgiveness, not merely a reduction in the non-Payroll Costs portion.
- The Flexibility Act also extends the "covered period" in which borrowers must use the funds for forgiveness purposes from the current 8 weeks to the earlier of 24 weeks from loan disbursement or December 31, 2020. Borrowers whose loans were in place prior to the passage of the Flexibility Act could elect to continue using the 8-week covered period.

#### ***Safe Harbor for Maintaining or Rehiring Employees***

- The CARES Act required that PPP borrowers maintain the average full-time equivalent employees as they had prior to the COVID-19 pandemic and pay employees at least 75 percent of the salary or wages they received in the last fiscal quarter before applying for a PPP loan. The CARES Act included a safe harbor if the PPP borrower restored employment or salary/wages prior to June 30, 2020.
- The Flexibility Act extends the CARES Act safe harbor for restoring average FTE and salaries/wages from June 30, 2020 to Dec. 31, 2020. The Flexibility Act also prevents a PPP borrower from having its loan forgiveness reduced if the borrower can establish in good faith that it was unable to:
  - Rehire an individual that was laid off after Feb. 15, 2020
  - Hire similarly qualified employees for unfilled positions, or
  - Return to the same level of business activity it was at before Feb. 15 due to compliance with U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) or Occupational Safety and Health Administration (OSHA) guidance.

### ***Term of the Loan & Repayment Timing***

- If you apply for forgiveness within 10 months after the end of either the 8 or 24-week week (it is the borrower's choice which period to use), you will not have to make any payments of principal or interest until the SBA remits the loan forgiveness amount to the lender (or notifies the lender that the forgiveness amount is allowed). If you do not apply for forgiveness within 10 months after the 8 or 24-week period, you must begin repaying the loan at the end of the 10-month period.
- The Flexibility Act extends the terms of new PPP loans (made on or after the Act's enactment) from 2 years to 5 years. Borrowers and lenders for existing PPP loans are not prohibited from mutually agreeing to extend the terms of their PPP loans.

### ***Payroll Taxes for Employees Whose Payroll Costs Are Covered by the Loan***

- The CARES Act allowed employers and self-employed individuals to delay the deposit of the employer-portion of the social security tax (the 6.2 percent tax on wages) and 50 percent of the tax imposed on the self-employment income, respectively. However, the CARES Act also prohibited employers from taking advantage of the payroll tax deferral after a PPP loan is forgiven.
- The Flexibility Act removes this restriction, allowing PPP borrowers to take advantage of the payroll tax deferral from March 27 to Dec. 31, 2020.

### **What Did Not Change**

There is no change in the maximum loan amount that can be borrowed under the program; it remains 2.5 times a borrower's one-month average payroll cost (as determined in accordance with existing rules).

Borrowers are also still allowed only one PPP loan, and they may not apply for or receive a second loan.

*Reach Out To Us at [CPA@Fuoco.com](mailto:CPA@Fuoco.com): PPP Loans are still available and the application deadline is June 30, 2020! Fuoco Group has a COVID 19 survival team with PPP Loan experts that can answer all your questions regarding forgiveness, as well as help with calculations and compliance for your bank.*