



Significant Changes Likely Coming to SBA Paycheck Protection Program

Client Advisories

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UPDATE: On June 5, 2020, President Trump signed the Paycheck Protection Program Flexibility Act. The bill gives employers more flexibility when using Paycheck Protection Program (PPP) funds and applying for loan forgiveness.

In response to concerns over the administration of the CARES Act funded Paycheck Protection Program (“PPP”), Congress has advanced a bill designed to loosen certain programmatic restrictions. Last week, the House of Representatives passed the “Paycheck Protection Flexibility Act” by a near-unanimous vote in an effort to remove impediments to borrowers’ loan forgiveness calculations. The Senate, through a unanimous vote, approved the Act without making any changes to the House version. The bill is now awaiting signature by the President.

The Act makes considerable changes to the PPP. Such changes are expected to assist those borrowers who may be struggling to spend the full amount of their loan or find themselves unable to qualify for loan forgiveness.

These changes include:

- Increasing the amount of time that borrowers have to spend PPP loan proceeds. The PPP currently utilizes an 8-week covered loan period. This period would triple to 24-weeks under the Act. Borrowers can, however, choose to utilize the original 8-week period if preferred. New borrowers under the PPP will receive a 24-week covered loan period which may not, however, extend beyond December 31st.
- Increasing the amount of loan proceeds that may be spent on non-payroll costs. The PPP allows borrowers to spend no more than 25% of funds on non-payroll costs (mortgage interest, rental expenses and utilities). This amount would be increased to 40% under the Act. Payroll costs must account for 60% of loan proceed use.
- Notably, the current version of the PPP requires that a borrower’s loan forgiveness be reduced (but not eliminated) if less than 75% of loan proceeds were used toward payroll costs. The Act, however, states that loan forgiveness will be eliminated if the new 60% payroll cost threshold is not met.

Certain key lawmakers in both chambers – including the co-sponsor of the House bill – have indicated that technical changes to the bill will likely be made to eliminate this all-or-nothing language.

- Extending the deadline to rehire displaced workers and restore wages. The PPP contemplates a deadline of June 30th to rehire employees and restore certain wage reductions. This deadline would be extended to December 31st allowing employers a longer period to recover from the impact of the pandemic.
- Providing more flexibility to employers who are unable to restore employee headcount to pre-COVID levels. The SBA previously issued guidance that allowed exceptions to a borrower's loan forgiveness calculation reduction if employees declined written re-employment offers. The Act expands this exception to include an employer's inability to find qualified employees willing to accept work and the inability to restore business operations due to COVID-19 restrictions.
- Extending the loan repayment period. The SBA provided a 24-month repayment period for the PPP. This Act increases this period to 60-months. Existing loan recipients will need to reach agreements with their lenders to extend the loan period. The interest rate, however, remains at 1%.
- Allowing companies who receive loan forgiveness to delay the payment of payroll taxes. Under the current version of the PPP and IRS determinations, employers may not avail themselves of certain payroll tax deductions if they have received loan forgiveness. The Act eliminates this exclusion.

Should the President sign this bill, the Small Business Administration is expected to amend its recently issued Loan Forgiveness Application and corresponding guidance to reflect the changes mandated by the Act .

For more information on these significant changes to the PPP or for assistance with any aspect of your PPP loan forgiveness application, please reach out to your Archer attorney or any member of the firm's **COVID-19 Task Force**.

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