



The PPP Flexibility Act



On June 5th, the president signed the Paycheck Protection Program Flexibility Act of 2020 into law which modified the debt forgiveness provisions on the Paycheck Protection Program. The Act provides greater flexibility for borrowers and maximizes their potential for loan forgiveness.

Extension of the Covered Period

Borrowers now have more time to deploy loan proceeds on qualified expenses. One of the challenges with the PPP debt forgiveness provision was that borrowers needed to spend loan proceeds on qualified expenses within the 8-week Covered Period. The new Act extends the Covered Period from 8 to 24 weeks, but the new 24-week period cannot extend past December 31, 2020.

Even though the Covered Period has been extended, you may still elect to use the original 8-week option. You might choose the shorter option if you have or will spend loan proceeds on qualified expenses within the 8-week Covered Period and don't want to wait to apply for loan forgiveness.

Increase in the Non-Payroll Limit

You now have greater flexibility in how to allocate your loan proceeds. The Paycheck Protection Program Flexibility Act enables you to spend a greater proportion of loan proceeds on non-payroll items by extending the limit from 25% to 40% of the total forgivable amount.



FTE and Compensation Restoration

You now have a longer period of time to restore full-time equivalent employees and compensation. The Paycheck Protection Program has penalties if you reduce full-time equivalent employees as compared to a prior base period or if you reduce compensation as compared to the first quarter of 2020. However, the program has safe harbor provisions that waive the penalties if you restore the full-time equivalent employees and compensation by June 30, 2020. The Paycheck Protection Program Flexibility Act extends the deadline for restoration from June 30 to December 31 of 2020.

The Paycheck Protection Program Flexibility Act also provides additional flexibility for employers who are not able to restore full-time equivalent employees by December 31. Previous guidance already allowed borrowers to exclude from the FTE requirement employees who turned down good-faith offers to be rehired at the same hours and wages as before the pandemic. The new Act allows borrowers to also avoid reductions in forgiveness if they are not able to find qualified employees to fill open positions or were unable to return to the same level of business as of February 15, 2020, due to government restrictions, maintaining sanitation standards, social distancing or any other safety requirement related to COVID-19.

Deferral of Loan Payments

You now may have a longer period of time for deferral of your loan payments. The CARES Act required lenders to defer PPP loan payments for at least six months. Now, the Paycheck Protection Program Flexibility Act provides for payments to be deferred until the date in which the lender receives the forgiveness amount from the SBA or 10 months after the expiration of the Covered Period if you don't apply for loan forgiveness.



Extended Loan Term

You now have longer to repay any loan proceeds that are not forgiven. Any PPP loans made after the date of enactment will have a maturity of 5 years instead of 2 years. If you received a PPP loan prior to the date of enactment, then you are free to renegotiate the terms of the existing loan to match the permitted 5 years.

Deferral of Payroll Taxes

You now have greater flexibility in deferring payroll taxes. The CARES Act enabled employers to defer 50% of their share of the 2020 Social Security tax until the end of 2021 and the remaining 50% to the end of 2022. However, the deferral was only available until the employer's PPP loan was forgiven. The Paycheck Protection Program Flexibility Act modified this so that employers can take advantage of the full deferral even if they have received forgiveness for their PPP loan.



Final Thoughts

While this provides an overview of the Paycheck Protection Program Flexibility Act of 2020, there are still many details that may affect your particular situation. If you need any help or would like to discuss your PPP loan situation, please contact our office. We are always happy to help.



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