

Payroll Protection Program Flexibility Act (PPPFA)

Significant changes to the Paycheck Protection Program (PPP) created by the Coronavirus Aid, Relief and Economic Security Act (the CARES Act) have been signed into law. The Paycheck Protection Program Flexibility Act of 2020 (the PPPFA) is now in effect and contains provisions that are intended to help eligible borrowers maximize forgiveness of their PPP loans.

The critical changes to the PPP are as follows:

- The loan application deadline has been extended from June 30, 2020 to December 31, 2020. **There are still funds left for eligible small businesses under the PPP - it isn't too late to apply!**
- The covered period (during which borrowers can spend the loan funds on certain eligible expenses that will qualify for forgiveness) has been extended from 8 weeks to 24 weeks (or the covered period will expire on December 31, 2020, if earlier). Borrowers who obtained loans before the passage of the PPPFA may elect to keep the 8 week covered period.
- The required 75/25 allocation of costs between payroll and non-payroll costs to maximize forgiveness has been changed to 60/40, but **the failure of a borrower to spend at least 60% of the loan proceeds on payroll costs will result in zero forgiveness.**
- The date to rehire employees and restore wages to avoid a reduction in forgiveness has been extended from June 30, 2020 to December 31, 2020.
- A borrower will not be penalized for not rehiring back employees to the level in place on February 15, 2020 if: (a) the borrower, in good faith, can provide documentation that (i) it was unable to rehire the same individuals who were employed on February 15, 2020, and (ii) borrower was unable to hire similarly qualified employees for the positions on or before December 31, 2020; or (b) the borrower is unable to return to the same level of operations as was in place on February 15, 2020 as a result of requirements established or guidance issued as result of COVID-19.
- The deferral period for repayment is extended to a date after a determination is made regarding a borrower's forgiveness.
- Borrowers who received forgiveness of a PPP loan are now eligible for payroll tax deferral under Section 2302 of the CARES Act.
- New borrowers (only) will have a minimum of 5 years to repay their PPP loans.

These changes will help more borrowers maximize their forgiveness under the PPP and will make completion of the application for forgiveness much simpler. Unfortunately, it may result in some borrowers delaying their application for forgiveness until 2021 and, thus, delaying a decision regarding forgiveness well beyond what is currently contemplated.