

CARES ACT: PAYCHECK PROTECTION PROGRAM

FAVORABLE CHANGES TO PPP LOAN FORGIVENESS – THE PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT OF 2020

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) into law. The Act created the Paycheck Protection Program (“PPP”), which allowed businesses with fewer than 500 employees to obtain forgivable loans of up to 2.5 times average monthly payroll costs, as defined in the statute. While the Department of Treasury issued guidance addressing numerous questions and issues regarding eligibility for and the process to obtain a PPP Loan, many questions remained on the forgivability aspect of the loans. Late on Friday, May 15, 2020, the Department of Treasury posted a detailed PPP Loan Forgiveness Application that introduced new concepts into the loan forgiveness calculation. A week later, the Department of Treasury issued its Interim Final Rule on Forgiveness. As employers digested the application form and interim rule, rumors emerged of further significant changes to the forgiveness aspects of PPP loans. Last week, Congress passed the Paycheck Protection Program Flexibility Act of 2020 (“PPPFA”), which was signed into law on June 5, 2020. The changes are favorable for borrowers.

The chart below highlights the key changes the PPPFA makes to the PPP. There is little doubt that the Department of Treasury also will issue additional guidance on the PPPFA.

<u>PPP Provisions Pre-PPPFA</u>	<u>PPPFA Changes</u>
Changes to General Loan Requirements	
“Covered period” is the 8-week (56 day) time period beginning on the date the loan funds are disbursed (i.e., the date they are deposited into the borrower’s account).	“Covered period” now begins on the date of the origination of the loan and ends on the earlier of 24 weeks after the origination or December 31, 2020. However , if a borrower received a loan before enactment of the amendment, then the borrower may elect to use the prior definition of the covered period.
Any PPP loan amount that is not forgiven will have a maturity date of 2 years.	Any PPP loan amount that is not forgiven will have a minimum maturity of 5 years.
Loan payments are deferred for not less than 6 months, and not more than 1 year.	Loan deferment is extended to the date that loan forgiveness is remitted by the Small Business Administration (“SBA”) to the lender (or to 10 months after the covered period, if the Borrower fails to submit a Loan Forgiveness Application).

<u>PPP Provisions Pre-PPFPA</u>	<u>PPFPA Changes</u>
Changes to Loan Forgiveness	
To receive full loan forgiveness, borrowers must spend 75% of the loan funds on payroll costs.	To receive full loan forgiveness, borrowers must now spend 60% of the loan funds on payroll costs.
The safe harbor provision provides that loan forgiveness amounts will not be impacted based on employee or wage reductions if: (1) the employer made cuts of FTEs between February 15, 2020 and April 26, 2020, and (2) by June 30, 2020, the employer remedies the FTE cuts and/or wage reductions.	The June 30, 2020 safe harbor to remedy any reductions in employees and wages is extended to December 31, 2020.
The law and guidance did not provide a cut-off date for loan forgiveness applications.	Borrowers must apply for loan forgiveness within 10 months after the last day of the covered period. If a borrower fails to apply, it must immediately start making payments towards principal, interest, and fees.
<p>Exceptions to the loan forgiveness reductions include:</p> <ul style="list-style-type: none"> (1) Rejection of a good-faith, written offer to rehire (or restore wages); (2) Employees fired for cause; (3) Employees who voluntarily resigned; and (4) Employees who voluntarily requested and received a reduction of their hours. 	<p>The exceptions to the reduction in forgiveness amount now also include:</p> <ul style="list-style-type: none"> (1) Inability to rehire individuals who were employees on February 15, 2020 and unable to hire similarly qualified employees by December 31, 2020; and (2) Inability to return to the same level of business activity as such business was operating before February 15, 2020 due to compliance with HHS, CDC, or OSHA regulations that were implemented between March 1, 2020 and December 31, 2020 related to “maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID–19.” <p>Borrowers seeking these exceptions must have documentation to support both.</p>

<u>PPP Provisions Pre-PPFPA</u>	<u>PPFPA Changes</u>
Changes to Payroll Tax Deferment	
Taxpayers who receive debt forgiveness for a PPP loan are not eligible for payroll tax deferment.	Strikes the provision that did not allow payroll tax deferment for taxpayers who received debt forgiveness for a PPP loan. Now this section would apply to allow all borrowers to defer 50% employer share of payroll taxes until the end of 2021 and the remaining 50% until the end of 2022.

**These Amendments will apply to PPP loans as if they were part of the original language of the CARES Act.