

Recent Changes To the Paycheck Protection Act Provide Welcome Relief for Loan Recipients

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Last week, President Trump signed the Paycheck Protection Program Flexibility Act (the Act) into law which significantly relaxed many requirements of the original Paycheck Protection Act (PPP). The changes come as employers struggle to meet certain requirements for loan forgiveness under the PPP. All of these changes are retroactive to when the CARES Act was passed in late March 2020, meaning that the changes apply to PPP loans that have already been issued.

Here is a summary of the highlights of the Act:

Covered Period Extended – Employers now have more time to use their PPP money. Previously, the PPP loans had to be used within 8 weeks of receipt. Employers now have the *earlier* of 24 weeks from the origination date of the PPP loan or December 31, 2020.

Loan Forgiveness Threshold Lowered – Employers were originally required to spend 75% of their PPP loan on payroll costs. The payroll cost threshold has been reduced to 60% and the remaining amounts may be spent on mortgage interest (not any past due interest), rent, and utilities.

Deadline to Reverse Employee and Wage Reductions Extended – The deadline for employers to restore the number of full-time employees (or the equivalent) and reverse wage reductions to pre-COVID-19 levels is extended from June 30, 2020 to December 31, 2020.

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New Safe Harbor Exemption – A new exemption provides that the amount of loan forgiveness will not be reduced due to a lower headcount if the employer can document in good faith the following:

(1) the inability to:

(a) rehire employees who were employed as of February 15, 2020; *and*

(b) the inability to hire “similarly qualified employees” for unfilled positions.

or

(2) the inability to achieve the same level of business activity at or before February 15, 2020 because of compliance requirements or guidance issued by the Secretary of Health and Human Services, the Centers for Disease Control and Prevention (CDC) or the Occupational Safety and Health Administration (OSHA) relating to sanitation, social distancing or worker or customer safety requirements related to COVID-19 during the period of March 1, 2020 to December 31, 2020.

Changes to Loan Maturity Dates – The maturity date for PPP loans issued *after* the Act is extended from two years to five years. For PPP loans issued *before* the Act, a lender can modify the maturity date to five years, but are not required to do so. There is no change to the 1% interest rate.

Payroll Tax Deferral – The ban on employers who obtain loan forgiveness to defer payment of their payroll taxes is lifted. Employers who receive loan forgiveness can continue to defer payroll taxes.