



## LEGAL UPDATES

# Changes To PPP Approved By Congress

The Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) proposes to change the CARES Act and particularly the current Small Business Act loans pursuant to Section 7(a)(36), the Paycheck Protection Program (PPP).

06/05/2020 | 3 minute read

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The Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) changes the CARES Act and particularly the current Small Business Act loans pursuant to Section 7(a)(36), the Paycheck Protection Program (PPP). The PPP Flexibility Act adds the following to the CARES Act:

- Establishes a longer maturity date
- Extends the covered period
- Employee availability exemption
- Changes the percentage of use of funds requirement
- Extends the deferral period of forgiveness
- Broadens applicability of employer payroll tax payment deferral

## Maturity Date

The PPP Flexibility Act establishes a minimum maturity date of five years for PPP loans for any amounts remaining after applying any forgiveness for the loan. The current PPP loan repayments have a maturity date of two years for all loans. This amendment would apply to PPP loans made on or after the date of the PPP Flexibility Act has been enacted. Lenders and borrowers may however agree to modify current maturity terms to conform with the PPP Flexibility Act.

## Covered Period

The Covered Period of the PPP loans have been extended from June 30, 2020 to December 31, 2020. Additionally, the PPP Flexibility Act extends the 'covered period' for the use of the funds from 8 weeks to 24 weeks after the date of origination of the loan or December 31, 2020, whichever is earlier.

## Related People

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## **Exemption on Employee Availability**

From February 1, 2020 to December 31, 2020 the amount of the loan forgiveness will be determined without the proportional reduction of the number of full-time equivalent employees if an eligible recipient in good faith:

1. Is able to document:
  1. an inability to rehire individuals who were employees on February 15, 2020; and
  2. an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020
2. is able to document an inability to return to the same level of business activity as such business was operating at 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, or the Occupational Safety and Health Administration from March 1, 2020 to 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.

## **Changes to Percentage of Use for Forgiveness**

A borrower can receive forgiveness so long as they use at least 60 percent of the covered loan amount for payroll costs, and use up to 40 percent of such amount for payment of interest on any covered mortgage obligation (i.e. mortgage interest) (not including any prepayments of or payment of principal on a covered mortgage obligation), any payment on any covered rent obligation, or any covered utility payment.

## **Deferral Period Extended**

A borrower can apply for loan forgiveness within 10 months, extending from 6 months, of the last day of the covered period before the borrower should make payments of principal interest and fees on the covered loan.

## **Employer Payroll Tax Deferral.**

The PPP Flexibility Act removes paragraph 2302(a)(3) which prohibits any taxpayer to be eligible for employment tax payroll deferral based on if such taxpayer has had indebtedness forgiven under a PPP loan or Section 1109 of the CARES Act.

The amendments are treated as if it was included in the CARES Act and applies to any loan made pursuant to a PPP loan or Section 1109 of the CARES Act.

## **What Now?**

As of this morning, June 5, 2020, the President has signed the PPP Flexibility Act, we recommend discussing any questions with an attorney to help you through the process of forgiveness or obtaining a new PPP loan as these regulations are ever changing.