



## Summary of Paycheck Protection Program (PPP) Flexibility Act

*The following is to assist you in the PPP Flexibility Act signed by Trump on June 5, 2020 and is current based on the information available at June 5, 2020. There are several items that are subject to interpretation; we have interpreted these items based on our understanding of the CARES Act, SBA Temp Final Regs, and SBA FAQs.*

As expected, Congress has passed an update to the PPP loan forgiveness rules and the SBA will soon provide a modified loan application form implementing those changes. Among the changes are:

- Borrowers receiving the loan prior to 6/5/2020 have the option to extend the covered period for loan forgiveness from 8 weeks to 24 weeks, making it easier to achieve full or almost full forgiveness. Any loan received after 6/5/2020 will have a 24-week period.
- The 75% payroll expenditure requirement is reduced to 60%. As of today, no loan forgiveness is available if the borrower spends less than 60% of the loan proceeds on payroll; However, both SBA and Treasury Secretary Mnuchin clarified that partial loan forgiveness will also be available under the 60% threshold. Guidance on this is expected soon.
- Provides a safe harbor from reductions in loan forgiveness for reductions in Full Time Equivalent (FTE) employees, if the borrower in good faith is able to document: 1) an inability to rehire individuals who were employees of the borrower on Feb. 15, 2020; 2) inability to hire similarly qualified employees for unfilled positions by Dec. 31, 2020 and 3) is unable to return to the same level of business activity as before Feb. 15, 2020, due to compliance with requirements established or guidance issued by CDC and HHS between 3/1/20 and 12/31/20 related to sanitation, social distancing or other worker/customer safety requirements related to COVID-19.
- Provides an opportunity to avoid reduction in loan forgiveness if the FTE headcount is restored by December 31, 2020 instead of June 30, 2020. This provides a longer period of time to restore the workforce but it is unclear if the safe harbor date must be as of 12/31/20, or if borrower can claim the safe harbor was met prior to 12/31/20. Additional guidance is needed.
- The repayment period of any unforgiven portion of the loan is extended from 2 years to 5 years IF the lender and borrower agree. Interest rate remains at 1%.

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- PPP borrowers can now qualify for the deferral of employer's share of Social Security tax (6.2%) with 50% due in 2021 and the remainder due in 2022.
- PPP loan payments are deferred until the SBA determines the amount of loan forgiveness and remits it to the lender. The period had been a 6-month deferral. The borrower must apply for loan forgiveness within 10 months after the last day of the covered period or payments will be required at the 10<sup>th</sup> month.

Some questions that are still unanswered and need additional guidance include:

- Does the limit on cash compensation for employees paid over \$100,000 (annualized) increase from \$15,385 ( $100,000 \times 8/52$ ) to \$46,154 ( $100,000 \times 24/52$ )?
- Can a borrower use the June 30, 2020 FTE reduction safe harbor instead of December 31, 2020?