

Paycheck Protection Program Flexibility Act of 2020

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President Trump signed H.R. 7010 – the Paycheck Protection Program Flexibility Act (“PPPFA”) – into law on June 5, 2020. The PPPFA makes several sizable changes to the Paycheck Protection Program (“PPP”). This brief alert will address the major changes, including the extension of the borrower’s “covered period” and change to the payroll/non-payroll expenses ratio. Discussion of the PPP and subsequent guidance can be found on our firm’s website.

Extension of the covered period: The most significant change for those companies that have struggled to use their PPP funds in the allotted 8 week period is the increase of the covered period from 8 weeks to 24 weeks. However, borrowers can choose to use their original covered period instead of utilizing the extended period set out in the PPPFA.

Change in payroll/non-payroll expenses ratio: Guidance in the wake of the CARES Act’s passage mandated that borrowers use at least 75% of their PPP proceeds towards payroll expenses, and up to 25% could be used for non-payroll expenses, including rent, utilities, and mortgage interest payments. The PPPFA now allows for up to 40% of the loan to be used on non-payroll expenses instead of 25%, and at least 60% of the loan proceeds must be used for payroll expenses instead of 75%.

Ability to “cure” reductions to workforce and pay: The time by which you may “cure” any reductions to your employment levels and/or pay has also changed. As you may recall, reduction to your workforce or their pay during your covered period would reduce the amount of forgiveness that you’d be eligible for. However, if these reductions were made between February 15, 2020 and April 26, 2020, you could restore these numbers by June 30, 2020 and your forgiveness would not be reduced as a result. The PPPFA has changed the deadline of June 30, 2020 to December 31, 2020.

New exemption for inability to rehire workforce: Further, forgiveness will not be reduced as a result of reductions in the number of full-time equivalent employees if the borrower is able to, in good faith, adequately document:

1. an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
2. an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending 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.

Extended loan maturity: As of the date of the Act's enactment, PPP loans with remaining unforgiven loan amounts will now have a minimum maturity of 5 years (recall that it was previously 2 years). Borrowers and their lenders may otherwise independently agree to alter the terms of their loans to conform to this new requirement, should said loans have been agreed upon prior to the passage of the PPPFA.

New time period for payment deferral: Borrowers were previously not required to make any loan payments for six months. According to the PPPFA, deferment will be until the date on which the SBA remits the loan forgiveness amount to the lender. Further, if an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in section 1106(a) of the CARES Act, the borrower shall make payments of principal, interest, and fees on their loan beginning 10 months after the last day of their covered period.

Deferral of payroll tax payment: Borrowers are now able to delay payment of the employer's share of 2020 payroll taxes, as section 2302 (a)(3) of the CARES Act has been eliminated (previously, deferment was not allowed for borrowers that received forgiveness of their PPP loan(s)).

The SBA issued a statement on June 8, 2020, stating that it will be providing additional guidance shortly. Please let one of the members of the Nexsen Pruet team know if we can help you navigate these new requirements.

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