



New Flexibility for the Paycheck Protection Program

The Paycheck Protection Program was adopted quickly to provide emergency support to business facing the Coronavirus crisis. Since the inception of the PPP program, however, it has been recognized that certain provisions of the Act could be improved. In early June, the *Paycheck Protection Program Flexibility Act of 2020* (“*PPP Flexibility Act*”) made much needed changes to the PPP Program. Below is a summary of the major changes to the Paycheck Protection Program.

Time Period to Use PPP Loans

Original PPP Act: Under the original terms of the PPP loans, your organization had to use the PPP funds on allowable expenses beginning on the loan origination date and ending 8 weeks later, but no later than June 30, 2020.

New PPP Flexibility Act:

- Your organization now has 24 weeks to use the PPP funds, so long as the funds are used by December 31, 2020. If you already received a PPP loan, you still have the option of continuing to use the 8-week covered period.
- Your organization now has, effectively, up to **10 months** from the end of your chosen covered period to apply for forgiveness.

Covered Obligations

Original PPP Act: Initially, at least 75% of the PPP loans must have been used for payroll. If you used less than 75% of the PPP loan on payroll, there was a sliding scale for loan forgiveness.

New PPP Flexibility Act:

- The new PPP Flexibility Act reduces the amount of the PPP loan that must be used for payroll to 60%. The other 40% of the PPP loan may be used for other covered obligations such as interest on mortgages, rent and utilities.
- However, if you do not use at least 60% of the PPP loan for payroll, it is possible that the entire PPP loan may not be forgiven. The Small Business Administration and the Department of Treasury should be clarifying this provision.

Loan Repayment

Original PPP Act: If a PPP loan is not forgiven, the original payback period for the loan was 10 years at a maximum interest rate of 4%. This was later revised to a 2-year payback period at a 1% interest rate.

New PPP Flexibility Act:

- For PPP loans originating after June 5, 2020, the loan payback period was extended to 5 years at a 1% interest rate.

- PPP loans that originated prior to June 5, 2020 remain unchanged at 2 years/1%, however, you may be able to work with your lender to restructure the loan repayment for a longer payback period.
- Repayment of the PPP loan is deferred until the amount of forgiveness is determined.

Rehiring Employees

Original PPP Act: Initially your organization had until June 30, 2020 to restore compensation and to rehire the same number of full-time employees in order to have the PPP loan forgiven in its entirety.

New PPP Flexibility Act:

- The new PPP Flexibility Act extends until December 31, 2020 when your organization must restore compensation and rehire the same number of full-time employees to have the PPP loan forgiven.
- The PPP Flexibility Act also confirms earlier guidance from the Small Business Administration and the Department of Treasury that loan forgiveness will not be reduced if the borrower can show they were unable to hire former employees or other similarly qualified employees by December 31, 2020. The employer must have made the offers of employment in writing and have confirmation that the offer was turned down.
- The PPP Flexibility Act also allows for PPP loans to be forgiven even if your organization is unable to return to a pre-February 15, 2020 level of business activity due to compliance with standards for sanitation, social distancing or other Covid-19 safety requirement. The Small Business Administration and the Treasury Department need to provide further details about how this will be measured and operate.

Loan Deferral Period

Original PPP Act: Initially your organization could defer payment of the principal, interest, and fees of their PPP loans for not less than six months nor more than one year.

New PPP Flexibility Act:

- The new PPP Flexibility Act changes the deferral period to end when the PPP loan forgiveness amount is paid to the lender.
- Also, borrower must either apply for forgiveness within 10 months or begin to make payments of principal, interest, and fees on the PPP loan.

Payroll Tax Deferral

Original PPP Act: Although the CARES Act had allowed certain companies to defer payroll taxes, any company that had their PPP loan forgiven was prohibited from also deferring payment of payroll taxes.

The New PPP Flexibility Act:

- Companies whose PPP loans are forgiven to also defer payroll taxes through December 31, 2020 to help with cash flow.
- Deferred taxes will be due in two equal installments in December 2021 and December 2022.