

Congress Provides Welcome Modifications to PPP In New Bill

June 4, 2020

Congress has acted to change the Paycheck Protection Program (“PPP”) including to relax PPP Loan Forgiveness rules with the goal of making it easier for many businesses to qualify for loan forgiveness on a larger portion of their loans. The extended “shutdown” of many areas begged for an extension to the forgiveness period as well as an easing of other requirements of the program. The President’s approval is still required to enact this legislation.

On Thursday, May 28, 2020, the U.S. House passed H.R. 7010 Paycheck Protection Program Flexibility Act of 2020 (PPPFA). On Wednesday, June 3, 2020, the Senate passed the House bill “as is.” President Trump is expected to sign the bill, at which point it will take effect. This legislation will make it easier for Borrowers to qualify for the maximum amount of loan forgiveness of their PPP loans.

Loan Forgiveness

The PPPFA extends the “covered period” from 8 weeks to 24 weeks from the date of the origination of the covered loan, or December 31, 2020, whichever is earlier. A borrower under an existing PPP loan may elect to keep the 8-week covered period.

The requirement that the Borrower use at least 75% of the PPP Loan on payroll costs was lowered to 60% so that the Borrower may now use up to 40% on nonpayroll costs (mortgage interest, rent and utilities) for its loan forgiveness amount. However, the way the PPPFA is written, the new threshold is now a “cliff”, meaning that at least 60% of the loan amount must be spent on payroll costs in order to be eligible for forgiveness.

The Safe Harbor date to restore reductions in Full-time Equivalent (FTE) employees has been changed from June 30, 2020 to December 31, 2020.

The PPPFA adds an exemption to the FTE Reduction calculation, if for the period

beginning February 15, 2020 and ending December 31, 2020, the Borrower can document:

- An inability to rehire employees who were employed as of February 15, 2020, **and**
- An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020, **or**
- 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 and guidelines issued by Health and Human Services, CDC or OSHA during March 1, 2020 to December 31, 2020 related to certain protocols for responding to COVID-19.

Deferral of Employer Payroll Taxes

Recipients of PPP loan forgiveness are no longer **excluded** from the deferral of the employer's half of federal social security and Medicare taxes.

Loan Term and Deferral Period

The CARES Act (Section 1106) initially provided that a PPP loan would have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness. In its first Interim Final Rule (IFR) issued in early April 2020, the SBA set the loan maturity at two years. The PPPFA requires all new PPP loans made on or after the effective date to have a minimum maturity of 5 years, up to a maximum of 10 years.

The PPPFA also does not "prohibit lenders and borrowers from mutually agreeing" to modify the two-year term of existing PPP loans to conform with this new section.

The six-month deferral period before payments are due has been replaced. The deferral period now begins on the loan date and ends on the date that the SBA remits the amount of forgiveness to the lender.

If a borrower does not apply for forgiveness within 10 months after the last day of the covered period, the deferral period ends on that same date.

NOTE: All changes above are retroactively applicable as if they were included in the original CARES Act, except for the change in loan term.

The Anchin COVID-19 Resource Team continues to monitor ongoing updates to the PPP Program. To better understand how the changes impact your unique situation, please contact your Anchin Relationship Partner or our Anchin COVID-19 Resource Team at COVID19@anchin.com.

Disclaimer: Please note this is based on the information that is currently available and is subject to change.