

President Signs Paycheck Protection Program Flexibility Act

Updated June 5, 2020

President Trump has now signed the Paycheck Protection Program Flexibility Act of 2020 into law.

There are important considerations in determining whether it makes sense to take advantage of the 24-week covered period.

If you would like to explore what's best for your business or have any other PPP questions, please contact [Jim Catanzaro](#), [Justin Furrow](#), or your relationship attorney.

Senate Passes Key Changes to PPP Loan Program

The Senate has now passed the Paycheck Protection Program Flexibility Act of 2020 (the Flexibility Act), which passed the House on May 28. The Flexibility Act includes critically important changes to the Paycheck Protection Program (PPP) loan program created by the CARES Act, including an extension of the PPP loan covered period. The Flexibility Act will not become law until signed by the President, but commentators have suggested that the President is likely to sign.

Here's a summary of the changes:

- The PPP loan covered period is extended from eight weeks to the earlier of 24 weeks after loan origination or December 31, 2020. Borrowers who received loans before the date the Flexibility Act is enacted (as signed by the President) may elect to continue using the eight-week covered period.
- PPP loans may be made through December 31, 2020—under the CARES Act, PPP loans could not be made after June 30, 2020 (although June 30 will remain the deadline for applying for PPP loans under the Flexibility Act).
- Borrowers will receive forgiveness as long as at least 60% of the loan proceeds are used for payroll costs, and they may receive forgiveness for up to 40% of the loan spent on non-payroll costs (e.g., rent, mortgage interest, and utilities).
 - Because of odd wording in the Flexibility Act, borrowers are now **required** to use 60% of the loan proceeds on payroll costs, or they will not receive forgiveness for any amounts spent. This issue was heavily debated and may be subject to further changes.
- Loan forgiveness will not be determined based on a reduction in full-time equivalent (FTE) employees for the period of February 15, 2020 – December 31, 2020, if the borrower in good faith:
 - Documents an inability to rehire employees who were employed as of February 15, 2020, and documents an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
 - Documents an inability to return to the same level of business activity as of February 15, 2020, in compliance with governmental requirements or guidance issued between March 1, 2020, and December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
- PPP loan maturity is set at a minimum of five years. The Treasury Department's earlier guidance set PPP loan maturity at two years. This provision of the Flexibility Act applies only to loans made on or after the date of its enactment.

- The deferral period for interest on PPP loans is extended from six months to the date on which the loan forgiveness amount is remitted to the lender.
- The prohibition on deferral of employer payroll taxes for borrowers who have PPP loans forgiven is deleted. This means that PPP loan borrowers may defer 2020 payroll taxes in accordance with the CARES Act, repaying 50% on or before December 31, 2021, and 50% on or before December 31, 2022.
- The Flexibility Act requires borrowers to begin repaying principal, interest, and fees on the PPP loan if they do not apply for forgiveness within 10 months after the last day of the covered period applicable (i.e., eight weeks if maintained or 24 weeks).

Our Chambliss team continues to monitor legal developments in connection with the COVID-19 pandemic. We will soon be addressing these and other critical questions business owners will face in response to this new legislation. Please contact [Jim Catanzaro](#), [Mark Cunningham](#), [Justin Furrow](#), or your relationship attorney if you have questions or need additional information.

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