

# ANDERSON KILL EMPLOYMENT LAW INSIDER

ALERT

## New Forgiveness Guidelines for the PayCheck Protection Program; Employer Obligations Eased

By Bennett Pine and John P. Lacey Jr.

In March 2020, Congress established the Paycheck Protection Program (PPP) to provide much needed relief to small businesses economically devastated by COVID-19. The PPP program (described in our April Alert) afforded small business owners the opportunity to apply for loans up to \$10 million that would cover payroll, mortgage interest, rent, and utilities.

While many business owners utilized the PPP, many believed the PPP was flawed, particularly that the conditions for loan forgiveness were untenable for many businesses. Congress responded with the Paycheck Protection Program Flexibility Act (“PPPFA”), signed into law on June 5, which relaxes many of the key features of the PPP for employers. The PPPFA comes at a critical time, as many businesses begin to reopen, and provides businesses greater flexibility in implementing their reopening plans.

Businesses initially hesitant to apply for the PPP loan should review the PPPFA, and consider whether to apply for the loan, particularly since the deadline to do so expires at the end of June. Some of the key changes to the PPP are set forth below.

### Extended Covered Period for Use of The PPP Loan

Initially, PPP loan recipients were required to use their loan proceeds within **eight** weeks from when they received PPP funds. As a result, many businesses were forced to accelerate spending when that spending wasn’t absolutely necessary. The PPPFA now extends the time period within which loan recipients must use their loan proceeds to **twenty-four** weeks, or until December 31, 2020, whichever occurs first.

The extended covered period is geared towards making it easier for more borrowers to reach full forgiveness on their loans.

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## Modified Payroll Threshold for PPP Loan Recipients

The PPP first required that loan recipients allocate at least **75%** of their loan proceeds to payroll expenses in order to be eligible for loan forgiveness. Many loan recipients, however, were concerned over whether they could meet that threshold. The PPPFA now relaxes the minimum threshold and only requires that a PPP loan recipient allocate at least **60%** of the covered loan amount on payroll expenses in order to remain eligible for total loan forgiveness. In turn, businesses can now use up to **40%** of loan proceeds on other expenses, including key overhead expenses, rent and utility payments.

## The PPPFA Extends the Time in Which Employers Can Rehire Workers

The PPP originally required borrowers to rehire workers no later than June 30, 2020 in order for their salaries to count towards loan forgiveness. Under the PPPFA, that deadline is extended to December 31, 2020.

## Time to Repay the PPP Loan Is Extended

Originally, borrowers were required to repay unforgiven portions of their PPP loans within **two years**. The PPPFA now extends the time in which a borrower can repay unforgiven portions of their loans to **five years**.

## Time to Rehire Employees Is Extended

Under the PPP, loan forgiveness was contingent upon businesses rehiring the same number of full-time employees or full-time equivalent employees at their average salaries at the same levels as of February 15, 2020, and were required to do so by June 30, 2020. The PPPFA extends the deadline to December 31, 2020.

## Safe Harbor

As discussed, one of the key features of the PPP is loan forgiveness. The PPPFA takes into account that loan recipients' ability to comply with the PPP may be affected by circumstances relating to COVID-19 that are out of their control. For example, even if a borrower cannot restore their workforce or salaries by the December 31, 2020 deadline, loan forgiveness will not be reduced if a business demonstrates that its failure to do so was the result of federal and state guidelines related to COVID-19 restrictions.



## In Sum

The PPPFA is a step in the right direction for PPP borrowers and provides much needed flexibility for business owners as they begin to implement their reopening plans. The deadline to apply for a PPP loan, however, remains unchanged, and is set to expire at the end of June 2020. Prospective borrowers who may have ruled out applying before passage of the PPPFA should move quickly to review the PPPFA and reconsider applying before the deadline.

In the meantime, borrowers should keep abreast of continuing legislation in this arena, as there are signs that even greater flexibilities may be on the horizon. ▲

This publication was prepared by Anderson Kill P.C. to provide information of interest to readers. Distribution of this publication does not establish an attorney-client relationship or provide legal advice. Prior results do not guarantee a similar outcome. Future developments may supersede this information. We invite you to contact the editor, Bennett Pine, at [bpine@andersonkill.com](mailto:bpine@andersonkill.com) or (212) 278-1288, with any questions.

