

## Paycheck Protection Program Flexibility Act of 2020<sup>1</sup>

2020 June 08

Jeffrey E. Tranel<sup>2</sup>

President Trump just signed into law the Paycheck Protection Program Flexibility Act of 2020. H.R. 7010 passed the Senate by unanimous consent and the House by a vote of 417-1. The Act modifies the Paycheck Protection Program (PPP) in a number of ways so as to make the PPP more borrower friendly. The U.S. Department of Treasury and Small Business Administration have yet to develop any associated rules and to provide guidance for implementation of the Act.

- **The minimum maturity date for loans that are not forgiven has been extended from two years to five years.** This provision applies only to loans made on or after June 8th, but lenders and borrowers can mutually agree to modify the terms of any loans.
- **Extending the end of the “covered period” for PPP loans from June 30, 2020, to December 31, 2020.** The language allows borrowers to now spend PPP loan proceeds through December 31, 2020. Also, the language could be interpreted to allow PPP loans to be issued through December 31<sup>st</sup>.
- **Extending the loan forgiveness “covered period” from 8 weeks to 24 weeks, with the end of the covered period expiring, at the latest, by December 31, 2020 (instead of June 30, 2020).** Although this provision applies to all borrowers, a borrower who received a loan prior to the date of enactment of this Act can choose to have the 8-week forgiveness period apply. It is unclear how SBA and Treasury will modify its owner compensation guidance in response to this new law. Also, in question is the current employee compensation cap of \$15,385 per employee.
- **Extending the rehire and salary restoration safe harbor date (so loan forgiveness will not be reduced) from June 30, 2020, to December 31, 2020.**
- **Exempting employers from a reduction in forgiveness due to a reduction in their full-time equivalent workforce** if the following requirements are met:
  - 1) the employer is able to document (a) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and (b) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; **OR**
  - 2) The employer is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or federal guidance during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

---

<sup>1</sup> Reference: Kristine Tidgren, Director of the Center for Agricultural Law and Taxation at Iowa State University, and U.S. Department of Treasury.

<sup>2</sup> Tranel, Jeffrey E. Agricultural and Business Management Economist, Colorado State University Extension.

- **Requiring that borrowers use 60 percent of the covered loan amount for payroll expenses to qualify for forgiveness. Forty percent of the loan amount may be used for interest on covered mortgage obligations, covered rent obligations, or covered utility obligations.** The CARES Act did not include a requirement that a certain percentage of loan proceeds be spent on payroll. Treasury and SBA, however, issued guidance setting the requirement that borrowers use 75 percent of the loan amount for payroll costs. The Act makes it easier to receive forgiveness on one hand by allowing up to 40 percent of the loan amount to be used for non-payroll expenses. However, if the recipient does not use at least 60 percent of the loan amount for payroll, there will be no forgiveness at all.
- **Revising the deferral period for PPP loans, allowing recipients to defer payments until the lender receives compensation for the forgiven amounts.** Recipients who do not apply for forgiveness will have 10 months from the end of the forgiveness covered period to begin making payments.
- **Allowing recipients who receive PPP loan forgiveness to also defer their payroll taxes (6.2 percent employer portion of social security payroll taxes) under section 2302 of the CARES Act.** The CARES Act had restricted PPP borrowers from deferring these taxes once they received PPP loan forgiveness.

Again, the SBA and Treasury still need to revise the forgiveness application and guidance to incorporate these new provisions. It is expected that a number of additional Frequently Asked Questions will be developed to further explain these provisions, as well as other still unresolved questions relating to forgiveness.