

The Senate yesterday passed the Paycheck Protection Program Flexibility Act that the House passed last week. President Trump is expected to sign it today. It makes important and needed changes to the PPP. Here is a summary:

- Changes the requirement to spend 75% of the loan proceeds on payroll costs to 60%
- Increases the covered period (the period where eligible expenses can be used for loan forgiveness) from eight weeks to 24 weeks or until December 31, 2020 (whichever date is earlier). For borrowers who have already received a loan, the borrower can elect to use the 24 week covered period or continue with the eight week covered period.
- The safe harbor period to rehire workers who have been laid off or furloughed (or to reverse a greater than 25% wage decrease) in order to avoid the effect that such layoff or wage reduction would have on reducing the amount of loan forgiveness has been extended from June 30th to December 31, 2020. As a reminder, the total loan forgiveness amount is reduced by a proportional amount for any reductions in FTEs when comparing the covered period to a base period of either January – February 2020 or February 15, 2019 – December 31, 2019 (at borrower’s election)(the “FTE Reduction”) and is also reduced by the amount that each employee (who makes \$100,000 or less) whose wages are reduced by more than 25% when compared to the wages of that employee in the first quarter of 2020 (“Wage Reduction”). If either of those events occurred between February 15, 2020 and April 26, 2020 and the borrower reversed those events by December 31, 2020 then there will be no reduction in the loan forgiveness amount as a result of an FTE Reduction or Wage Reduction.
- A new safe harbor to avoid loan forgiveness reduction as a result of an FTE Reduction based on employee unavailability. Under this new safe harbor, any calculation for reducing the loan forgiveness amount will not take into account any proportional FTE reduction of a borrower who in good faith is able to document: (A) (i) an inability to rehire individuals who were employees on February 15, 2020 and (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or (B) an inability to return to the same level of business activity as such business was operating at before February 15, 2020 due to compliance with requirements established or guidance issued by the CDC, Secretary of Health and Human Services or OSHA during March 1, 2020 through December 31, 2020 where such requirements or guidance relates to COVID-19 safety issues (social distancing, maintenance of sanitation standards, etc.). The statute does not specifically call out state or local orders related to COVID-19; however, many of those order incorporate federal guidance.
- Changes the deferral period for any repayment of a PPP loan so that it is until the lender is paid from SBA the loan forgiveness amount on the PPP loan. This period was originally six months from the date of loan origination.
- Adding a new provision that if a borrower fails to make an application for loan forgiveness within 10 months after the end of the borrower’s covered period then the repayment of the loan shall start at the end of that 10 month period.
- Extend the repayment term from two years to at least five years

- Extend the Paycheck Protection Program until December 31, 2020
- It allows PPP borrowers to now take advantage of the payroll tax deferral that was included in the CARES Act (Section 2302 of the CARES Act)