Trump Signs Bill Easing Paycheck Protection Program Requirements

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June 5, 2020

President Donald Trump has signed into law a bill that gives employers more flexibility when using Paycheck Protection Program (PPP) funds and applying for loan forgiveness.

Lawmakers from both sides of the aisle supported making changes (https://www.politico.com/newsletters/morning-shift/2020/05/06/ppp-changes-on-the-horizon-787382) to the PPP to address complaints from employers that the existing rules were unfeasible. U.S. House of Representatives passed the bipartisan Paycheck Protection Program Flexibility Act (https://www.congress.gov/bill/116th-congress/house-bill/7010) (PPPFA) in a 417-1 vote on May 28, and the Senate passed the bill by unanimous consent on June 3.

"Millions of working families continue to face the historic economic fallout from the coronavirus pandemic, including unemployment levels not seen in many decades," said Sen. Mitch McConnell, R-Ky. He noted that the new legislation will "strengthen the implementation of the Paycheck Protection Program for the workers and small businesses that are struggling to weather this storm."

Congress initially allocated funds to the PPP under the Coronavirus Aid, Relief and Economic Security (CARES) Act to help small businesses keep workers on their payrolls. Sen. Chuck Schumer, D-N.Y., said the amendments will make the program work better for all small businesses, including "truly small and minority-owned" organizations.

"The changes will give borrowers greater flexibility, both in terms of how they spend their loan, as well as the length of time they have to spend it," noted James Plunkett, an attorney with Ogletree Deakins in Washington, D.C. "This is especially important for those businesses who are still trying to survive under on-going government-ordered operating restrictions."

Key Changes

The new legislation will help employers by providing time to use PPP loan funds and still have the loan forgiven, explained Patrick Dennison, an attorney with Fisher Phillips in Pittsburgh. Instead of eight weeks, borrowers will now have 24 weeks from the disbursement of their loan to use the PPP funds, or until Dec. 31 when the program is now set to end. Borrowers can still opt, however, to use funds in the original eight-week period.

The PPPFA also creates flexibility in the amount of loan money that must be used for payroll purposes. Employers now have to spend 60 percent—rather than the previous 75 percent—of PPP funds on payroll costs. Payroll costs include:

- Salary, wages, commissions and tips—up to $100,000 annualized for each employee.
- Employee benefits, including paid leave, severance pay, insurance premiums and retirement benefit.
- State and local taxes assessed on pay.
- Payroll costs for sole proprietors and independent contractors include wages, commissions, income or net earnings from self-employment (up to $100,000 annualized).

The additional 40 percent could be spent on mortgage interest, rent, utilities and other costs.

Additionally, employers now have until Dec. 31, rather than June 30, to rehire certain laid-off workers if they are seeking loan forgiveness. Exceptions to the rehire rule may apply based on employee availability.

Employers should note that the new act extends the maturity date of the PPP loans—for any portion of a PPP loan that is not forgiven—from two years to five years. "This provision of the act only affects borrowers whose PPP loans are disbursed after its enactment," explained Joshua Bowman and Joseph Wang, attorneys with Sherin and Lodgen in Boston. With respect to already existing PPP loans, the act states specifically that nothing in the act will "prohibit lenders and borrowers from mutually agreeing to modify the maturity terms of a covered loan."

Many employers who have not been able to reopen, or only recently reopened, were running into significant issues meeting the prior provisions, Dennison said. "The added flexibility makes it easier for more borrowers to reach as close to full forgiveness as possible."

Under the PPPFA, borrowers will also able to defer payroll taxes even if they receive loan forgiveness.

The Program's Purpose

Borrowers should continue to use the loan money within the spirit and intent of the CARES Act, Dennison said, which is to cover payroll and qualified expenses, such as rent and utilities, during the pandemic.

"If you stay within the parameters of that, the PPPFA provides a greater chance for the entire loan to be used and forgiven," he added. "So, if employers had layoffs or furloughs or reduced wages, now is the time to restore headcount and employee pay."

Employers should also continue to diligently document their use of the funds, he noted, so when loan forgiveness time comes, employers can quickly and accurately substantiate their use of the loan and increasing the odds of full forgiveness.

Borrowers should look for additional guidance and rules (https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf) from the U.S. Treasury Department and the U.S. Small Business Administration.