

PAYROLL PROTECTION PROGRAM FLEXIBILITY ACT

The Flexibility Act (PPFPA) was enacted into law on June 5th and makes significant changes to several key Paycheck Protection Program (PPP) loan provisions. On June 16th the SBA provided a new “interim final rule” as guidance for the changes. The following is a summary of these changes:

1. Loan maturity is extended from 2 years to 5 years. (If loan is dated prior to June 5th, you will need to check with your banker to extend the due date.)
2. Loan Forgiveness Covered Period is extended from 8 weeks to the earlier of 24 weeks or December 31, 2020. (PPP loans prior to June 5th can *elect* to stay with 8 weeks. This election may be beneficial in certain cases where 100% forgiveness is already met, and to avoid FTE and wage reduction which might happen after the 8 weeks.)
3. FTE and compensation reductions can be ignored if restored to February 15, 2020 levels by December 31, 2020 (or date of forgiveness application) rather than June 30, 2020.
4. The new FTE relief provision allows borrowers to ignore FTE reductions if the borrower can document the inability to:
 - o rehire the same employees working on 2/15/20 or similarly qualified individuals for unfilled positions; OR
 - o return to your 2/15/20 level of business activity due to OSHA, CDC or HHS requirements or guidance related to COVID-19 between 3/1/20 and 12/31/20.
5. Borrowers shall use at least 60% of loan for payroll costs, and may use up to 40% of amount on non-payroll costs. The previous limits were 75% and 25%. It has been clarified that if less than 60% of loan is used on payroll costs, it would not prevent the borrower from receiving any forgiveness but instead borrower may receive partial forgiveness.
6. PPP loan participants can now fully participate in the Payroll Tax Deferral Program. This is a deferral of employer Social Security tax only, and the tax needs to be paid – 50% by 12/31/21 and remaining 50% by 12/31/22.

With these changes, the maximum forgiveness per employee has changed depending on your covered period.

Sole proprietors, partners and S corporation shareholders:

- 8-week period \$15,385
- 24-week period \$20,833 (the full amount that could have been borrowed)

Employees:

- 8-week period \$15,385 (\$100,000 x 8/52)
- 24-week period \$46,154 (\$100,000 x 24/52)

On June 17th the revised PPP Loan Forgiveness Application Forms (3508) were released, including a new EZ form – Form 3508EZ. These forms and instructions are available on our website.

Of course, we will continue to be on the look-out for further guidance on loan forgiveness and procedures. The above is based on our current understanding of the PPPFA. Feel free to contact us if you have any questions.

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