

Paycheck Protection Program Flexibility Act Signed Into Law

June 12, 2020

On June 5, 2020 the President signed into law the Paycheck Protection Program Flexibility Act (the “Flexibility Act”), which amended the CARES Act and PPP Loan Program to extend the time period in which borrowers can seek loan forgiveness for PPP Loan proceeds spent on eligible costs, among other modifications. Our prior summary of the PPP Loan Program can be [found here](#). The following is a high level summary of some of the prominent features of the Flexibility Act:

- Forgiveness Period Extension: Under the original CARES Act, borrowers could apply for loan forgiveness for funds spent on eligible costs through June 30, 2020. The Flexibility Act has extended the June 30, 2020 deadline to December 31, 2020.

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Maturity Date Extension: The Flexibility Act extends the maturity date of PPP Loans from two years to a minimum of five years for loans made on or after June 5, 2020. For PPP loans outstanding as of June 5, 2020, the maturity date may be extended for greater than two years if the borrower and lender both agree to do so.

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Covered Period Extension: [As readers may recall](#), the “covered period” under the PPP Loan Program is the 8-week period of time during which PPP loan proceeds spent on “payroll expenses” are later eligible for forgiveness, as well as the time period during which reductions in loan forgiveness due to reductions in salary and employee levels were determined. The Flexibility Act extends that 8-week period to the earlier of (i) 24 weeks from loan origination; or (ii) December 31, 2020. For PPP Loans outstanding as of June 5, 2020 a borrower may opt for the original 8-week covered period.

Relatedly, if a borrower reduced salaries or employee levels, the CARES Act permitted borrowers to restore salaries and employee levels by June 30, 2020 without being subject to any reductions in loan forgiveness. The Flexibility Act extends the June 30, 2020 deadline to restore salaries and employee levels until December 31, 2020 and further provides certain exceptions to restoring salaries or employee levels if a borrower can demonstrate its inability to do so is related to compliance with federal COVID-19 protocols.

- Payroll/Non Payroll Cost Expansion: Small Business Administration guidance following the enactment of the CARES Act clarified that in order to maximize their loan forgiveness eligibility, borrowers were expected to utilize at least 75% of loan proceeds on “payroll costs” (i.e., wages, salaries, and benefits); and not more than 25% of loan proceeds on “non-payroll costs” limited to mortgage, interest, rent, and utilities. The

Flexibility Act expands the limit on non-payroll costs from 25% to 40%, and, correspondingly, the requirement that borrowers use 75% of loan proceeds on payroll costs has been reduced to 60%.

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Loan Deferral Extension: Borrowers were originally permitted to defer PPP Loan payments for six months. The Flexibility Act permits borrowers to defer payments until the date that the lender receives the forgiveness amount from the SBA. If a borrower does not apply for loan forgiveness within ten months after the expiration of the “covered period,” then the repayment period begins ten months following the expiration of the covered period.

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Payroll Taxes Deferral: The Flexibility Act now permits borrowers to defer their employer payroll taxes for the period of on March 27, 2020 to January 1, 2021.

As the CARES Act and PPP Loan Program continue to evolve, we expect additional guidance from the SBA to be forthcoming.