

AlphaAlerts

Time sensitive alerts and updates on Payroll, Tax, HR Compliance, and more

On June 5, 2020, the President signed into law the *Paycheck Protection Program Flexibility Act*, effectively overriding a number of Paycheck Protection Program (PPP) loan requirements implemented by the Small Business Administration (SBA). Over the last few months, many borrowers, lenders, accountants and legal experts had criticized the SBA for imposing

what was believed to be more stringent requirements than what Congress had intended when it established the PPP. The Act relaxes a number of key provisions, including the following:



- **Allows Payroll Tax Deferral after Loan Forgiveness.** PPP borrowers were initially prohibited from deferring payment of the employer portion of their Social Security taxes once a decision had been made on their loan forgiveness application. The Act eliminates this restriction and all borrowers are now eligible to defer payment of their Social Security taxes through December 31, 2020.
- **Reduces 75% Rule to 60%.** The SBA initially indicated borrowers had to spend at least 75% of loan proceeds on payroll costs, with no more than 25% of non-payroll costs eligible for loan forgiveness. While there was debate early on as to whether this 75% threshold must be met for any forgiveness to be available (an “all or nothing” requirement), the SBA later clarified that a borrower’s loan forgiveness amount would be proportionately reduced to the extent payroll costs did not meet the 75% threshold. The Act now allows borrowers to spend up to 40% on allowable non-payroll costs and have those amounts forgiven. We note, however, that many believe the Act’s language technically restores the “all or nothing” characteristics of the threshold, but that this may be a drafting error subject to correction in the near future.
- **Extends 8 Week Covered Period to 24 Weeks.** Borrowers now have the option of extending their “Covered Period” relevant to their loan forgiveness analysis from 8 weeks to the earlier of (a) 24 weeks after loan origination; or (b) December 31, 2020.
- **Extends Payment Deferral.** The Act now allows payments of principal, interest and fees to be deferred until the forgiven amount is remitted by the SBA to the lender, or at least 10 months have passed from the last day of the borrower’s “Covered Period” (if the borrower has not yet applied for loan forgiveness).
- **Increases Maturity Date from 2 to 5 Years.** The original statutory text provided that any loan balance that was not forgiven would have a maximum maturity of 10 years. The SBA’s guidance established a 2 year maturity date, but the Act now clarifies that loans made after June 5, 2020 have a 5 year maturity date. Maturity dates for loans originated prior to June 5, 2020 can be extended to 5 years if mutually agreed with the lender.
- **Extends Safe Harbor for Restoration of Headcount and Wages to 12/31.** The PPP’s Safe Harbor originally gave borrowers until June 30, 2020 to restore full-time equivalent employees and salary/wages that were reduced between February 15, 2020 and April 26, 2020, while still obtaining loan forgiveness. The Act now extends

this Safe Harbor period to December 31, 2020.

- **Eliminates Reductions in Forgiveness Due to Rehire Limitations.** Loan forgiveness will no longer be impacted if a borrower has a reduction in FTE but they are able to show (a) they, in good faith, were unable to re-hire individuals who were employees as of February 15, 2020, or they were unable fill the position by December 31, 2020 with a qualified individual; or (b) they were unable to return to the same level of business activity as prior to February 15, 2020 due to compliance with worker or customer safety requirements related to COVID-19.

We encourage you to review Jackson Lewis' [overview of the key provisions of the Act](#) and consult with your accountant to understand how these changes may impact you.

We thank you for your continued partnership and look forward to assisting you with all of your "back to business" needs.

AlphaStaff

