

On Friday, June 5, the President signed the Paycheck Protection Program Flexibility Act (HR 7010) into law after the Senate passed this bill from the House by unanimous consent earlier in the week. This Bill is concise, containing eight pivotal provisions which change how Paycheck Protection Program (PPP) borrowers can maximize forgiveness of the loans by adding more flexibility and extending important timeframes. Details of the eight provisions include:

1. **Extended Maturity Date for Loans:** all PPP loans that are made on or after June 5, 2020, will have a minimum maturity of five years. This changes the period from 2 years under the CARES Act and does not impact loans executed prior to that date. HR 7010 does permit borrowers and lenders to agree modify the terms of PPP loans executed prior to June 5 to conform to the extended maturity date in the bill. The interest rate remains 1% for loans made under both pieces of legislation.
 - a. Under this borrower-friendly rule, there will be no payment due until five years after the borrower received the PPP loan.
2. **Extension of Deadline to Use Proceeds:** Extends the PPP loan forgiveness period from 8 weeks to include costs incurred over 24 weeks after the loan is issued (or through 12/31/20 – whichever comes first). This extension will apply to all PPP loans, but recipients that received a loan prior to June 5 may elect to have the covered period end on the date that is 8 weeks after their loan's origination date which may be beneficial if the borrower has spent the sum and wants assurance that they qualify for forgiveness sooner rather than later.
3. **Change in Permitted Percentage of Non-Payroll Costs Paid with Loan Proceeds:** Under the CARES Act, borrowers were able to use up to 25% of their PPP loan proceeds on eligible non-payroll expenses (e.g., mortgage and pre-existing debt interest, rent, and utilities). HR 7010 modified this to allow borrowers to use up to 40% of their PPP loan proceeds on eligible non-payroll expenses. This change can be interpreted as eliminating partial loan forgiveness, meaning that if a borrower uses less than 60% of the loan proceeds for payroll costs, then the borrower would be ineligible for any loan forgiveness. This is an issue identified by Congress and it is anticipated to be addressed in the next COVID-19 related package or through SBA rulemaking.
 - a. Lowers the required percentage of forgiven loan amounts that come from payroll expenses from 75% to 60%.
4. **Extension of Safe Harbor to Rehire Employees:** Under the CARES Act, borrowers could be exempt from a reduction in the amount of their PPP loan which would qualify for forgiveness due to reduced staffing if the borrower restored the full-time equivalent employees by June 30, 2020. HR 7010 extended this safe harbor deadline so that borrowers will be eligible for the safe harbor exemption if the reductions in employee levels are restored by December 31, 2020.

5. **Exemption for Reduction of Full-time Equivalent Employee:** Under HR 7010, borrowers that have a reduction of full-time equivalent employees will still be able to qualify for full loan forgiveness for the period beginning on February 15, 2020 and ending on December 31, 2020, if they can document in good faith that:
 - a. They are unable to rehire individuals who were employees on February 15, 2020 and
 - b. They are unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020.

6. **Exemption for the Inability to Return to the Same Level of Business Activity:** Likewise, borrowers will now still be able to qualify for full loan forgiveness for the period beginning on February 15, 2020 and ending on December 31, 2020 if they can document, in good faith that:
 - a. They are unable to return to the level of business activity at which they were operating before February 15, 2020 and
 - b. That inability is due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration 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.

7. **Eligibility for Payroll Tax Deferrals:** HR 7010 modifies the CARES Act to provide that all employers and self-employed individuals are eligible for the full amount of deferral of the employer's portion of Social Security taxes that are due from March 27, 2020 through December 31, 2020 regardless of whether they had any portion of a PPP loan forgiven. 50% of these taxes will be deferred until December 31, 2021 and the remaining 50% deferred until December 31, 2022.
 - a. Under the CARES Act previously, if any portion of the PPP loan was forgiven, then the employer or self-employed individual is ineligible to defer any Social Security tax that becomes due on or after the date that the employer receives notice of the loan forgiveness.

8. **Extension of Deferral Period:** Allows borrowers to defer principal and interest payments on PPP loans until the SBA compensates lenders for any forgiven amounts. Borrowers that don't apply for forgiveness would be given at least 10 months after the program expires to start making payments. Under the CARES Act, the payment of principal, interest, and fees could be deferred for a period of not less than six months, and not more than one year. HR 7010 modifies the deferral period such that:
 - a. If the borrower applies for forgiveness of the loan within 10 months after the last day of the covered period, then the deferral period ends on the date on which the borrower receives notice of the amount of forgiveness from the lender.
 - b. If the borrower does not apply for forgiveness of the loan within 10 months after the last day of the covered period, then the deferral period ends on the date that is 10 months after the last date of the covered period.

You can review the full bill text [here](#) and access a Paycheck Protection Loan Forgiveness Application [here](#).