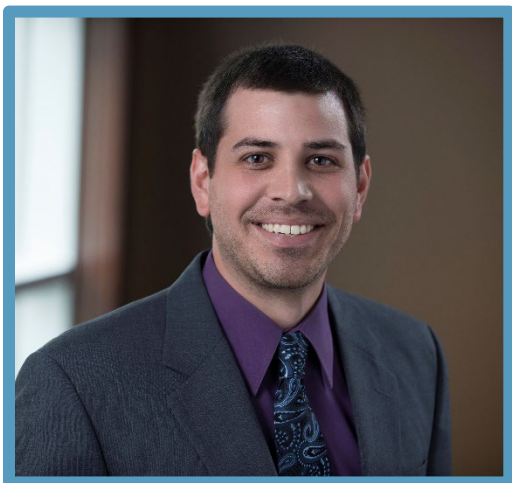




Paycheck Protection Program (PPP) Flexibility Act

Law Enacted on June 5, 2020

Presenters



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Today's Discussion

PPP & PPPFA Overview

Changes to PPP due to PPPFA
(Paycheck Protection Program Flexibility Act)

Next Steps

Q&A

Paycheck Protection Program (PPP)

Overview

- Part of the CARES Act signed into law on March 27, 2020.
- Additional funding added through the Paycheck Protection Program and Healthcare Enhancement Act on April 24, 2020.
- Changes to program made through the Paycheck Protection Flexibility Act or 2020 (PPPFA) signed into law on June 5, 2020 (H.R. 7010).
- Allows qualified businesses to apply for a loan with an approved institution with the potential for a portion, up to 100%, of that loan to be forgiven.

Paycheck Protection Program (PPP)

Upcoming Expectations

- Expect additional guidance to come through Interim Final Rules (IFR) and/or Frequently Asked Questions (FAQ)
 - <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
 - <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>
- Expect changes to PPP Loan Forgiveness Application
 - Current application: <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>
- Possibility of additional legislative, interpretive, or administrative changes

PPP Flexibility Act of 2020 (PPPFA)

What it DOES NOT Do

- Does **NOT** allow businesses to have more than one PPP loan, or otherwise apply for additional funding through the PPP program
- Does **NOT** address deductibility of expenses for tax purposes
- Does **NOT** include more allowable uses of loan proceeds
- Does **NOT** provide definitions or guidance on any previously unclear definitions (i.e. “owner-employee”, “transportation”, or any utility definition)
- Does **NOT** address how or when the PPP Loan Forgiveness Application will be changed

PPP Forgiveness Covered Period

Previous Guidance

- CARES Section 1106 provided a “covered period” for loan forgiveness defined as the *“8-week period beginning on the date of the origination of the loan”*.
- [FAQ #20](#) clarified that the covered period *“begins on the date the lender makes the first disbursement of the PPP loan to the borrower”*.
- [PPP Loan Forgiveness Application](#) also allowed for the use of an Alternative Payroll Covered Period that was intended to offer administrative convenience in performing calculations.

PPPFA

- PPPFA defines the “covered period” as the *“period beginning on the date of the origination of a covered loan and ending the earlier of the date that is **24 weeks after such date of origination or December 31, 2020.**”*
 - Origination still based on the date the lender makes the first disbursement of the PPP loan to the borrower.
 - No law provides for use of Alternative Payroll Covered Period; will SBA/Treasury still allow it in order to offer administrative convenience?

PPP Forgiveness Covered Period Choice

Previous Guidance

- No specific guidance

PPPFA

- PPPFA states that an eligible recipient that received a covered loan before June 5, 2020 **may elect an 8-week covered period.**
 - What are the benefits of electing an 8-week covered period?

PPP Forgiveness Payroll vs. Non-Payroll Cost

Previous Guidance

- First [Interim Final Rule](#) states “*not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs*”.
“The Administrator has determined in consultation with the Secretary that 75% is an appropriate percentage in light of the Act’s overarching focus on keeping workers paid and employed.”
- SBA [Flash Report](#) noted the requirement to spend 75% on payroll costs paired with 2-year amortization “*could result on unintended burden to the Borrowers.*”
- Guidance was initially unclear whether forgiveness would be granted if less than 75% of proceeds were spent on payroll costs.
- [PPP Forgiveness Application](#) showed that forgiveness was reduced if less than 75% of proceeds were spent on payroll costs.

PPPFA

- PPPFA states that in order to receive forgiveness, Borrowers “***shall use at least 60% of the covered loan amount for payroll costs and may use up to 40% of such amount for***” non-payroll costs (as previously defined).
- If Borrowers spend less than 60% on payroll costs, they will receive no forgiveness.

PPP Forgiveness Payroll vs. Non-Payroll Cost

Post Recording UPDATE

- After the recording of this webinar, SBA Administrator Jovita Carranza and Treasury Secretary Steven Mnuchin released a joint statement on the Paycheck Protection Program Flexibility Act of 2020.
- The Joint Statement clarifies that “If a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness [emphasis added] subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.”
- This information supersedes the information that was discussed in the recording of this webinar. As always, Borrowers should continue to watch for future guidance that may provide additional clarification or information regarding this and other provisions.
- For a link to the Joint Statement, please visit <https://home.treasury.gov/news/press-releases/sm1026>.

PPP Forgiveness Safe Harbor

Previous Guidance

- CARES Section 1106 indicated that forgiveness could be reduced if the Borrower reduced full time equivalent (FTE) count or average annual salary/hourly wages in the covered period as compared to specific comparison periods.
- However, if the borrower made the reduction between 2/15/2020 and 4/26/2020 (or 30 days after CARES was enacted), they would have until June 30 to eliminate the reduction.
- Specific safe harbor tests were outlined with calculation instructions in the [PPP Loan Forgiveness Application](#)

PPPFA

- PPPFA changes the safe harbor date from **June 30 to December 31, 2020.**
- Borrowers have until December 31, 2020 to eliminate any reductions in FTEs or average annual salary/hourly wages that occurred between 2/15/2020 and 4/26/2020 (or 30 days after CARES was enacted).

PPP Forgiveness FTE Reduction Exceptions

Previous Guidance

- CARES Section 1106 allowed the Safe Harbor: if the borrower made the reduction between 2/15/2020 and 4/26/2020, they would have until June 30 (now December 31) to eliminate the reduction.
- [FAQ #40](#) said that if the Borrower makes a good-faith written offer, at the same hours & wages, to rehire a laid off employee and the employee rejects it, Borrower will not be penalized (if rejection documented and reported to state unemployment agency within 30 days, per [PPP Loan Forgiveness Application](#)).
- [PPP Loan Forgiveness Application](#) does not penalize Borrowers for employees who:
 - were fired for cause
 - voluntarily resigned
 - voluntarily requested and received a reduction in hours

PPPFA

- PPPFA states forgiveness shall not be reduced based on FTE count if a Borrower, in good faith, is able to document:
 - An inability to rehire individuals who were employees of the eligible recipient on 2/15/2020
 - An inability to hire similarly qualified employees for unfilled positions on or before 12/31/2020
 - An inability to return to the same level of business activity as 2/15/2020 due to compliance with guidance issued by HHS, CDC, or OSHA between 3/31/2020 and 12/31/2020 related to sanitation, social distancing, or safety.

PPP Forgiveness Application Deadline

Previous Guidance

- No specific guidance

PPPFA

- PPPFA states if eligible recipient fails to apply for forgiveness of a covered loan **within 10 months after the last day of their covered period**, the recipient shall make payments of principal, interest, and fees beginning on the date that is not earlier than the date that is 10 months after the last day of such covered period.

PPP Loan Maturity

Previous Guidance

- CARES Section 1102 provided for a maximum 10-year maturity
- [First Interim Final Rule](#) provided for 2-year maturity, which was:
“sufficient in light of the temporary economic dislocations caused by the coronavirus. Specifically, the considerable economic disruption caused by the coronavirus is expected to abate well before the 2-year maturity date since borrowers will be able to re-commence business operations and pay off any outstanding balances on their PPP loans.”
- [SBA Flash Report](#) noted the 2-year amortization period paired with the requirement to spend 75% of proceeds on payroll costs *“could result in unintended burden to the Borrowers.”*

PPPFA

- PPPFA allows for **maturity at a minimum of 5 years and a maximum maturity of 10 years** from the date on which the borrower applies for loan forgiveness for new loans.
- Nothing prohibits lenders and borrowers from mutually agreeing to modify terms.
 - Current Borrowers may opt to negotiate with lenders.

PPP Loan Payment Deferral

Previous Guidance

- CARES Section 1102 states that lenders must provide *“complete deferment relief for impacted borrowers with covered loans for a period of not less than 6 months, including payment of principal, interest, and fees, and not more than 1 year.”*
- The Administrator shall exercise authority to purchase the loans to ensure impacted borrower receives this deferral.

PPPFA

- PPPFA states that lenders must provide complete deferment relief for impacted borrowers with covered loans including payment of principal, interest, and fees **until the date on which the amount of forgiveness determined under section 1106 of the CARES Act is remitted to the lender.**
- The Administrator shall exercise authority to purchase the loans to ensure impacted borrower receives this (new) deferral.

PPP & Deferment of Employer Payroll Taxes

Previous Guidance

- CARES Section 2302 allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax (6.2%).
- Half of deferred employment tax to be paid by 12/31/2021, and the other half by 12/31/2022.
- Applies to payroll taxes for wages between the enactment of the law and 1/1/2021.
- [IRS FAQ](#) clarified that PPP Borrowers may defer deposit and payment of the tax from 3/27/2020 through the date the lender issues a decision to forgive the PPP loan. Once they have the decision that the PPP loan is forgiven, the employer is no longer eligible to defer deposit and payment of the tax due after that date. The amount of the deposit and payment of the deferred tax through the date that the PPP loan is forgiven continues to be deferred and will be due per the above.

PPPFA

- PPPFA eliminates the section that prohibits borrowers with a forgiven PPP loan from deferring payment of the employer share of the Social Security tax (6.2%).
- Thus, PPP borrowers may defer payment of the employer share of the Social Security tax (6.2%) regardless of whether they have a forgiven loan.

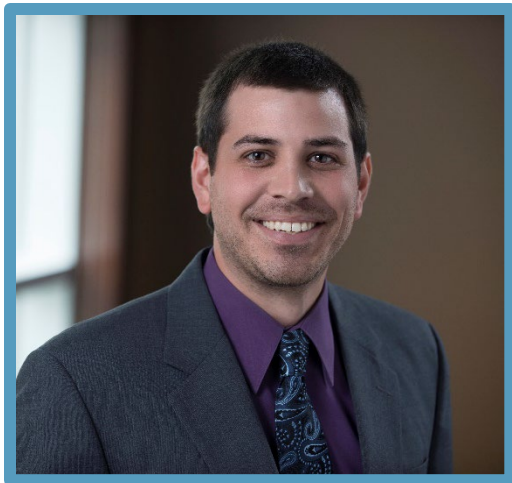
Paycheck Protection Program (PPP)

Suggested Next Steps

- If you have not applied for a Paycheck Protection Program loan and are still interested in the program, funding is still available.
- Ensure that you are maintaining appropriate records regarding the use of funds and documentation to support the use of funds. Refer to the current [PPP Loan Forgiveness Application](#).
- Consider whether your business should elect the 8-week Covered Period or 24-week Covered Period.
- Watch for additional guidance, including an updated PPP Loan Forgiveness Application.
- Ensure you review all guidance available at the time of your forgiveness application.
- Consider whether to defer Employer Payroll Taxes.



Questions



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Thank You and Stay Well!



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