

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT PROVIDES EMPLOYERS WITH MORE OPTIONS (UPDATED)

Insights
Jun 8, 2020

After much discussion and debate, Congress just passed the Paycheck Protection Program Flexibility Act, which will implement substantial changes to the Paycheck Protection Program (PPP). President Trump is expected to sign the bill into law. Among other changes, the bill extends the time that businesses have to spend PPP loan funds and alters the forgiveness rules, including a reduction in the percentage of the loans that must be used for payroll purposes.

[Ed. Note: The president signed this bill into law on June 5, 2020.]

PAYCHECK PROTECTION PROGRAM

The Coronavirus Aid, Relief and Economic Security (CARES) Act provided much-needed [economic relief](#) to businesses and employees impacted by the COVID-19 crisis. The most significant provision of the CARES Act for employers established “paycheck protection” loans administered by the Small Business Administration (SBA) to help employers cover payroll costs and other expenses during the COVID-19 crisis. The covered period for loans was February 15, 2020 through June 30, 2020.

The program provided that the federal government would forgive the loans in an amount equal to the total money spent on payroll and other specified costs during an eight-week period after the disbursement of the loan. The amount of loan forgiveness would be reduced proportionally based on calculations involving reductions in full-time employees

Related People



Patrick W. Dennison

Partner

[412.822.6627](tel:412.822.6627)



Michael P. Elkon

Partner

[404.240.5849](tel:404.240.5849)

and wages in excess of 25% for certain employees. The PPP also provided that any reduction in the amount of loan forgiveness would be avoided entirely if the employer rehired all employees laid off between February 15, 2020 and April 26, 2020, or increased their previously reduced wages, no later than June 30, 2020.

The SBA and Department of the Treasury later clarified that 75% of any forgiveness amount must be used for payroll purposes by capping the amount of non-payroll costs eligible for forgiveness at 25%.

WHAT DOES THE PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT CHANGE?

The Paycheck Protection Program Flexibility Act extends the covered period from February 15, 2020 to June 30, 2020 to **February 15, 2020 to December 31, 2020**. The period during which PPP loan funds may be used is extended from eight weeks to 24 weeks after the disbursement of the PPP loan, or up until December 31, 2020, whichever period ends earlier. Borrowers who received a PPP loan before the enactment of the Flexibility Act may elect to use an eight-week forgiveness period.

The Flexibility Act also amends the CARES Act to provide that any reduction in the amount of loan forgiveness is avoided if the employer rehires all employees laid off between February 15, 2020 and April 26, 2020, and increases their previously reduced wages, no later than **December 31, 2020**.

The Flexibility Act creates an additional exemption to the reduction-in-loan forgiveness. The exemption states that the amount of loan forgiveness will be determined "without regard to a proportional reduction in the number of full-time equivalent employees" if the borrower, in good faith:

- Can document an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
- Can document an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health



Rick Grimaldi

Partner

610.230.2136



Nicholas S. Hulse

Partner

704.778.4183

Service Focus

Counseling and Advice

and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period between March 1, 2020 and December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

These exemptions are important for businesses that are unable to return to full operation because of restrictions on customer capacity or similar reopening restrictions.

The Flexibility Act amends the guidance issued by the SBA and Department of the Treasury to require that borrowers use at least **60% of the PPP loan amount for payroll costs**, and at most **40% of the PPP loan amount for non-payroll costs** (rent, mortgage interest, and utilities). This is an important change to note because the guidance issued by the SBA and Department of the Treasury's previous guidance placed the cap on non-payroll costs at 25% of the total forgiveness amount, not the total loan amount.

Under the Flexibility Act, payment of principal, interest, and fees are deferred until the date that the amount of forgiveness is remitted to the lender. Borrowers must submit applications for forgiveness within ten months after the last day of the covered forgiveness period.

CONCLUSION

The Paycheck Protection Program Flexibility provides borrowers with additional flexibility and time to use PPP loan funds and still have the loan forgiven. Borrowers will now have 24 weeks from the disbursement of their loan to use the PPP funds. The bill also creates flexibility by reducing the amount of loan money that must be used for payroll purposes. This is welcome news to borrowers who have not been able to reopen, or only recently reopened.

Fisher Phillips' [SBA Loan Team](#) will continue to monitor the ever-changing COVID-19 situation and provide updates. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information.

For further information, contact your Fisher Phillips attorney, [or any member of our SBA Loan Task Force](#). You can also review our [FP BEYOND THE CURVE: Post-](#)

[Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.