

## Finance Alert

June 2020

# Congress Enacts Changes to PPP to Give Businesses More Flexibility

In an extremely rare bit of bipartisanship in Congress, the Senate in a voice vote on June 3 passed the House version of the Paycheck Protection Program Flexibility Act of 2020—without changes. The act passed the House on a nearly unanimous vote of 417-1. The bill is headed to the president's desk for signature, and he is expected to sign it.

The act makes a number of sought-after changes to the Paycheck Protection Program (PPP), most significantly:

- The “covered period”—the period of time in which the loan proceeds used to pay for payroll and other specific costs are eligible for forgiveness, currently set at eight weeks from the date of disbursement of the loan—is extended to the earlier of 24 weeks from the date of disbursement of the loan or Dec. 31, 2020. A borrower with an existing loan can elect to retain the current eight-week covered period.
- The percentage of PPP funds that must be used for payroll costs is reduced from 75% to 60%. The 75% threshold was not in the original PPP but was set by the Small Business Administration (SBA). The 60% threshold is now incorporated into the statute, overriding prior SBA guidance and rules.
- Due to concerns about businesses being able to fully reopen and the willingness of employees to return, the amount of any loan forgiveness is calculated without regard to the reduction of full-time-equivalent (FTE) employees if the borrower, in good faith, is able to document one of the following:
  - Both an inability to rehire individuals who were employees of the eligible recipient on Feb. 15, 2020, and an inability to hire similarly qualified employees for unfilled positions on or before Dec. 31, 2020.
  - An inability to return to the same level of business activity the business was operating at before Feb.



15, 2020, due to compliance with COVID-19-related sanitation, safety or social distancing requirements established, or guidance issued, by the Department of Health & Human Services, the Centers for Disease Control (CDC) or the Occupational Safety and Health Administration (OSHA).

The act also:

- Extends the term of PPP loans to up to five years. This provision expressly applies only to loans made after the effective date of the act, but borrowers and lenders can modify their existing loans by mutual agreement.
- Changes the deferral period from six months to one year.
- Sets the time period in which a borrower can apply for forgiveness at 10 months from the end of the borrower's covered period.
- Removes an existing exclusion (Section 2302(a)(3) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act), so that borrowers that have their PPP loans forgiven are able to delay the payment of employer payroll taxes, as other employers can.

The changes in the act are a relief to many borrowers who were facing the possibility of not being able to use PPP

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proceeds within the original eight-week covered period due to extended closures. As the act is implemented, further clarifications, particularly with respect to the forgiveness mechanism, likely will be required, and will be implemented through SBA FAQs or interim final rules. At present, no further legislative changes to the PPP are expected.

### COVID-19 Resource Center

For information on the business impacts of COVID-19, please visit our [COVID-19 Resource Center](#), which we continue to update as the situation evolves. If you have questions about COVID-19's impact on your business, please reach out to your Loeb relationship partner or email us directly at [COVID19@loeb.com](mailto:COVID19@loeb.com).

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6358 REV1 06-10-2020