

Paycheck Protection Program Flexibility Act – Significant Impact for Businesses that obtained PPP Loans

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The Paycheck Protection Program Flexibility Act of 2020 (the “Flexibility Act”) was signed by President Donald Trump on June 5, 2020. The Flexibility Act amended certain provisions of the Small Business Act and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). A copy of the Flexibility Act can be found [here](#). Below is a brief summary of the most significant aspects of the Flexibility Act for most business.

1. Extension of Forgiveness Period. The period for which businesses are able to claim forgiveness for expenditures on allowable uses of loan funds has been increased from eight weeks following the origination date of the loan to the earlier of twenty-four weeks following the origination date of the loan or December 31, 2020. Businesses that obtained a loan prior to June 5, 2020 are permitted to elect an eight-week forgiveness period as originally prescribed in the CARES Act.

2. Reduction in Payroll Costs Requirement. The percentage of the PPP loan proceeds that a business must expend on Payroll Costs (as defined in the CARES Act) in order to receive loan forgiveness was reduced from 75% to 60%. This change will be especially beneficial for businesses with higher fixed costs, such as mortgage, rent, and utility payments.

3. Extension of the Re-Hire Exemption. The timeframe for a business to restore its number of full-time equivalents (“FTEs”) for purposes of loan forgiveness has been extended from June 30, 2020 to December 31, 2020. The effect of this change is that a business has additional time to restore the number of FTEs without incurring a proportional reduction in the amount of loan forgiveness.

4. New Exemption Based on Employee Availability/Business Restrictions. A new exemption is available to businesses that are not able to restore their number of FTEs. In order to utilize this exemption, a business must document the inability to rehire individuals who were employees of the business on February 15, 2020 and the inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020, or the inability to return to the same level of business activity at which such business was operating before February 15, 2020, due to compliance with specified governmental requirements or guidance. This exemption may provide additional flexibility for businesses to avoid a reduction in loan forgiveness if the business is not able to restore the number of FTEs.

5. Extension of Repayment Term. The maturity date for any PPP loans which are disbursed on or after June 5, 2020 has been extended from two years to a minimum of five years following the deferral period. PPP loans which were disbursed prior to June 5, 2020 are still subject to a two-year maturity period, but the Flexibility Act permits a business to mutually agree to modify the maturity terms of the PPP loan with its lender.

We anticipate that the Small Business Administration will provide further guidance and issue interim final rules regarding its interpretation of the Flexibility Act in the coming weeks.

This article as well as further updates in regard to other legal implications related to the Coronavirus pandemic can be found on our COVID-19 Response [webpage](#).

If you have any questions, please contact a member of the Business Team at SkarlatosZonarich LLC:

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