

Congress Passes Paycheck Protection Program Flexibility Act of 2020

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010) (the “PPPFA”) was signed into law, amending the Paycheck Protection Program under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748). The PPPFA modifies the Paycheck Protection Program in the following respects:

- Covered period changed from eight weeks to the earlier of 24 weeks after the loan’s origination or December 31, 2020.
 - If a business received a loan prior to enactment of the PPPFA, the business may elect an eight-week covered period.
- Requirement that 75% of the loan proceeds must be used for payroll costs in order for the loan to be eligible for forgiveness reduced to 60%.
- Deadline for the FTE Reduction Safe Harbor extended from June 30, 2020 to December 31, 2020.¹
- Two new exemptions to the FTE Reduction Safe Harbor added:
 - If the business cannot rehire the same employees and similarly qualified employees for unfilled positions by December 31, 2020.
 - If the business is unable to return to the same level of business activity due to compliance with guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period March 1, 2020 to December 31, 2020.
- Minimum maturity date extended from two years to five years. Borrowers that already have a loan with a two-year maturity date may negotiate with their lenders.
- Deferral period extended to the date on which the forgiveness amount is remitted to the lender or to 10 months if the borrower did not apply forgiveness.²
- Provision prohibiting deferral of payroll taxes eliminated.

These modifications are intended to give small businesses more flexibility in how loan proceeds received under the Paycheck Protection Program are spent and to respond to the lengthening of the anticipated road to recovery from the pandemic and its economic consequences.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Helene R. Banks at 212.701.3439 or hbanks@cahill.com or Robyn Sablove at 212.701.3753 or rsablove@cahill.com; or email publications@cahill.com.

¹ The FTE Reduction Safe Harbor provides an exemption from reduction based on full-time equivalency if the number of full-time equivalent employees on December 31, 2020 is at least equal to the number of full-time equivalent employees on payroll for the pay period that includes February 15, 2020.

² The PPPFA does not address what constitutes the deferral period if a borrower receives forgiveness on some, but not all, of the loan proceeds.