



CRISIS PRACTICE

Coronavirus

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New Flexibilities Enacted in Paycheck Protection Program (PPP)

On June 5, 2020, President Trump signed into law the Paycheck Protection Program Flexibility Act, [H.R. 7010](#) (P.L. 116-142). While this law does not add any new funding to the Small Business Administration (SBA) Paycheck Protection Program (PPP) loan program, it amends the program to give small businesses greater flexibility in the use of loan proceeds and the term of the loans. After the House passed the bill on May 28 by a vote of 417-1, the Senate approved the bill by voice vote on June 3.

Background:

The PPP was enacted in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, or P.L. 116-136), to provide eight weeks of cash flow assistance, through federally guaranteed loans, to small businesses who used the loans to maintain employment. The entire amount of these loans is eligible to be forgiven if certain hiring and compensation criteria are satisfied.

The PPP proved popular, and after the initial \$349 billion of program funding was exhausted, Congress, as part of the Paycheck Protection Program and Health Care Enhancement Act (PL 116-139), increased the loan authorization level to \$659 billion and targeted a portion of PPP funding to ensure PPP loans would (x) go to women, minority, and veteran-owned small businesses and (y) be disbursed by small- and medium-sized financial institutions.

When the PPP was enacted at the end of March, it was not clear how long the economic disruptions of the COVID-19 public health crisis would last. However, as has become apparent, these disruptions for small businesses will continue for months longer than the time frames in the original PPP, particularly as social distancing continues. The initial rules for the program – in particular, the requirement that 75% of proceeds be used for payroll purposes – made it difficult for businesses to fully utilize loan proceeds for forgivable purposes within the required eight week period.

Key provisions of Paycheck Protection Program Flexibility Act are summarized below:



<p>Minimum Loan Maturity</p>	<p><u>Original:</u> Two years (established by the initial Interim Final Rule).</p> <p><u>New:</u> H.R. 7010 establishes a minimum maturity of five years for a PPP loan with a balance remaining after forgiveness if originated after June 5th, 2020; the maturity of existing PPP loans has not been changed by this law.</p>
<p>Extending Rehiring Deadline</p>	<p><u>Original:</u> PPP gives employers until June 30 to rehire any laid off workers to achieve full loan forgiveness.</p> <p><u>New:</u> H.R. 7010 extends the rehiring deadline from June 30 to December 31, 2020.</p>
<p>Extending Expense Forgiveness Period</p>	<p><u>Original:</u> Only amounts spent within eight weeks of loan origination are eligible for loan forgiveness.</p> <p><u>New:</u> H.R. 7010 extends the eight-week limit to the earlier of 24 weeks after loan origination or December 31, 2020 (at the election of the borrower for previously-disbursed loans).</p>
<p>Loan Forgiveness/Employee Availability</p>	<p><u>Original:</u> No provision.¹</p> <p><u>New:</u> H.R. 7010 expands loan forgiveness provisions if the recipient is able to document that it is unable to rehire former employees who worked for the business as of February 15 and is unable to hire similarly qualified employees before December 31, or that it is unable to return to the same level of business activity due to compliance with federal guidance related to COVID-19.</p>
<p>Reducing Payroll Ratio Requirement to 60%</p>	<p><u>Original:</u> The current loan forgiveness application requires that, in order to obtain full loan forgiveness, the borrower must spend at least 75% of the loan proceeds on payroll during the eight week period.</p> <p><u>New:</u> H.R. 7010 establishes a requirement that at least 60% of a PPP loan must be used for payroll costs to be eligible for loan forgiveness. Up to 40% of a PPP loan could be used for “any covered mortgage obligation,” rent, or utility payments. Note that H.R. 7010 as drafted would require companies to spend at least 60% on payroll or none of the loan would be forgiven (rather than capping the total forgiveness amount); if this drafting error cannot be addressed in rulemaking, a technical amendment may be enacted in a future legislative vehicle.</p>

¹ The Interim Final Rule published on June 1, 2020 contains a similar provision which exempts individual employees from the headcount and salary reduction tests to the extent the individual worker did not accept a good faith offer to return to work on the same terms as their prior employment.



Extension of Deferral Period	<p><u>Original:</u> No interest, principal or fees are payable until six months after disbursement of the loans.</p> <p><u>New:</u> Deferrals are extended through the date on which the lender receives reimbursement from SBA for the forgiven loan amount. A recipient is required to apply for loan forgiveness within 10 months of the end of the bill's 24-week loan period. If the recipient does not apply for loan forgiveness within that 10 months, loan repayments will begin at the conclusion of that 10 month period.</p>
Allow Payroll Tax Deferment	<p><u>Original:</u> Businesses whose PPP loans were forgiven may not defer 2020 payroll taxes.</p> <p><u>New:</u> H.R. 7010 eliminates this prohibition.</p>
<p>Unless otherwise specified, the provisions of H.R. 7010 are retroactive to March 27, 2020, the date of enactment for the CARES Act.</p>	

Next Steps:

There is strong bipartisan, bicameral support for ensuring that the PPP meets the needs of small businesses, and it is likely that the PPP will be amended again. As noted above, there is an immediate need to address a drafting error in the payroll ratio requirement language, and members of Congress have expressed an interest in further refining the program, including allowing PPP recipients to use loans for personal protective equipment, medical supplies, and renovations needed to meet federal guidelines for reopening. Additional areas for reform will likely become apparent as PPP recipients transition from the loan to grant phase in the coming weeks.

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