Paycheck Protection Program Flexibility Act of 2020
On June 3, the Senate approved for President Trump’s signature a House-passed bill (H.R. 7010) that would extend the Coronavirus Aid, Relief, and Economic Security (CARES) Act Paycheck Protection Program (PPP) loan forgiveness covered period from 8 weeks to 24 weeks and reduce the percentage of eligible payroll expenses to 60% of the PPP loan amount, giving small businesses more flexibility in how they spend federal loans provided by the PPP. An extension of the PPP to December 31, 2020, would apply only to spending, but would not extend the deadline for applying for PPP loans, which will remain June 30, 2020.

The following FAQs provide an overview of key provisions intended to support smaller businesses through this crisis.

1

Did the Paycheck Protection Program Flexibility Act of 2020 (PPPFA) extend the time frame for applying for a Paycheck Protection Program (PPP) loan?

**Answer:** No, the time frame was unchanged, and the last day to apply is still June 30, 2020.

2

How long is the covered period for determining eligible forgivable costs?

**Answer:** For purposes of determining forgiveness of eligible costs, the covered period begins on the date of the origination of the PPP loan and ends on the earlier of:

A. The date that is 24 weeks after the date of loan origination
   Or
B. December 31, 2020

Borrowers who received PPP loans prior to the enactment of the PPPFA may elect to use a covered period that ends 8 weeks after the date of the origination of the PPP loan.

**Note:** The default covered period is now 24 weeks.
For a borrower’s loan to be forgivable, is there a minimum percentage of the PPP loan amount that must be spent for eligible payroll costs incurred or paid during the covered period?

**Answer:** Yes, for a loan to be eligible for any level of forgiveness, the borrower must use at least 60% of the PPP loan amount for eligible payroll costs. Failure to meet this test disqualifies the borrower from having any portion of the PPP loan forgiven.

**Note:** The PPPFA makes failure to achieve the 60% threshold for forgiveness an all-or-nothing determination. Several members of Congress believe this was a drafting error and are requesting that Treasury clarify the issue through subsequent guidance.

What is the maximum percentage of the PPP loan that can be used for non-payroll costs while still allowing the PPP loan to be eligible for forgiveness?

**Answer:** Non-payroll costs (mortgage interest, rent and utilities) cannot exceed 40% of the PPP loan amount to be eligible for loan forgiveness.

Will the forgivable amount of the PPP loan be reduced as a result of an FTE reduction during the covered period, if the borrower attempts to rehire a previously laid-off worker?

**Answer:** No, there is no reduction to the forgivable loan amount if:

A. The borrower is able to document, in good faith:
   
   i. An inability to rehire individuals who were employees of the borrower on February 15, 2020
   
   ii. An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020
   
   Or

B. The borrower is able to document, in good faith, an inability to return to the same level of business activity as such business was operating at prior to February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19.
What is the term of maturity for the portion of the loan that is not forgiven? Also, is it possible to have principal and/or interest payments deferred for any portion of time?

**Answer:** For PPP loans made after the date the PPPFA is enacted, the minimum maturity of a PPP loan has been extended to five years. Previously, the minimum maturity for PPP loans was 2 years (maximum maturity of 10 years remains). Lenders and borrowers are allowed to mutually agree to modify the maturity of PPP loans that were approved prior to the enactment of the PPPFA.

Principal, interest and fees are deferred until the date in which the amount of forgiveness is determined by the lender (no later than 60 days after the submission of the forgiveness application) and is remitted by the SBA to the lender (not later than 90 days after a decision of forgiveness by the lender).

If the borrower does not apply for forgiveness within 10 months after the last day of the covered period, the borrower is required to begin making payments of principal, interest and fees on the PPP loan.

**Note:** Treasury has issued guidance that if a borrower has begun making principal and interest payments and all or a portion of the PPP loan is forgiven, lender must remit the excess amount, including accrued interest, to the borrower.

Can a borrower continue to defer payroll taxes (FICA) after the PPP loan is forgiven?

**Answer:** Yes. The CARES Act allows for payroll taxes (FICA) to be deferred for pay periods March 27, 2020, through December 31, 2020, or until the borrower receives loan forgiveness. The PPPFA eliminated the restriction on the ability to defer payroll taxes (FICA) for payroll periods after loan forgiveness; therefore, borrowers may defer pay periods up to and including December 31, 2020.

Based on the changes contained in the PPPFA, we expect that Treasury will issue a new version of the Paycheck Protection Program Loan Forgiveness Application (SBA Form 3508). In addition, Treasury has issued guidance regarding the PPP loan program in the form of FAQs and Interim Final Rules. We anticipate that Treasury will provide additional guidance in light of the changes to the PPP loan program made by the PPPFA.
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