

WHAT YOU NEED TO KNOW: PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT OF 2020

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law, which initiated the Paycheck Protection Program (PPP). To address the small businesses' concerns around the PPP and its loan forgiveness component, on June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act) was signed into law to provide businesses with greater flexibility received under the Paycheck Protection Program (PPP). Below are seven key changes in how the Flexibility Act modifies the PPP loan provisions.

UPDATE: Congress has extended the deadline for businesses to apply for loans under the PPP program to August 8, 2020. While the deadline has been extended, some participating banks and other lenders are not accepting applicants. Business clients who missed the earlier June 30 application deadline should act promptly to submit their applications by August 8.

The Flexibility Act:

1. Extends the covered period for loan forgiveness from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement (but no later than December 31, 2020), although employers who have already received their loans retain the option to use an eight-week covered period.

2. Lowers the requirement that 75% of the proceeds be used for payroll purposes to 60% during the 24-week period. Additionally, a borrower will be eligible for partial loan

forgiveness, subject to at least 60% of the loan forgiveness amount having been used for payroll costs.

3. Extends the FTE safe harbor to February 15, 2020 levels from June 30, 2020 to December 31, 2020.

4. Provides a new safe harbor against a reduction in loan forgiveness due to reduced FTE numbers if the borrower can document the inability to hire or rehire new employees is due to the business's inability to return to its pre-February 15 operating levels due to compliance of Covid-19 worker or customer safety regulations.

5. Extends the deferral period for borrower payments of principal, interest, and fees on PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender. If a borrower has not applied for forgiveness of a covered loan within 10 months after the last day of the covered period, payments on principal, interest, and fees will begin.

6. Potentially allows loan maturity to be extended by a lender to up to 5 years.

7. Allows deferral of employer payroll taxes which would be due 50% on December 31, 2021, and 50% on December 31, 2022.

The Flexibility Act provides small businesses with better loan terms, loosens requirements for how business owners use the PPP funds, and extends the time businesses have to use them.

If you have any questions regarding the Flexibility Act or need any other assistance, please do not hesitate to reach out to us. Donahue Fitzgerald's employment attorneys are committed to providing your business with our best guidance and advice during these changing times.

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