

RUSSELL THOMPSON BUTLER & HOUSTON, LLP



## PPP Loan Update: Loan Forgiveness Flexibility Provisions and Clarifications

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Good Afternoon,

Last evening, Wednesday June 3, 2020, the Senate passed the *Paycheck Protection Program Flexibility Act of 2020*. The significant provisions of the bill, which was previously introduced by the House of Representatives, and is expected to be signed by the President, are the following:

- Borrowers can choose to extend the eight-week “covered period” to 24 weeks, or they can keep the original eight-week period. This provides additional time to spend funds on potentially forgivable expenses.
- The payroll expenditure portion drops from 75% to 60%, meaning 40%, rather than 25%. of expenditures may be used for rent, mortgage interest and utilities and still

be eligible for forgiveness.

- If less than 60% is spent on payroll (including health insurance, retirement benefits, and state unemployment taxes), **none** of the loan is forgiven. Accordingly, the previous sliding scale of reducing (but not eliminating) the forgivable portion if the percentage threshold is not met, has been eliminated.
- The new 24-week period can be used to restore workforce levels and wages to the pre-pandemic levels required for full forgiveness, with the deadline for doing so extended to December 31, 2020, rather than June 30, 2020.
- Two new provisions allow full loan forgiveness, even if workforce levels are not fully restored, as follows:
  - Employees who turned down good faith offers to be rehired at the same hours and wages as before the pandemic may be excluded from the forgiveness eligibility calculations.
  - Adjustments are allowed for businesses that could not find qualified employees or were unable to restore business operations to February 15, 2020 levels due to COVID-19 related operating restrictions (such as actions by the CDC and other agencies which prevented the business from operating at the same capacity as it had before March 1, 2020).
- The repayment period has been extended from two years to five years; however, the interest rate remains the same at 1%.
- Businesses that took a PPP loan may also delay payment of payroll taxes, which was prohibited by the CARES Act. Taxes eligible for payment delay are as follows:
  - Employer portion of OASDI (Social Security) tax or Tier 1 Railroad Retirement Act tax
  - One-half of self-employment tax for self-employed individuals
  - Deferment is available through the end of 2020. Of the taxes deferred, 50% is required to be deposited by the end of 2021 and the remaining 50% by the end of 2022.
- Application for loan forgiveness may be made within ten months (previously six months) of the last day of the “covered period”, before principal and interest payments must start. Loan interest and payment of principal and fees will be deferred until forgiven by the lender.

The SBA previously issued Form 3508 – *Paycheck Protection Program Loan Forgiveness Application*, ([click here](#)). Given the changes noted above, we anticipate a revised forgiveness application form to be issued.

The SBA also recently issued *Business Loan Program Temporary Changes; PPP – Requirements – Loan Forgiveness*, ([click here](#)), which provided clarifications to certain aspects of the forgiveness calculations. Of note are the following:

- Payroll costs eligible for forgiveness include costs paid **or** incurred during the “covered period”. The period begins on either:
  - The date of disbursement of the PPP loan proceeds from the lender (i.e., the start of the “covered period”); or

- The first date of the first payroll cycle in the “covered period” (the “alternative payroll covered period”), but only if the payroll cycle is bi-weekly or more frequent.
- Payroll costs incurred during the last pay period of the “covered period” or “alternative payroll covered period” are eligible for forgiveness if paid on or before the next regular payroll date; otherwise payroll costs must be paid during the “covered period” or “alternative payroll covered period” to be eligible for forgiveness.
- Nonpayroll cost is eligible for forgiveness if it was:
  - Paid during the “covered period”; or
  - Incurred during the covered period and paid on or before the next regular billing date, even if the billing date is after the “covered period”.
- Full-time equivalent (FTE) employee is defined as an employee who works an average of 40 hours or more each week. There was previous speculation that a 30 - hour average would be used.
- FTE calculations may be calculated under either of the following methods:
  - Average hours worked as a percentage of 40 hours. As an example, an employee who works an average of 30 hours per week would be considered to be an FTE of 0.75; or
  - An FTE of 0.50 may be used for each employee who works less than an average of 40 hours per week.
- When an employee is fired for cause, voluntarily resigns, or voluntarily requests a reduced schedule during the “covered period” or the “alternative payroll covered period”, the employee may be counted at the same FTE level as before the FTE reduction event.

Should you have questions regarding this recent development, or if we may assist you in any way, please do not hesitate to contact us.

We wish you continued health and safety.

The Partners of  
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