

The Senate passes the Paycheck Protection Program Flexibility Act

On June 3, 2020, the Senate passed the Paycheck Protection Program Flexibility Act in hopes of helping small businesses more thoroughly take advantage of the provisions of the PPP. Here are the key takeaways.

The Paycheck Protection Program (PPP) provisions of the CARES Act have been continuously evolving since signed into law on March 27, 2020. On June 3, 2020, the Senate passed House Bill H.R. 7010 Paycheck Protection Program Flexibility Act (PPP Flex), the latest evolution of the PPP. The purpose of this legislation is to enable small businesses to more thoroughly take advantage of the provisions of the PPP.

The key provisions of the PPP Flex include:

- Extending the “covered period” during which PPP funds can be spent from eight weeks, starting on the date the funds were received, to the earlier of 24 weeks or Dec. 31, 2020. Initial AICPA interpretation indicates current PPP borrowers can choose to extend the eight-week period to 24 weeks, or they can keep the original eight-week period. This gives companies more time to spend funds on qualified expenditures that are eligible for forgiveness.
- Changing the limitation on nonpayroll costs that may be included for forgiveness to 40% of the amount of the loan forgiven (60% payroll, 40% nonpayroll) from 25% (75% payroll, 25% nonpayroll). This provision enables companies who may have been required to be closed during a significant proportion of their covered period to include more of their nonpayroll costs in the forgiveness calculation.
- Extending the loan maturity on PPP funds that don’t qualify for forgiveness from two to five years. This provision also enables participating companies to have more time to pay back PPP funds by deferring repayment until the date of which the amount of forgiveness is determined.
- Extending the “safe harbor” to rehire employees from June 30, 2020, to Dec. 31, 2020. This provision is designed to enable more companies to qualify for loan forgiveness by restoring employment levels to those that existed as of Feb. 15, 2020. The legislation also provides two new exceptions which clarify that a borrower’s loan forgiveness would not be penalized for reductions in staff if it can document:
 - An inability:
 - To rehire individuals who were employees on Feb. 15, 2020.
 - To hire similarly qualified employers for unfilled positions on or before Dec. 31, 2020.
 - An inability to return to the same level of business activity as such business was operating at before Feb. 15, 2020 due to compliance requirements established or guidance issued by HHS, CDC, or OSHA during the period from March 1, 2020, through Dec. 31, 2020.
- Allowing businesses who have received PPP loan funding to also receive the full benefit of payroll tax deferments that are also part of the original CARES Act.

The added flexibility provided by the PPP Flex, along with the gradual reopening of the economy that is starting in various parts of the United States, may enable companies who have received PPP funding to more strategically utilize the loan proceeds to bolster their businesses during the restart period. As companies restart their businesses, they may:

- Revisit how they are allocating the use of PPP funding to eligible nonpayroll costs that now may qualify for loan forgiveness.
- Think differently about how they ramp up the rehiring of employees as they evaluate the impact of reopening rules in the communities/states in which they do business.
- Revisit the timing of when they utilize PPP funds to maximize the benefit to their reopening efforts.
- Focus more on how to utilize PPP funding to best support the revitalization of their businesses.

The PPP Flex addresses many concerns the small business community and lenders had regarding the PPP. Additional guidance and clarification from the SBA are required (likely through updated FAQs and Interim Final Rules). For example, the PPP Forgiveness Application must be updated to reflect the changes required by the PPP Flex.

As the provisions of this program and the SBA's guidance and interpretations evolve, we will continue to keep you up to date. Please continue to monitor the [HBAD COVID-19 resource center](#), and [the Department of Treasury's PPP information site](#).