

Congressional Amendments to PPP Loans

Paycheck Protection Program Flexibility Act of 2020

This week, Congress modified the PPP Loan program with the newly enacted Paycheck Protection Program Flexibility Act of 2020. The key changes Congress made to the PPP Loan program are as follows:

1. Creates a floor of 5 years for loan maturity.
2. Extends the covered period for obtaining and using a loan until 12/31/2020.
3. For purposes of loan forgiveness, redefines the covered period to begin on the date of loan origination and end on the earlier of (a) the date that is 24 weeks after loan origination or (b) 12/31/2020.
4. For purposes of avoiding a reduction in the amount of loan forgiveness, extends the date for rehire of employees to 12/31/2020.
5. For purposes of avoiding reduction in the amount of loan forgiveness, creates an exemption from the rehiring requirement where the employer is able to document (a) an inability to hire individuals who were employees on 2/15/2020, (b) an inability to hire similarly-qualified employees for unfilled positions on or before 12/31/2020, and (c) an inability to return to the same level of business activity as such business was operating at before 2/15/2020 due to compliance with requirements established or guidance issued by HHS, CDC, or OSHA during the period beginning on 3/1/2020 and ending on 12/31/2020 related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
6. Requires, as a condition of loan forgiveness, that at least 60% of the loan be used to cover payroll costs.
7. Extends the loan deferment period to the date on which the amount of forgiveness is remitted to the lender.
8. Provides that a borrower that fails to apply for loan forgiveness within 10 months after the last day of the covered period shall make payments of principal, interest, and fees beginning no earlier than the date that is 10 months after the last day of such covered period.
9. Allows an employer that receives a PPP loan to defer the deposit and payment of its share of social security tax that is due after the loan is forgiven.