

Paycheck Protection Program Flexibility Act

Employers who received an original Paycheck Protection Program (PPP) loan were given eight weeks from the loan origination to restore their workforces to pre-coronavirus employment levels and pay levels and receive forgiveness for the loan. For those who received among the earliest loans (around the second week in April), that eight-week period ends in early June. Unfortunately for many businesses, the deadline to restore employment and pay levels comes at a time when many jurisdictions are still in some phase of lock-down and business operations have not recovered, leaving them unable to rehire furloughed or laid-off workers or restore pay to full pre-pandemic levels.

To address this, both houses of Congress, on a bipartisan basis, passed the much-needed Paycheck Protection Flexibility Act, which President Trump is expected to sign. The legislation accomplishes the following:

- Employers can continue to apply for a PPP Loan through June 30, 2020, which remains the deadline for loan.
- Current PPP borrowers can keep the original eight-week covered period or choose to extend the eight-week period to 24 weeks.
- New PPP borrowers will have a 24 week covered period, but they can't extend beyond December 31, 2020.
- In order to have the PPP loan forgiven, current PPP borrowers were required to spend at least 75% of the loan on payroll expenditures. The legislation drops this to 60% but establishes a cliff-threshold, meaning that if a borrower spends less than 60% of the loan on payroll expenditures, none of the loan will be forgiven.
- Borrowers can use the new 24-week period to restore their workforce levels and wages to pre-pandemic levels to receive loan forgiveness and this must be done by December 31. The original legislation required full restoration by June 30.
- Forgiveness amounts will not be reduced due to a failure to restore full time employment if employers can document they had employees who turned down good-faith offers to be rehired and they are not penalized if they are unable to restore business operations to pre-pandemic levels because of social distancing, sanitation, and worker or customer safety requirements.
- New borrowers will have five years to repay the PPP loan and existing PPP borrowers can extend their loan repayment to five years, up from the existing two years, at a 1% interest rate.
- Borrowers whose loans are forgiven are now able to delay payment of their payroll taxes, which was prohibited under the CARES Act.

Employers who applied for or received a PPP loan are encouraged to contact their lender and their financial and tax advisors for further guidance on how the Paycheck Protection Program Flexibility Act affects their loans and the potential for loan forgiveness.

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