

PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT OF 2020

Summary of Resulting Changes to Paycheck Protection Program

(Posted June 5, 2020)

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President Trump signed into law the Paycheck Protection Program Flexibility Act of 2020 (the “Act”) on June 5, 2020. The following summarizes the Act and the resulting changes to the Paycheck Protection Program.

Issue	Original CARES Act/PPP Guidance	Paycheck Protection Program Flexibility Act of 2020
Loan Maturity (unforgiven amount)	2 years from date of loan origination.	Minimum of 5 years from date of loan origination for all loans issued after June 5, 2020. For loans issued prior to June 5, 2020, lenders and borrowers may agree to modify the term to comply with amendment, but are not required to do so. (§2(b)).
“Covered Period” (SBA §7(a)(36)(A)(iii))	February 15, 2020 – June 30, 2020 .	February 15, 2020 – December 31, 2020 (§3(a)).

Issue	Original CARES Act/PPP Guidance	Paycheck Protection Program Flexibility Act of 2020
<p>Forgiveness Covered Period (CARES Act §1106 (a)(3)).</p>	<p>8-week (56-day) period commencing on loan origination date, with alternative payroll period beginning on first day of payroll period following loan origination date.</p>	<p>Commencing on the loan origination date and ending on the earlier of (a) the end of the 24th week following loan origination; or (b) December 31, 2020. (§3(b)). Borrowers receiving funds prior to June 5, 2020, may elect for the cover period to be the previously stated 8-week period. (§3(b)(3)).</p>
<p>Forgiveness Safe Harbor – FTEs (CARES Act §1106(d)(5)(B)(i)(I)).</p>	<p>Forgiveness amount is adjusted if a reduction in FTE’s from February 15, 2020, occurring between February 15 and April 26 is not remedied by June 30, 2020.</p>	<p>Forgiveness amount is adjusted if a reduction in FTE’s from February 15, 2020, occurring between February 15 and April 26 is not remedied by December 31, 2020. (§3(b)(2)(A)).</p>
<p>Forgiveness Safe Harbor – Salary/Wage Reductions (CARES Act §1106(d)(5)(B)(ii)(II)).</p>	<p>Forgiveness amount is reduced if any employee’s salary/wages is reduced between February 15 and April 26, 2020, and salary/wages are not returned to February 15 rates by June 30, 2020.</p>	<p>Forgiveness amount is reduced if any employee’s salary/wages is reduced between February 15 and April 26, 2020, and salary/wages are not returned to February 15 rates by December 31, 2020. (§3(b)(2)(A)).</p>

Issue	Original CARES Act/PPP Guidance	Paycheck Protection Program Flexibility Act of 2020
Exemption Based on Employee Availability	Not addressed.	<p>Adds an exemption to reductions in forgiveness amounts if borrower is able to document:</p> <ul style="list-style-type: none"> (a) an inability to rehire individuals who were employees on February 15, 2020, <i>and</i> an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; <i>OR</i> (b) an inability to return to February 15, 2020, levels of business activity due to compliance with requirements established or guidance issued by Secretary of HHS, Director of CDC or OSHA during the period beginning March 1, 2020, and ending December 31, 2020, related to maintenance of standards for sanitation, social distancing or any other worker or customer safety requirement related to COVID-19. (§3(b)(2)(B)).
Limitation on Forgiveness	Limited nonpayroll expenses to 25% of total forgiven amount (minimum 75% for payroll expenses).	Increases limitation on nonpayroll expenses to 40% (minimum 60% for payroll expenses). (§3(b)(2)(B)).
Deferral Period (SBA §7(a)(36)(M)(ii)(II) and (iii))	Deferment of 6 months for principal, interest and fees.	Deferment of principal, interest and fees until the date the forgiveness amount is determined and remitted to the lender by the SBA. (§3(c)(1) & (2)).

Failure to Apply for Forgiveness	Not Addressed	If borrower fails to apply for forgiveness within 10 months of last day of the forgiveness covered period, principal, interest and fee payments shall commence.
Employer Payroll Taxes (§2302 CARES Act)	Does not permit delayed payment of employer payroll taxes under §2302 of CARES Act to the extent PPP borrower has had indebtedness forgiven.	Deletes restriction against delayed payment of employer payroll taxes under §2302 and permits PPP borrowers to participate. (§4(a)).