

## CORPORATE &amp; TRANSACTIONAL ADVISORY

## PPP Flexibility Act Summary



On June 5, President Trump signed into law the PPP Flexibility Act of 2020 (the Flexibility Act). The Flexibility Act modifies numerous loan eligibility, loan forgiveness, and loan repayment aspects of the Paycheck Protection Program (PPP) created under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Flexibility Act was created to provide additional flexibility for PPP borrower with respect to receiving PPP loans, maximizing PPP loan forgiveness, and assisting in PPP loan repayment for amounts that are not forgiven.

**Highlights of the Flexibility Act include:**

Extension of PPP Loan Application Deadline. Originally, borrowers could apply for PPP loans through June 30, 2020. This deadline was extended to December 31, 2020.

Extension of Loan Forgiveness Calculation Period. Originally, borrowers were required to calculate loan forgiveness based on the payment of eligible expenses in the eight-week period following receipt of PPP loan origination (the Covered Period). The Covered Period has been extended from eight weeks to 24 weeks to allow borrowers a longer period of time to both incur and pay eligible expenses. In the event the 24-week period lasts beyond December 31, 2020, then borrowers must calculate loan forgiveness for the period between receipt of PPP proceeds and December 31, 2020.

Employee Headcount and Compensation Reduction. Originally, when calculating PPP loan forgiveness, borrowers were required to reduce their loan forgiveness by factoring in (1) reduction in employee headcount and (2) reduction in employee compensation during the Covered Period. With respect to employee headcount, borrowers were required to multiply their loan forgiveness amount by a fraction, the numerator of which is the full-time equivalent (FTE) headcount of the borrower during the "Forgiveness Period" and the denominator of which is either (1) the borrower's FTE headcount during the period beginning February 15, 2019, and ending June 30, 2019, or (2) the borrower's FTE headcount during the period beginning January 1, 2020, and ending February 29, 2020. The second way in which a borrower's loan forgiveness amount could be reduced is by subtraction, on a dollar-for-dollar basis, of an amount equal to the reduction in compensation for all employees that earned less than



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\$100,000 per year during the Covered Period by more than 25 percent. The PPP originally created a safe harbor such that if FTE employee headcount or employee compensation was restored to pre-pandemic levels by June 30, 2020, borrowers could avoid loan forgiveness reduction. This safe harbor deadline has now been extended to December 31, 2020.

Adjustment to Cap on Forgiveness of Non-Payroll Expenses. Originally, borrowers were only entitled to obtain loan forgiveness for eligible non-payroll expenses not to exceed 25 percent of a borrower's eligible expenses, requiring that at least 75 percent of PPP loan proceeds be used for eligible payroll costs in order to maximize loan forgiveness. This 25 percent threshold has been increased to allow borrowers to use 40 percent of PPP loan proceeds on eligible non-payroll expenses and still maximize loan forgiveness.

Extension of Loan Repayment Deferral Period. Originally, a borrower could defer all payments of principal and interest on PPP loan amounts not subject to forgiveness for a period of six months from the date of loan origination. The deferral period has been extended to the date on which the loan forgiveness amount is paid by the SBA to the lender, so long as the borrower submits his or her loan forgiveness application within 10 months following the expiration of the Covered Period.

Employer Payroll Tax Deferral. Originally, PPP borrowers were not allowed to take advantage of the CARES Act provision allowing employers to defer payment of payroll taxes until December 31, 2020, and then to pay those payroll taxes over a two-year period. PPP borrowers are now permitted to take advantage of that deferral.

Extension of PPP Loan Maturity. The maturity date for PPP loans has been extended from two years to five years for all loans issued after June 5, 2020. For PPP loans issued prior to June 5, 2020, borrowers may negotiate extensions of maturity with their lenders.