



## Updates to the Paycheck Protection Program

Recently, there have been notable changes to the Paycheck Protection Program (PPP) that small businesses and nonprofits should know about. On July 3, 2020, the PPP Extension Act was enacted. The PPP Extension Act reopened the PPP application window, providing small businesses and nonprofits until August 8, 2020 to apply.

Prior to the PPP Extension Act, on June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 was also enacted. The Flexibility Act made several changes to the CARES Act as it relates to PPP.

Notably, the Flexibility Act expands the covered period for borrowers to spend the loan proceeds from eight weeks to the earlier of 24 weeks or December 31, 2020. Existing borrowers can choose to use the original eight-week covered period if they prefer, which allows the borrower to seek forgiveness earlier.

Further, the Flexibility Act permits borrowers seeking forgiveness to spend a minimum of 60 percent of loan proceeds on eligible payroll costs, and up to 40 percent on eligible non-payroll costs. This provides much more flexibility for businesses that are particularly rent-burdened than the original 75 percent/25 percent requirement.

Next, the Flexibility Act provides borrowers seeking forgiveness until December 31, 2020

to restore full-time equivalent (FTE) employees and wages. For borrowers that are unable to restore FTEs, the Flexibility Act creates two potential routes to full forgiveness. First, borrowers won't be penalized for any FTE reduction if they can document they were unable to rehire individuals who were employees on February 15, 2020 **and** they were unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020. Similarly, borrowers won't be penalized for FTE reductions if they document they were unable to resume normal business activity levels due to compliance with HHS, CDC, or OSHA requirements or guidelines in effect between March 1, 2020, and December 31, 2020, related COVID-19 safety, including compliance with standards for sanitation, social distancing, or other worker or customer safety requirements.

In addition, the Flexibility Act modifies repayment for borrowers with any loan amount that is not forgiven. Repayment of the unforgiven loan amount begins on the date when the forgiveness is determined or 10 months after the last day of the covered period if the borrower doesn't apply for forgiveness within ten months. The repayment period for borrowers after the Flexibility Act's enactment is set at five

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years—existing borrowers maintain the original two-year repayment requirement unless their lender affirmatively chooses to extend repayment to five years.

Lastly, PPP borrowers are now also permitted to delay payment of federal payroll taxes under the CARES Act.

*be timely. Consult an attorney if you have questions regarding the contents of this communication.*

**Additional information for nonprofits and small businesses impacted by the coronavirus pandemic is at the D.C. Bar Pro Bono Center’s Coronavirus Legal Resources section at [www.probono.center/NPSB](http://www.probono.center/NPSB).**

**If you have questions about these programs or other legal issues, feel free to contact us at [cedinfo@dcbar.org](mailto:cedinfo@dcbar.org).**

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