

President Signs Paycheck Protection Program Flexibility Act

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On June 5, 2020, President Trump signed H.R.7010, the [Paycheck Protection Program Flexibility Act of 2020](#) (the “**PPPFA**”). The PPPFA modifies the Paycheck Protection Program (“**PPP**”) to provide additional flexibility to borrowers in using PPP loan proceeds and obtaining forgiveness for their loans by the Small Business Administration (the “**SBA**”).

The PPP is a small business loan program established pursuant to Title I of the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act signed by President Trump on March 27, 2020, and supplemented by the Paycheck Protection Program and Health Care Enhancement Act (the “**PPP/HCE Act**”) on April 24, 2020.

Below is a high-level summary of the changes to the PPP set forth in the PPPFA. We expect the SBA and U.S. Department of Treasury to provide further implementing guidance and regulations in the coming days. Such guidance and regulations could provide further detail with respect to the usage and forgiveness mechanics for PPP loans and may materially change the summary below. Businesses are encouraged to seek advice from qualified legal counsel when obtaining and seeking forgiveness under a PPP loan.

1. Covered Period Extended to 24 Weeks.

- The period during which all PPP loan funds must be spent to qualify for loan forgiveness (the “**Covered Period**”) is extended from eight weeks following the initial disbursement of funds to the earlier of 24 weeks following the initial disbursement or December 31, 2020.
- Borrowers who take advantage of the extended covered period may still apply for loan forgiveness after eight weeks (using the eight-week covered period). Borrowers that elect to use the longer 24-week period will need to demonstrate compliance with the requirements to maintain employment levels through the entire 24-week period or to restore wage and full-time equivalent employee levels by December 31, 2020.

2. Amount of Loan Required to Be Spent on Payroll Reduced.

- The amount of loan funds required to be spent on payroll expenses in order to qualify for loan forgiveness is reduced from 75% to 60%.
- The remaining 40% may be spent on qualifying non-payroll expenses, which are unchanged from prior legislation and consist of rent, mortgage interest and utilities.

3. Deadline to Rehire Workers Extended.

- A borrower’s loan forgiveness will not be reduced for any reduction in employees over the course of the Covered Period, as long as the borrower has rehired the same number of employees by December 31, 2020.

4. Rehiring Requirements Relaxed.

- A borrower will not be penalized for failing to rehire employees in either of the following situations:
 - The borrower can document a) an inability to rehire an individual who was an employee on February 15, 2020, and b) an inability to hire a similarly qualified individual for this position by December 31, 2020.

- The borrower can document an inability to return to the same level of business activity as at February 15, 2020, due to compliance with federal government requirements relating to sanitation, social distancing or any other COVID-19-related worker or customer safety requirement.

5. Loan Maturity and Deferral Period Extended.

- The repayment term for any unforfeitable portion of a PPP loan is extended from two years to five years for loans entered into following enactment of the PPPFA. Loans entered into prior to the enactment of the PPPFA still have a two-year repayment term, but borrowers and lenders may mutually agree to modify the term of these loans.
- The loan repayment deferral period is extended from six months to the time that the SBA compensates the lender for any forgiven amounts.
- Importantly, repayment may nevertheless be required if a borrower has not applied for forgiveness within 10 months of the end of the Covered Period.

6. Payroll Tax Deferral Allowed.

- The original PPP requirements prohibited employers from deferring the employer portion Social Security taxes after any portion of a PPP loan was forgiven. Borrowers may now defer payment of the employer share of Social Security payroll taxes for the full year, such that any deferred amounts would be due in two equal payments in December 2021 and December 2022.

Given the fast pace of developments, businesses are encouraged to seek advice from qualified legal counsel concerning these matters.

For more information, please see the following resources:

1. Prior Haynes and Boone Guidance on the Paycheck Protection Program:

- [Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program](#) (updated June 8, 2020)
- [SBA Issues New Guidance on PPP Loan Forgiveness](#) (June 1, 2020)
- [SBA Issues New Guidance on Certification of Necessity Safe Harbor](#) (May 13, 2020)
- [SBA Extends Loan Repayment Safe Harbor Date, Provides Additional Guidance on Employees of Foreign Affiliates](#) (May 7, 2020)
- [Could Retention of PPP Loan Funds Create False Claims Act Liability?](#) (updated May 6, 2020)
- [CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business](#) (April 6, 2020)
- [Full List of Haynes and Boone Alerts on PPP](#)

2. PPP Resources from the SBA and Treasury Department:

- [Top-Line Overview of the Program](#)
- [Information Sheet for Lenders](#)
- [Information Sheet for Borrowers](#) (updated April 2, 2020)

- d. [Borrower Application Form](#) (updated April 3, 2020)
- e. [Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions \(4/3/2020\)](#) (released April 3, 2020)
- f. [Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders \(4/8/2020\)](#) (released April 8, 2020)
- g. [Lender Agreement to participate in PPP](#) (released April 3, 2020)
- h. [PPP Program Loan Report](#) (updated April 16, 2020)
- i. [Loan Forgiveness Application](#) (released May 15, 2020)
- j. [How to Calculate Loan Amounts](#)
- k. [Search Tools: Find an Eligible Lender](#)

3. Prior SBA Guidance on the Paycheck Protection Program:

- a. [PPP Frequently Asked Questions](#) (updated May 27, 2020)
- b. [Interim Final Rule 1](#) (originally posted April 2, 2020)
- c. [Interim Final Rule on Applicable Affiliation Rules](#) (originally posted April 3, 2020)
- d. [Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#) (originally posted April 14, 2020)
- e. [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#) (originally posted April 24, 2020)
- f. [Interim Final Rule Additional Criterion for Seasonal Employers](#) (originally posted April 27, 2020)
- g. [Interim Final Rule on Disbursements](#) (originally posted April 28, 2020)
- h. [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#) (originally posted April 30, 2020)
- i. [Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria](#) (originally posted May 5, 2020)
- j. [Interim Final Rule on Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request](#) (originally posted on May 8, 2020)
- k. [Interim Final Rule on Loan Increases](#) (originally posted May 13, 2020)
- l. [Interim Final Rule on Eligibility of Certain Electric Cooperatives](#) (originally posted May 14, 2020)
- m. [Interim Final Rule on Treatment of Entities with Foreign Affiliates](#) (originally posted May 18, 2020)
- n. [Interim Final Rule on Loan Forgiveness](#) (originally published May 22, 2020)
- o. [Interim Final Rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities](#) (originally published May 22, 2020)

4. Resources on the SBA Economic Injury Disaster Loan (EIDL) Program.

- a. [Looking for an Alternative to PPP? Taking a Second Look at the Economic Injury Disaster Loan Program](#) (Haynes and Boone Alert, May 1, 2020).



- b. [SBA's COVID-19 Disaster Loan Program](#) (Haynes and Boone Alert, March 24, 2020)
- c. [SBA EIDL Resource Page](#)

Additional Questions? Contact a member of the Haynes and Boone [Finance](#) or [Corporate](#) Practice Groups at Haynes and Boone, including the following individuals:

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