



## New PPP Legislation Provides Flexibility to Borrowers

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On Thursday the U.S. Senate passed the Paycheck Protection Program Flexibility Act of 2020 (the "Act"), and the president is expected to sign it into law. The Act loosens several of the Paycheck Protection Program's requirements. PPP borrowers now have significantly longer to spend loan proceeds, rehire employees, and restore their wages to avoid reductions to loan forgiveness. Borrowers can now spend a greater percentage of loan proceeds on forgivable non-payroll costs. We summarize these changes below.

### 1. Extended Time to Spend Loan Proceeds and Repay Loan.

PPP borrowers previously had 8 weeks to spend loan proceeds to receive maximum loan forgiveness. A borrower who receives their loan before July 16 now has 24 weeks to spend loan proceeds and claim forgiveness for those costs. Borrowers who receive their loan on or after July 16 have until December 31, 2020 to spend the loan. Alternatively, the borrower may elect to use the old 8-week period.

The Act also extends the loan repayment window from 2 years to 5 years, and interest is now deferred until the loan forgiveness amount is determined and paid to the borrower's lender.

### 2. Extended Time to Avoid Forgiveness Reductions.

A Safe Harbor previously allowed borrowers to rehire employees and restore their wages by June 30, 2020 to avoid loan forgiveness reductions. The Act extends the Safe Harbor to December 31, 2020. When compared with the CARES Act, the Act appears to permit borrowers to apply for loan forgiveness before December 31. Therefore, borrowers who anticipate additional workforce reductions this year should carefully consider when to apply for loan forgiveness.

### 3. New Exceptions to Avoid Reduced Forgiveness.

A borrower's forgiveness will generally be reduced by the same proportion that its FTE levels decline, unless an exception or the Safe Harbor applies. The Act provides two new exceptions. The first

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exception applies if the borrower can document an inability to (1) rehire individuals who were employed on 2/15/20 and (2) replace those employees with similarly qualified employees before 12/31/20.

The second exception applies if the borrower can document an inability to return to its level of business activity before February 15, 2020 due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 21, 2020, and ending 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.

While the new exceptions will benefit many borrowers, they are very fact specific. Therefore, we recommend carefully considering these new exceptions and their documentation requirements, and contacting us to determine whether they might apply.

#### **4. 75% Payroll Costs Requirement Revised to 60%.**

Previously, borrowers were required to spend at least 75% of their PPP loan on payroll costs to obtain full forgiveness. The Act revises this requirement to 60%. Borrowers can now spend up to 40% of their loan on non-payroll costs.

Previously, this requirement only *reduced* loan forgiveness for borrowers who could not comply, rather than eliminate it entirely. The Act appears to state that borrowers who fail to meet the 60% requirement will receive no forgiveness, however. Lawmakers have indicated that this may be clarified to restore the reduction consequence.

#### **5. Extended Ability to Defer Payroll Taxes.**

Previously, the CARES Act permitted businesses that do not receive PPP loan forgiveness to defer 50% of the employer's share of 2020 Social Security tax until the end of 2021, and 50% until the end of 2022. The Act now provides the same payroll tax deferral benefit to borrowers who obtain PPP loan forgiveness.

While the Act provides several borrower-friendly updates and planning opportunities, many are complicated and fact-specific. We expect to continue receiving guidance regarding the Program in the coming weeks.

***While the information in this article is accurate at time of publication, the laws and regulations surrounding COVID-19 are constantly evolving. Please consult your attorney or advisor to make sure you have the most up to date information before taking action.***