

# PPP Flexibility Act Makes Several Business-Friendly Changes to PPP Loan Program



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On Friday, June 5, 2020, President Trump signed the “Paycheck Protection Program Flexibility Act of 2020,” which makes the several welcome changes to the PPP loan provisions of the CARES Act, enacted on March 27, 2020. The Flexibility Act’s changes to the PPP Loan program include the following:

- Businesses now have 24 weeks, rather than 8 weeks, to spend their PPP loan funds and have the loan forgiven. The deadline under the Flexibility Act is technically 24 weeks from the date the loan is funded, or December 31, 2020, whichever is earlier.
- The Flexibility Act provides that businesses that have already received a PPP loan may elect to have the original 8-week “covered period” continue to apply. Businesses who plan to spend all of their loan proceeds on forgivable expenses within the original 8 week period, and may consider employee layoffs or salary reductions sometime after the end of their 8 week period, should consider making this election. If not, the loan forgiveness amount could be reduced if the borrower’s workforce is reduced within 24 weeks of receiving the loan funds.
- It reduces the amount of loan proceeds required to be spent on payroll costs, from 75% to 60%. This allows businesses to spend more funds on rent, utilities and mortgage interest if necessary.
- It extends the deadline for rehiring employees to full capacity from June 30, 2020, to December 31, 2020. The CARES Act provides for a reduction in the amount of loan forgiveness to the extent the business reduces its number of employees or wages paid during the covered period of the loan. However, reductions made from February 15, 2020, through April 26, 2020 (30 days after the date the CARES Act was enacted) are disregarded as long as the business eliminates the reduction by June 30, 2020. The Flexibility Act pushes this deadline back to December 31, 2020. It allows businesses that receive PPP loan funds and have them forgiven to take advantage of the social security tax deferral provisions of the CARES Act, by removing an exception in the CARES that prevented PPP loan recipients from participating in this program.
- The Flexibility Act also adds some important new exceptions to the forgiveness reduction rules. Businesses are not required to reduce their forgiveness amount to the extent they can document an inability to rehire former employer or similarly qualified employees (presumably addressing the question of what to do if some workers choose not to come back to work and instead draw unemployment). It also provides an exception for business that are not able to return to the same level of previous business activity due to federal guidelines related to sanitation, social distancing or other worker or safety requirements.

- It pushes the deadline for applying for loan forgiveness to October 31, 2021. Prior to this change, the CARES Act and other SBA guidance had not yet officially set a due date for forgiveness application, although the application form recently released by SBA stated the deadline was October 31, 2020.
- For any portion of the PPP Loan that must be repaid, it extends the deferral of payments of principal and interest until as far out as January 2022. Technically, the Flexibility Act states that lenders must defer payments until the borrower's forgiveness application is processed and the forgiveness amount is sent to the lender by the SBA. The CARES Act states that applications should be processed within 90 days of being submitted. So, a borrower that may be required to repay some or all of its PPP loan could wait until October 31, 2021, to submit its forgiveness application, and defer payment until after the application is processed 90 days later, around January 30, 2022. Current provisions of the CARES Act allow lenders to defer loan repayment anywhere from 6 months to a year after the loan is funded.

Lastly, it increases the PPP loan repayment period from two years to five years. Lenders have the option to extend maturity to up to ten years.