



JUNE 5, 2020 • NO. 12

Congress Passes PPP Flexibility Act Extending Certain Terms of the Paycheck Protection Program and Adding New Provisions

On June 3, 2020, the U.S. Senate passed a bill (the “PPP Flexibility Act”) that was also passed by the House of Representatives on May 28, 2020. It is expected that the President will sign the PPP Flexibility Act later this week. The PPP Flexibility Act extends certain terms of the Paycheck Protection Program (the “Paycheck Protection Program” or the “PPP”), including with respect to forgiveness.¹ These revisions should be a welcome change to many PPP borrowers and will greatly increase the possibility of achieving full forgiveness of PPP loans for many borrowers.

The legislation modifies certain existing terms of the PPP while adding certain other provisions:

- **Minimum Term:** The SBA has set the term on PPP loans at two years. The PPP Flexibility Act sets the minimum term for loans funded after the date of enactment at five years. It is unclear whether existing borrowers will be able to convert their loans to a five-year term without having to repay and reapply for a loan. The longer term will be important to any PPP borrowers who do not expect to achieve a substantial forgiveness.
- **Covered Period:** Forgiveness under the PPP is based on the costs incurred during the covered period, which was originally the 8-week period following disbursement of the PPP loan. Under the PPP Flexibility Act, PPP borrowers will have up to 24 weeks following disbursement (or, if earlier, until December 31, 2020) to incur and pay costs that will be eligible for forgiveness.
- **Exemptions for Rehires:** The PPP requires a reduction in the amount that can be forgiven based on certain reductions in salary or wages in excess of 25 percent or headcount; however, the PPP permitted borrowers to avoid the negative impact of these reduction to the extent that any headcount reduction or salary/wage reduction was fully eliminated (*i.e.*, the headcount was increased to at least the headcount effective as of February 15, 2020 or wages and salaries were reinstated in full to the amounts as of February 15, 2020—in each case by June 30, 2020). The PPP Flexibility Act extends the time for when the headcount or compensation can be reinstated from June 30, 2020 to December 31, 2020.²
- **Exemption Based on Employee Availability:** The SBA had provided guidance with exceptions for certain instances in which employers were not able to rehire employees by the June 30, 2020 deadline. The PPP Flexibility Act codifies that guidance, extending the deadline to determine that rehires could not be obtained to December 31, 2020. Accordingly, PPP borrowers will not be subject to a forgiveness reduction to the extent the borrower can document in good faith an inability to rehire or to hire similarly qualified employees on or before December 31, 2020.

- The PPP Flexibility Act adds a new exemption from forgiveness reduction for borrowers who can document in good faith that it is unable to return to the same level of business activity as the business operated on or before February 15, 2020 due to compliance with certain administrative limits during the period from March 1, 2020 through December 31, 2020, related to maintenance of standards for sanitization, social distancing, or other worker or customer safety requirements related to COVID-19. The SBA will need to provide further guidance on the implementation of this new aspect of the exemption.
- **Limitations on Forgiveness:** In guidance on forgiveness, the SBA announced that at least 75 percent of the balance of any PPP loan subject to forgiveness must be used for payroll costs (as defined in the PPP). The PPP Flexibility Act adjusts the required payroll cost allocation to ensure that at least 60 percent of the covered loan amount must be used for payroll costs and up to 40 percent may be used for permitted nonpayroll costs.
- **Grandfather Covered Period Election:** The PPP Flexibility Act provides that a PPP borrower that received its loan before the date of enactment (expected to be June 4, 2020) can elect to be subject to a covered period that ends eight weeks after the date of disbursement of its loan.
- **Extension of Deferral Period:** Under the PPP and related guidance, principal and interest on each PPP loan is deferred for the first six months following disbursement. The PPP Flexibility Act extends the deferral period (which may now extend to December 31, 2020) until the date on which the amount of forgiveness determined under the PPP is remitted to the lender. The remittance to the lender seems to refer to the PPP borrower's request for forgiveness—which would mean that deferral would conclude at the point in time in which the PPP borrower asserts the level of forgiveness it is entitled to receive and the balance becomes subject to amortization.
- **Repayment by PPP Borrowers Who Do Not Seek Forgiveness:** The PPP Flexibility Act establishes that if a PPP borrower does not apply for forgiveness within 10 months of the last day of the covered period (which will now be extended to December 31, 2020), that borrower must start repayment on the day that is not earlier than 10 months after the last day of the covered period. That means that a borrower who does not seek any forgiveness would not be required to begin repayment until the end of October 2021. Note that this extension would not reduce the accrual of interest throughout the deferral period, but effectively extends the deferral to a period of as much as approximately 19 months; however, the repayment period would be reduced to as short as approximately five months (for loans that have a two-year term).

The SBA may provide further guidance related to certain new aspects of the PPP introduced by the terms of the PPP Flexibility Act.

For additional information, please contact:

Martin Teckler, Washington, D.C. Office
Partner, Finance, Restructuring, and Bankruptcy
202.420.2590 | mteckler@blankrome.com

Grant E. Buerstetta, New York Office
Partner and Co-Chair, Finance, Restructuring,
and Bankruptcy
212.885.5454 | gbuerstetta@blankrome.com

Kevin J. Baum, Philadelphia Office
Partner and Co-Chair, Finance, Restructuring, and
Bankruptcy
215.569.5612 | baum@blankrome.com

Christopher A. Manion, Philadelphia Office
Partner, Finance, Restructuring, and Bankruptcy
215.569.5521 | cmanion@blankrome.com

Shlomo Troodler, Philadelphia Office
Partner, Finance, Restructuring, and Bankruptcy
215.569.5338 | troodler@blankrome.com

Kevin M. O'Malley, Los Angeles Office
Of Counsel, Finance, Restructuring, and Bankruptcy
424.239.3482 | omalley@blankrome.com

1. The Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") includes Title 1, the "Keeping American Workers Paid and Employed Act", which adds a new program, the Paycheck Protection Program, to Section 7(a) of the Small Business Act of 1953, as amended (the "Small Business Act"). The PPP is administered by the U.S. Small Business Administration (the "SBA").

2. The reduction calculations for these purposes, along with a fulsome analysis of all of the elements pertinent to the forgiveness calculations, are discussed in greater detail in an earlier client alert that can be found [here](#).