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Paycheck Protection Program Flexibility Act of 2020 (PPPFA)

The recently enacted [Paycheck Protection Program Flexibility Act of 2020](#) changes several provisions in the [original PPP loan program](#) enacted as part of the CARES Act. The PPPFA gives borrowers more flexibility and time to spend the PPP loan proceeds and allows the funds to be used on broader categories of expenses while still qualifying for loan forgiveness.

How much of the PPP loan needs to be spent on payroll costs?

- The PPPFA reduced the payroll expense requirement from 75% to 60%.
- This means 40% of the PPP loan funds may now be put towards overhead costs such as mortgage interest, rent, and utilities.
- Word of Caution: The language of the PPPFA appears to suggest borrowers must spend at least 60% on payroll or no portion of the loan will be eligible for forgiveness. Congress has since indicated it did not intend to eliminate the sliding scale under the old PPP rules. Amendments to restore the sliding scale are anticipated. In the meantime, out of an abundance of caution, we recommend borrowers do not spend less than 60% on payroll until the fix has been made or until further guidance is issued from the federal government and/or the Small Business Administration (“SBA”).

How much time do I have to spend the PPP loan funds and still qualify for loan forgiveness?

- The Covered Period has been extended to 24 weeks starting from the date of origination, or December 31, 2020, whichever is sooner.
- To qualify for full loan forgiveness, borrowers using the new 24-week Covered Period must maintain payroll levels for the full 24-weeks.
- Borrowers with existing PPP loans may choose to keep the original 8-week Covered Period. However, they will be required to maintain payroll levels through the original 8-week Covered Period in order to qualify for the full loan forgiveness amount.

When do pre-pandemic employment and wage levels need to be restored?

- The deadline for eliminating reductions in workforce and wages has been extended from June 30 to December 31, 2020.
- Borrowers now have until December 31, 2020, to restore workforce levels and wages to pre-pandemic levels required for loan forgiveness.

Will the loan forgiveness amount be reduced if I can't restore the original number of full-time employees?

- No. The reduced-headcount penalty has been removed.
- The loan forgiveness amount is now determined by, without regard to FTE headcount, documentation showing that the borrower was [1] unable to rehire former employees and unable to hire similarly qualified employees OR [2] unable to return to the same level of business activity due to compliance with federal guidelines related to COVID-19.
- The SBA is expected to provide clarification as to what “documents” are necessary to satisfy this exception.

When does the PPP loan mature?

- For PPP loans with a remaining balance after an application for forgiveness has been made, the PPPFA establishes a minimum maturity of 5 years [instead of 2 years] for loans made after June 5, 2020.
- For PPP loans taken out before June 5, 2020, the PPPFA allows lenders and borrowers to mutually agree to extend the loan term to 5 years.

When do I need to apply for PPP loan forgiveness?

- Applications for PPP loan forgiveness should be submitted the day after the Covered Period ends or as soon thereafter. Don't wait too long! Borrowers who fail to timely apply for loan forgiveness will be required to begin making loan payments 10 months from the close of the Covered Period.

I applied for PPP loan forgiveness; when do I start making payments?

- For borrowers who submit a loan forgiveness application, PPP loan repayment is deferred until the date on which the SBA remits the loan forgiveness amount to the lender.

My lender issued a decision to forgive my PPP loan, can I still defer the payroll tax for the period from March 27 to December 31, 2020?

- Yes! The PPPFA retroactively eliminates the restriction in the CARES Act, which prevented borrowers that received PPP loan funding from deferring additional payroll tax once the lender issued a decision to forgive the PPP loan.
- Borrowers may now continue to defer the payroll tax for the entire period from March 27 to December 31, 2020, regardless of whether the PPP loan was forgiven during this period.

These changes apply to all PPP loans regardless of whether the PPP loan was taken out before or after the PPPFA was enacted, except for the change in loan maturity as indicated.

Note that the final date to apply for a PPP loan is still **June 30, 2020**.

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