



Congress Revises Paycheck Protection Program

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On June 3, 2020, the U.S. Senate approved the legislation originally passed by the U.S. House of Representatives on May 28, 2020. This legislation, titled the Paycheck Protection Program Flexibility Act, revises a number of provisions of the Paycheck Protection Program (PPP) that have been cited as burdensome by business owners and organizations, including the period for forgiveness of PPP loans and the portion of PPP loans that must be applied to payroll expenses. Having passed through Congress, the legislation is expected to be signed into law by President Trump.

If signed into law, businesses will have more time to use PPP loan proceeds and more flexibility around how the proceeds are used. The key provisions of the bill are:

- The end of the period for the loan program is extended from June 30, 2020 until December 31, 2020. Borrowers will be able use PPP loan proceeds through the end of the year.
- The forgiveness covered period (during which borrowers may use PPP loan proceeds on certain expenses and these amounts be forgiven) is extended from 8 weeks from the funding of the PPP loan to the *earlier* of (a) 24 weeks from the funding of the loan, or (b) December 31, 2020. This gives borrowers more time to spend proceeds that will be forgiven. Borrowers who have already received PPP loans can elect for the forgiveness covered period to be limited to the initial 8-week period and continue through the current process and timelines for forgiveness.
- Borrowers now have until December 31, 2020 to restore their workforce levels and wages to the pre-COVID-19 levels required for full forgiveness.
- The legislation includes two new exemptions allowing borrowers to achieve full loan forgiveness even if they do not fully restore their workforce. The amount of loan forgiveness will not be affected if the business is able to document, in

good faith:

- an inability to rehire individuals who were employees of the business on February 15, 2020, and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
 - an inability to return to the same level of business activity it was operating at or before February 15, 2020 due to requirements established by the Centers for Disease Control and Prevention (CDC), Occupational Safety and Health Administration (OSHA), or the Department of Health and Human Services (HHS), relating to maintaining standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
- The legislation reduces the percentage of PPP funds that are required to be applied towards payroll costs for the loan to be forgivable from 75% to 60%.
 - Note: The legislation seems to get rid of any sliding scale allowing borrowers to receive forgiveness on other eligible expenses. As written in the bill, borrowers must spend at least 60% on payroll costs or none of the loan will be forgiven. There are already discussions between members of Congress and the SBA to return to the sliding scale model through regulations to be issued by the SBA.
 - For new PPP borrowers, the minimum maturity date for the remaining balance on PPP loans after forgiveness is five years, instead of two years. Lenders and borrowers may renegotiate the terms of an existing PPP loan to extend the maturity date to five years.
 - Loan payments are deferred until after the Small Business Administration (SBA) makes its determination on the forgiveness of the loan and pays funds to the lender. Borrowers who do not apply for forgiveness within 10 months from the end of the borrower's forgiveness covered period shall begin making payments on the date that is ten months

from the last day of their forgiveness covered period.

- Borrowers may defer payment of their employees' share of Social Security payroll taxes for two years, regardless of the whether the borrower's loan is forgiven.

Many businesses are seeing that the COVID-19 crisis will have expansive long-term effects and the bill may help businesses recover from the crisis over the remainder of the year.

We will wait to see how the SBA interprets the new legislation and what changes may be coming in the form of interim final rules and FAQs, and to the form of the loan forgiveness application, to address these revisions.

For more information, please contact [Becky Moore](#), [Shannon Kuhl](#) and [Adam Okuley](#) or any attorney in Frost Brown Todd's [Financial Services](#) Industry Team. You can also read the latest articles in our "Preparing for an SBA PPP Audit Series," including:

[*Preparing for an SBA Audit: Answers to Frequently Asked Questions on the Paycheck Protection Program \(PPP\) Loan Forgiveness Application*](#)

[*Preparing for an SBA Audit: What are the Risks?*](#)

[*Preparing for an SBA Audit: Eligibility and Loan Amount Compliance Issues*](#)

[*Preparing for an SBA PPP Audit: The Necessity Certification*](#)

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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