

PPP Forgiveness Rule Changes

Effective June 5, 2020

Congress has once again revised the Small Business Administration's Paycheck Protection Program (PPP) through amendments made to the CARES Act by the recently enacted PPP Flexibility Act. The newest revisions, signed into law June 5, 2020, modify certain provisions related to the forgiveness of loans made under the PPP, allow recipients of loan forgiveness to defer payroll taxes, and for other purposes, including the following:

Maturity Extended to 5 Years

Loans under the PPP allow for the borrower to request forgiveness of that portion of the loan that was used during a covered period for certain payroll costs and business expenses. For the loan amount not forgiven under the program, the borrower had 2 years to repay the remaining balance. Under the PPP Flexibility Act, the repayment period has been extended from 2 years to 5 years after application of forgiveness.

The applicability of new maturity term is backdated to the enactment of PPP; however, for PPP loans that have already closed, based upon language in the PPP Flexibility Act, WBA believes both lender and borrower need mutually agree to modify the loan maturity term from 2 years to 5 years before the 5-year term will apply to the previously executed PPP loan.

Covered Period Extended

Borrowers were permitted to spend PPP loan proceeds for 8 weeks, beginning on date of loan disbursement. This period was referred to as the "covered period". The PPP Flexibility Act has extended the covered period from 8 weeks to 24 weeks; the period cannot go past December 31, 2020. This provision is also backdated to the enactment of PPP, however, a borrower who previously received a PPP loan may elect keep the original 8-week covered period.

The PPP Flexibility Act also corrected a technical issue that was created when Congress added funding to the PPP because original 8-week covered period had run beyond the original June 30, 2020 program termination date. To correct the timing issues, the PPP is now extended to the earlier of December 31, 2020 or the date program funding has expired.

Exemption Based on Employee Availability

New flexibility has been given to determine full-time equivalency (FTEs) for loan forgiveness calculations. During the period beginning on February 15, 2020 and ending December 31, 2020, the amount of loan forgiveness is to be determined without regard to a proportional reduction in the number of FTEs if a borrower, in good faith can document:

The inability to rehire individuals who were employees of the borrower on February 15, 2020; and

An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

Is able to document an inability to return to the same level of business activity as was operating before February 15, 2020, due to compliance with requirements established or guidance issued by Secretary of Health and Human Services, the Director for CDC, or OSHA during a period beginning on March 1, 2020 and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other work or customer safety requirement related to COVID-19.

Percentage of PPP Loan Proceeds on Payroll Costs

Loan proceeds under PPP were to be used for certain expenses with a cap of 25% permitted for use on non-payroll costs during the covered period. The PPP Flexibility Act now allows for up to 40% of PPP loan proceeds to be used on non-payroll costs. For forgiveness, the borrower must now use at least 60% of PPP loan proceeds for payroll costs during the covered period.

Forgiveness Application Filing and Deferral Period

The PPP Flexibility Act requires borrower to apply for forgiveness of a covered loan within 10 months after the last day of the covered period. If borrower fails to file for forgiveness at that time, borrower will be required to make payments of principal, interest and fees, as applicable.

The Act also revised the previously set payment deferral period to coincide with borrower's application for forgiveness or 10 months after the last day of the covered period if borrower failed to apply for forgiveness.

Payment of Payroll Taxes

The PPP Flexibility Act eliminates the CARES Act exception to now allow a borrower to delay the payment of payroll taxes if the borrower has indebtedness forgiven under PPP