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Paycheck Protection Program Flexibility Act signed into law

June 5, 2020

President Donald Trump has signed into law a bill that gives employers more flexibility when using Paycheck Protection Program (PPP) funds and applying for loan forgiveness.

Lawmakers from both sides of the aisle supported making changes to the PPP to address complaints from employers that the existing rules were unfeasible. U.S. House of Representatives passed the bipartisan Paycheck Protection Program Flexibility Act (PPPFA) in a 417-1 vote on May 28, and the Senate passed the bill by unanimous consent on June 3.

Key Changes

Instead of 8 weeks, borrowers will now have 24 weeks from the disbursement of their loan to use the PPP funds, or until Dec. 31 when the program is now set to end. Borrowers can still opt, however, to use funds in the original eight-week period.

The PPPFA also creates flexibility in the amount of loan money that must be used for payroll purposes. **Employers now have to spend 60 percent—rather than the previous 75 percent**—of PPP funds on payroll costs. Payroll costs include:

- Salary, wages, commissions and tips—up to $100,000 annualized for each employee.
- Employee benefits, including paid leave, severance pay, insurance premiums and retirement benefit.
- State and local taxes assessed on pay.
- Payroll costs for sole proprietors and independent contractors include wages, commissions, income or net earnings from self-employment (up to $100,000 annualized).

The additional 40 percent could be spent on mortgage interest, rent, utilities and other costs.

Additionally, **employers now have until Dec. 31, rather than June 30**, to rehire certain laid-off workers if they are seeking loan forgiveness. Exceptions to the rehire rule may apply based on employee availability.

Employers should note that the new act extends the maturity date of the PPP loans—for any portion of a PPP loan that is not forgiven—from two years to five years. This provision of the act only affects borrowers whose PPP loans are disbursed after its enactment. With respect to already existing PPP loans, the act states specifically that nothing in the act will "prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan."

Under the PPPFA, borrowers will also able to defer payroll taxes even if they receive loan forgiveness.

The Program's Purpose

Borrowers should continue to use the loan money within the spirit and intent of the CARES Act, which is to cover payroll and qualified expenses, such as rent and utilities, during the pandemic.

Staying within the parameters of the CARES Act provides a greater chance for the entire loan to be used and forgiven. Therefore, if employers had layoffs or furloughs or reduced wages, now is the time to restore headcount and employee pay.

Employers should also continue to diligently document their use of the funds, so when loan forgiveness time comes, employers can quickly and accurately substantiate their use of the loan and increasing the odds of full forgiveness.

Borrowers should look for additional guidance and rules from the U.S. Treasury Department and the U.S. Small Business Administration.