

Congress modifies terms of PPP to provide borrowers with greater flexibility

5 June 2020

On 5 June, H.R. 7010, the [Paycheck Protection Program Flexibility Act](#) (the PPP Flexibility Act or Act), was signed into law. The bill had previously passed the House and Senate with strong bipartisan votes.

The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) became public law on 27 March 2020 and established a variety of programs aimed at mitigating the adverse economic effects of the pandemic. Notably, the CARES Act expanded the Small Business Administration's (SBA) 7(a) Loan Guarantee Program and leveraged its existing framework to create the Paycheck Protection Program (the PPP or Program). Despite some initial challenges with implementation, the Program has been embraced by lawmakers on a bipartisan basis.

Since the Program's inception, small businesses across the country have applied for and received hundreds of billions of dollars in forgivable loans. According to a [report](#) by the Department of the Treasury, as of 30 May, 4.4 million loans had been made in both rounds of the Program for a total loan value of US\$510.2 billion. There remains more than US\$120 billion in the Program left unallocated for lending to small businesses.

In order to clarify ambiguities about the Program as originally conceived by the CARES Act, the Treasury Department and SBA have issued multiple interim final rules and advisory guidance intended to improve the Program's functionality. Now, Congress has now taken action to further modify the Program through the PPP Flexibility Act.

Once signed into law, the PPP Flexibility Act would amend the CARES Act in the following ways:

- Allow PPP borrowers to obtain loan forgiveness equal to the amount spent on payroll and other eligible expenses during the "covered period" lasting 24 weeks from the date of loan origination (but not beyond the end of 2020), rather than the 8-week "covered period" established by the CARES Act;
 - Borrowers receiving loans prior to the date of enactment of the proposed legislation may elect for the "covered period" of the loan to last only for the initial 8-week period;

- Expand the cap on non-payroll expenses (interest payments on mortgages, rent, or utilities) to 40% rather than 25% of PPP loan proceeds, meaning that borrowers are required to spend only 60% of the loan proceeds on payroll expenses;
- Extend the borrowers' PPP loan terms from 2 years to a minimum of 5 years (applies to PPP loans made on or after date of enactment);
- Calculate loan forgiveness without regard to a proportional reduction in the number of full-time equivalent employees if the borrower can document an inability to restore previous employment and operating levels that existed as of 15 February 2020;
- Change the mandatory deferral period by when borrowers must pay any interest and principal on the loan from 6 months to the date on which SBA makes a loan forgiveness determination, or, if borrowers do not apply for loan forgiveness within ten months of the earlier of (i) the end of the twenty-four or eight-week loan forgiveness periods, as applicable, or (ii) 31 December 2020, then repayment is deferred ten months from that earlier date;
- Ensure borrowers' full access to payroll tax deferment for businesses that take PPP loans; and
- Extend to 31 December 2020 the rehiring deadline, (from 30 June 2020 under the CARES Act) to allow PPP borrowers to mitigate any forgiveness reduction associated with a reduction in the number of full time employees, and/or salaries or wages.

Each of these elements will enhance borrower flexibility in using and obtaining forgiveness for PPP loans. Notably, with the exception of loan terms being extended from 2 to 5 years, the PPP Flexibility Act applies retroactively to loans already issued prior to the date of enactment. The Act would not, however, increase the overall size of the program or respective authorized loan amounts.

Due to a drafting error in the House-passed version of H.R. 7010, certain House and Senate lawmakers inserted a letter into the Congressional Record in order to clarify congressional intent on a point of confusion. According to the letter, PPP borrowers may spend their loan proceeds until 31 December 2020; however, the Small Business Administration may not accept loan applications past 30 June 2020. Additionally, prior to the legislation's passage, Senate Majority Leader Mitch McConnell stated that there were additional "technical fixes" likely to be made to the PPP Flexibility Act going forward. For now, though, the bulleted summary listed above is accurate and will become effective once the president signs the bill into law.

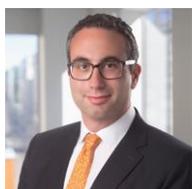
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