

NEWS ALERT

TAX AND BUSINESS GROUPS



Congress Passes Bill to Provide Further Flexibility to PPP Borrowers

By Marc T. Finer, Mark J. Tarallo and Sergio E. Marin | June 5, 2020

On Wednesday June 3, 2020, the Senate unanimously approved the House's version of the Paycheck Protection Program Flexibility Act of 2020 (the "Flexibility Act"), which President Trump is now expected to sign into law. The Flexibility Act is designed to ease Paycheck Protection Program ("PPP") loan terms and to provide business owners with more time to use PPP funds.

Highlights under the Flexibility Act include:

- PPP borrowers can choose to extend the 8-week covered period for loan forgiveness to the earlier of 24 weeks after the loan is disbursed or December 31, 2020.
- The Flexibility Act extends the June 30, 2020 safe harbor deadline for restoring workforce levels and wages to their pre-pandemic levels required for full forgiveness until December 31, 2020.
- The payroll expenditure requirement is now 60%, a change from the previous 75% requirement. However, the Flexibility Act creates a "cliff" by requiring the borrower to spend at least 60% of the PPP loan on payroll costs or have none of the loan forgiven. We expect future guidance to remove this "cliff" so that partial forgiveness would be permitted even if the 60% threshold is not met.
- Previous guidance exempted PPP borrowers from a proportional reduction in loan forgiveness caused by a reduction in full-time equivalent employees who turned down good faith offers to be rehired at the same hours/wages as before the pandemic. The Flexibility Act will also exempt borrowers from the reduction in loan forgiveness due to a reduction in full-time equivalent employees if the borrower can document that for the period between February 15 and December 31, 2020, the borrower was unable to: (1) rehire employees who had been employed on February 15, 2020, or hire similarly qualified employees for unfilled positions by December 31, 2020; or (2) return to the same level of business activity at which the borrower was operating before February 15, 2020, due to compliance with federal requirements or guidance set forth between March 1 and December 31, 2020, relating to standards of sanitation, social distancing, or other worker or customer safety requirements related to COVID-19.
- For PPP loans made after the passage of the Flexibility Act, borrowers will have five years to repay the loan instead of two. However, the Flexibility Act also provides that lenders and borrowers are not prohibited from mutually agreeing to extend the maturity terms of pre-Flexibility Act disbursed PPP loans to five years.
- Under the CARES Act, a borrower was permitted to defer the repayment of the PPP loan for between 6 and 12 months. The Flexibility Act extends the loan deferral period to (a) whenever the amount of loan forgiveness is remitted to the lender or (b) 10 months after the applicable forgiveness covered period if a borrower does not apply for forgiveness during that 10 month period.

- The Flexibility Act lifts the ban on borrowers whose loans were partially or completely forgiven from deferring payment of payroll taxes. The payroll tax deferral is now open to all PPP borrowers.

The Flexibility Act provides much needed relief to small business owners who needed more time and flexibility to use their PPP funds. Unfortunately, many PPP loan forgiveness questions continue to remain unanswered but hopefully, these questions will be addressed by revisions to the PPP loan forgiveness application and Treasury/SBA guidance issued in response to the Flexibility Act.

If you have any questions regarding the Paycheck Protection Program, your eligibility to apply for a PPP loan or how a PPP loan might affect your business, please contact:

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