Monday, June 8, 2020

On June 5, 2020, the Paycheck Protection Program (PPP) Flexibility Act was signed by President Trump. This loan program has been popular, but its rules made it not fully useful to many small borrowers. This amendment provides new program flexibility, with a longer forgiveness period and relaxed payroll expense requirement among the core changes:

- Borrowers can apply for a PPP loan through June 30, 2020 (assuming PPP funding remains available).
  - A letter to the Small Business Administration (SBA) from several key members of Congress emphasizes their interest in not allowing new loan applications after June 30.

- Instead of the original eight-week period borrowers were allotted after loan disbursement to spend PPP funds and qualify for forgiveness, borrowers will now have a 24-week period after the PPP loan is approved or until the end of
2020 (whichever comes first) to spend PPP funds and qualify for loan forgiveness.

- Borrowers who received their loan before June 5 can use the original eight-week period or choose the 24-week period.

- The requirement to spend 75% of a PPP loan on payroll costs for maximum loan forgiveness has been reduced to 60%. To be forgiven, loan funds not spent on payroll must be for business mortgage interest, rent or utilities, and cannot exceed 40% of the total forgiveness amount.

- For PPP loans approved after June 5, the loan term is five years. For loans approved prior to June 5, the PPP loan term is two years. Lenders and borrowers may agree to extend the term of existing PPP loans.

- PPP borrowers can defer 2020 payroll taxes incurred after March 27, 2020.

### Key Considerations for Existing PPP Borrowers

The law gives some options to borrowers with existing PPP loans:

- **Retention of Employees.** Borrowers whose loans were funded before June 5 should note that the new time flexibility is either their current eight-week standard or 24 weeks after loan funding. Interim periods beyond eight weeks but short of 24 weeks are not permitted. During this window, businesses must retain a full payroll to achieve maximum possible forgiveness. Otherwise, borrowers will see a reduction in loan forgiveness.

  - For example, if a current PPP borrower cannot use the entire loan for allowed forgiveness purposes in eight weeks, the borrower can extend that period to 24 weeks. But if after 12 weeks the loan funds are used, and the business then lays off employees, thereby lowering its full-time equivalent (FTE) count at the end of the 24-week period, it will suffer a reduction in forgiveness because of its lower FTE count at the 24-week date.

- **Cliff Effect.** The bill language appears to create a “cliff effect” – meaning that if less than 60% of the PPP funds are used for payroll costs, there is no forgiveness. Some congressional leaders stated a preference that the U.S. Department of Treasury and SBA not interpret the law that way and allow some sort of proportional forgiveness. But that guidance is not required by the law, and the best practice if seeking any loan forgiveness is for borrowers to ensure that 60% of the loan is used for payroll, absent any forthcoming SBA guidance to the contrary.

- **Timing.** A borrower must apply for loan forgiveness within 10 months after the last day of the covered period for PPP loan forgiveness. Deferral on loan repayment ends when SBA repays the lender for the forgiven amount; then, the borrower must begin to pay the lender the loan balance.

With the concern over the seeming cliff effect and other still unclear issues, further SBA guidance is expected.
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