

NEW LAW MAKES PPP LOANS MORE FLEXIBLE FOR BORROWERS

LEGAL ALERT

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HOGE • FENTON

A breath of fresh air for PPP borrowers! The Senate unanimously passed the “Paycheck Protection Program Flexibility Act of 2020” (**H.R. 7010**) (the “PPP Flex”) on Wednesday (6/3) evening and the President signed it into law today. The PPP Flex addresses many concerns with the PPP loan program and relaxes some of the requirements in the original PPP program. We expect the Treasury and the SBA to issue more guidance on the PPP Flex in the near future. Although the PPP Flex offers some relief and clarity, there are new considerations. Borrowers who already plan on using the PPP funds within the original 8 week covered period can choose to do so and may decide to request loan forgiveness as soon as possible. Below is a list of major changes covered in the PPP Flex bill:

[Update](#)

[PPP / Initial SBA Guidance](#)

[PPP Flex](#)

1) Extended Loan Forgiveness Covered Period	8 weeks (56 days) from receipt of loan proceeds, or from first date of payroll period after receipt of loan proceeds for those eligible to apply "Alternative Payroll Covered Period".	Earlier of 24 weeks or December 31, 2020. Borrowers who received a PPP loan before the date of the enactment of PPP Flex may retain the 8 week covered period. At least 60% of loan proceeds must be spent on eligible payroll costs. This now appears to be a cliff. (i.e., a Borrower who spends only 59% on eligible payroll costs will receive no forgiveness)* [* Note: Subject to SBA regulation to determine if it is a cliff, but the current statutory language suggests it is a cliff]
2) Lower Payroll Cost Percentage Requirement	At least 75% of loan proceeds must be spent on eligible payroll costs, otherwise the loan forgiveness amount will be proportionally reduced.	
3) Extended Reduction in Work Force Safe Harbor Rehire Date	June 30th deadline to rehire employees separated between February 15, 2020 and April 26, 2020, to avoid a reduction in loan forgiveness.	December 31, 2020 deadline to rehire employees separated between February 15, 2020 and April 26, 2020, to avoid a reduction in loan forgiveness. New exceptions (in addition to the prior exception) if the Borrower:
4) New Exceptions for Borrowers who do not hire/rehire workers before the Rehire Date	No reduction in loan forgiveness if the Borrower offers reemployment and workers reject the offer to return to work.	<ul style="list-style-type: none"> ■ Could not rehire employees who were employed as of February 15, 2020; or ■ Could not find qualified employees to hire by December 31, 2020; or ■ Could not restore business to pre-February 15, 2020 level of activity because of social distancing or other <u>federal</u> health guidance/requirements
5) Longer Repayment Period	2 years	5 years (for loans after the enactment of PPP Flex; existing PPP borrowers might ask lenders to extend the loan. Available for <u>all</u> PPP borrowers regardless of forgiveness status; allows Borrowers to defer payment of 50% of payroll taxes until 2021, with the remaining 50% due in 2022.
6) Deferral of Employer Share of Payroll Taxes	Not available for a Borrower who had the PPP loan forgiven.	

Our experienced team of attorneys are available to further assist you with any more questions or concerns you may have regarding the Paycheck Protection Program Flexibility Act of 2020.



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