



PP&Co Action Alert

HR 7010 Passes Changes PPP Loan Forgiveness Rules

The House and Senate, in a rare show of bi-partisan unity, passed HR 7010, the Paycheck Protection Program Flexibility Act of 2020 (PPPFA). This morning the President signed the bill into law, paving the way for much needed changes to the Paycheck Protection Program (PPP).

The PPP, part of the CARES Act, while conceived with the best of intentions has been fraught with problems and uncertainties for borrowers and lenders. This in spite of the SBA issuing multiple 'Interim Final Rules' and updating their FAQs almost weekly. What follows is a summary of the changes and what those changes mean for borrowers.

Loan Maturity

The period to repay any portion of the Paycheck Protection Loan (PPL) that was not forgiven, originally 2 years, has increased to 5 years. The 5-year repayment period only applies to PPLs made after passage of the bill (there is still \$120 billion available). However, terms for PPLs received prior to the bill's passage can be renegotiated to match the updated 5-year repayment period.

In addition, while the CARES Act required lenders to defer the payment of principal and interest for six months, H.R. 7010 allows for deferral until the date the lender receives the forgiveness amount from the SBA. We expect that in most cases this will be longer than 6 months.

Obtaining Forgiveness is Easier

The forgiveness calculation was one of the more confusing and onerous features of the PPP, and the one businesses and industry groups wanted changed. Under the PPPFA forgiveness terms, more borrowers will be eligible for forgiveness. Here's why:

- ✚ **The timeframe for using the PPP loan proceeds has been extended.** Originally businesses had to spend the loan proceeds within 8 weeks of receiving the funds, with a minor adjustment for their payroll periods (called the "covered period"), to qualify for loan forgiveness. The PPPFA extends the covered period to the earlier of 24 weeks from the date of funding or December 31, 2020.

This extended covered period will allow businesses such as hotels, restaurants, bars and small retailers, that could not open during the 8-week covered period because of shelter in place orders in many parts of the county, the opportunity to spend their PPP loan proceeds once they are allowed to open and still qualify for forgiveness.

NOTE: the PPPFA still allows borrowers to use the original 8-week covered period to calculate loan forgiveness if they choose to do so.

- ✚ **The PPPFA increased the percentage of non-payroll costs from 25% to 40%, to be paid during the 24-week period.** The CARES Act required that no more than 25% of the loan proceeds be used for non-payroll expenses including rent, mortgage and other loan interest and utilities. It was expected that 75% of PPL proceeds would be used for payroll costs. This 75/25 split was difficult to achieve during the original 8-week covered period and becomes even more difficult under the new 24-month period.

NOTE: Borrowers must use caution here. As currently written, the language appears to indicate that if a business does not use at least 60% of the PPP Loan proceeds for payroll costs, **NONE** of the loan amount will be forgiven. Some legislators have expressed discomfort with this potential interpretation and clarification may be forthcoming in yet another SBA Interim Final Rule and/or updated FAQs. Stay tuned.

- ✚ **The timeframe to replace full-time equivalent employees (FTEs) and/or restore salaries is extended.** Under the CARES Act even if the business used 75% of the PPP loan proceeds to pay payroll costs within the 8-week period, they still might not qualify for full forgiveness if:
 - The borrower reduced FTEs during the covered period, and/or
 - The borrower reduced the salary or wages of certain employees.

The CARES Act provided a "solution" that was unworkable for many businesses. It allowed businesses only until June 30, 2020 to restore the number of FTEs and/or their salary and wages to February 15, 2020 levels in order to be eligible for full forgiveness. The problem is, as mentioned above, many businesses still remain shuttered and, therefore, restoring to those levels remains impossible.

The PPPFA extends the June 30th deadline to December 31, 2020, therefore increasing the likelihood of full loan forgiveness for more businesses.

- ✚ **Businesses that remain partially or fully closed through December 31, 2020 may still be eligible for loan forgiveness.** During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness will not be reduced when a borrower experiences a loss of FTEs if the borrower can document that:
 - a. The business tried to rehire those employees who worked for them on February 15, 2020 and could not.
 - b. The business could not hire similar employees by December 31, 2020, or,
 - c. The business activity did not return to February 15, 2020 levels because of continuing government mandated COVID 19 related limitations. This is important! Generally, if the government lockdowns continue, loan forgiveness is still available.

Borrowers Can Now Defer Certain Payroll Taxes Even If They Received a PPP Loan

The CARES Act incentive that allowed employers to defer the employer 6.2% share of 2020 Social Security tax until the end of 2021 (50%) and 2022 (50%) was previously only available to PPL borrowers until the moment the loan is forgiven. H.R. 7010 allows employers to effectively 'double dip.' Borrowers may now also defer all of their 2020 Social Security tax burden into 2021 and 2022, even if the loan is forgiven before the end of the year (12/31/2020).

We presume that the SBA will release updated PPP FAQs shortly. We will closely monitor the situation and provide additional information as it becomes available. Please keep in mind that, as with much during the Covid-19 pandemic, the situation is fluid and information is updated frequently. Continue to check the SBA's [Coronavirus \(COVID-19\): Small Business Guidance & Loan Resources](#) webpage for forgiveness guidance and updates.

Have questions or need help? We're here for you. Contact us at info@ppandco.com or (408)287-7911 for assistance. For more updates, check out our [COVID-19 Resources & Updates](#) webpage.

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