

### **1. PPPFA changes amount of loan needed for payroll to 60%**

The biggest complaint around the PPP loan program was that it required businesses to spend 75% of the loan on payroll. For those businesses shut down due to COVID-19, this meant playing the role of unemployment office, paying their workers to stay home and do no work. The PPPFA reduces the amount of the loan needed to be spent on payroll from 75% to 60%, thus increasing the amount of funds available for other expenses from 25% to 40%.

While this new breakdown was less than the 50-50 split business groups advocated for, it is still an improvement. However, the law does not change the list of expenses eligible for forgiveness. It still includes rent, mortgage payments, utilities, and interest on loans. Again, this is quite a restriction on businesses that need funds for inventory, personal protection equipment, expenses around remote working, and other needs. Business groups will continue to lobby to expand eligible expenses.

### **2. PPPFA extends time period to use funds from 8 to 24 weeks**

The second biggest issue around PPP was that it required businesses to spend the funds in the eight-week period from the date funds were received. For a business shut down by government mandate, this amounted to spending funds when, perhaps, conserving them was in order. Business owners clamored to have the flexibility to spend the loan after reopening, especially on payroll when workers returned to work and were not sitting idle.

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The PPPFA fixed this by extending the time period to spend the loans to 24 weeks. While businesses will still need to spend the money on payroll and authorized expenses, they now have until the end of 2020 to do so. Presumably, this will make receiving complete loan forgiveness more likely since the loan amount was based on one month of 2019 payroll multiplied by 2.5, which equals approximately 10 weeks. Businesses should now have the flexibility to spend the PPP funds when they like for the remainder of the year. And, another positive caveat: the PPPFA also does not require businesses to wait for 24 weeks to apply for forgiveness and can still do so after eight weeks if they prefer.

### **3. PPPFA pushes back a June 30 deadline to rehire workers to December 31, 2020**

Small businesses took issue with the PPP requirement that all workers had to be rehired by June 30, 2020, in order for their salaries to count towards forgiveness. Many businesses were concerned they might not be open, or certainly not at full capacity by this date, and would once again, be required to pay employees for not working. Under the new law, businesses now have until December 31, 2020, to rehire workers in order for their salaries to count towards forgiveness.

It is important to note, however, that the law did not change how salaries are calculated towards forgiveness. The payroll calculation used in the loan application still applies to the forgivable amount. So, employee compensation eligible for forgiveness is still capped at \$100,000, and until further guidance, employer owners and contractors are still capped at \$15,385. Presumably with the new law, however, having an extra six months of expenses eligible for forgiveness will make up for any gaps and ensure 100% forgiveness of the loan.

### **4. PPPFA eases rehire requirements**

As the intent of PPP was to keep the same number of employees on the payroll as was used to calculate the loan, it required a business to rehire the same number of full-time employees or full-time equivalents by June 30, 2020. The only exception to this rule was if an employer could document in writing an attempt to rehire an employee who rejected this offer.

The new law makes two significant changes to these requirements. First, it extends the rehire date to December 31, 2020, and second, it adds additional exceptions for a reduced head count. The law states a business can still receive forgiveness on payroll amounts if it:

- Is unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020;
- Is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020; or
- Is able to demonstrate an inability to return to the same level of business activity as such business was operating at prior to February 15, 2020.

It remains unclear how to “demonstrate the inability to rehire similarly qualified employees” or what the standard “to demonstrate the inability to return to previous levels of business activity” would be, but hopefully forthcoming guidance will elaborate. The good news appears to be that even with a reduced head count based on these exceptions, if 60% of the loan is still used on payroll throughout the remainder of 2020, it will be forgiven. Certainly, a business will need to document in writing as thoroughly as possible its efforts to rehire employees through December 31, 2020.

### **5. PPPFA extends the repayment term from 2 years to 5**

The new law also eases repayment terms in the event loans or portions of them are not forgiven. A business now will have five years at 1% interest to repay the loan. Further, the first payment will be deferred for six months after the SBA makes a determination on forgiveness. Since under current regulations your bank has 60 days to make a forgiveness

determination and the SBA an additional 90 days, this means you could have up until May of 2021 to make the first payment on the loan.

In addition, the PPPFA also allows borrowers to take advantage of the CARES Act provision allowing deferment of the employer's payroll taxes for Social Security. Previously, PPP did not permit deferment of these taxes on the forgivable portion of the loan.

### **Treasury guidelines still provide for SBA loan audits**

While this new law certainly addresses many concerns, and should ease the requirements for full forgiveness of PPP loans, it is not a complete fix. Namely, it does not address the issues around SBA audits of loans as outlined in the Treasury Department ["Interim Final Rules"](#) on PPP loans issued late on May 22.

According to [PPP Loans FAQs](#), the SBA could audit any loan at its discretion to determine if "the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower." This includes loans under \$2 million, which have a "safe harbor" on the issue of whether economic uncertainty made the loan necessary.