



Paycheck Protection Program Flexibility Act (PPPFA)

On June 5, 2020, President Trump signed into law the Paycheck Protection Program Flexibility Act (PPPFA) in an attempt to address many concerns expressed by the small business community around the Paycheck Protection Program (PPP) aimed at providing COVID-19 relief. All in all, the PPPFA is a win for small businesses. The law will ease many of the burdens placed on businesses that received PPP loans and for many that may still apply for them.

For answers to frequently asked questions regarding PPP Loans, please refer to the following link - <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

The new law addresses the following flaws in the original PPP program created under the CARES Act:

1. PPPFA changes amount of loan needed for payroll to 60%

The biggest complaint around the PPP loan program was that it required businesses to spend 75% of the loan on payroll. For those businesses shut down due to COVID-19, this meant playing the role of unemployment office, paying their workers to stay home and do no work. The PPPFA reduces the amount of the loan needed to be spent on payroll from 75% to 60%, thus increasing the amount of funds available for other expenses from 25% to 40%.

While this new breakdown was less than the 50-50 split business groups advocated for, it is still an improvement. However, the law does not change the list of expenses eligible for forgiveness. It still includes rent, mortgage payments, utilities, and interest on loans. **Again, this is quite a restriction on businesses that need funds for inventory, personal protection equipment, expenses around remote working, and other needs. Business groups will continue to lobby to expand eligible expenses.**

SBA PPP Approved Lending as of June 6, 2020

	Loan Count	Net Dollars	Average Loan Size
Maryland	74,612	\$9,840,088,049	\$13,188
DC	11,421	\$2,105,618,797	
Total	4,531,883	\$511,382,171,979	
Funding Remaining		\$130,681,819,671	

2. PPPFA extends the time period to use funds from 8 to 24 weeks

The second biggest issue around PPP was that it required businesses to spend the funds in the eight-week period from the date funds were received. For a business shut down by government mandate, this amounted to spending funds when, perhaps, conserving them was in order. Business owners clamored to have the flexibility to spend the loan after reopening, especially on payroll when workers returned to work.



The PPPFA fixed this by extending the time period to spend the loans to 24 weeks. While businesses will still need to spend the money on payroll and authorized expenses, they now have until the end of 2020 to do so. Presumably, this will make receiving complete loan forgiveness more likely since the loan amount was based on one month of the 2019 payroll multiplied by 2.5, which equals approximately 10 weeks. Businesses should now have the flexibility to spend the PPP funds when they like for the remainder of the year. **Also, now the PPPFA also does not require businesses to wait for 24 weeks to apply for forgiveness and can still do so after eight weeks if they prefer.**

3. PPPFA pushes back the deadline to rehire workers from June 30, 2020 to December 31, 2020

Small businesses took issue with the PPP requirement that all workers had to be rehired by June 30, 2020, in order for their salaries to count towards forgiveness. Many businesses were concerned they might not be open, or certainly not at full capacity by this date, and would once again, be required to pay employees for not working. Under the new law, businesses now have until December 31, 2020, to rehire workers in order for their salaries to count towards forgiveness.

It is important to note, however, that the law did not change how salaries are calculated towards forgiveness. The payroll calculation used in the loan application still applies to the forgivable amount. So, employee compensation eligible for forgiveness is still capped at \$100,000, and until further guidance, employer owners and contractors are still capped at \$15,385. Presumably with the new law, however, having an extra six months of expenses eligible for forgiveness will make up for any gaps and ensure 100% forgiveness of the loan.

4. PPPFA eases rehire requirements

As the intent of PPP was to keep the same number of employees on the payroll as was used to calculate the loan, it required a business to rehire the same number of full-time employees or full-time equivalents by June 30, 2020. **The only exception to this rule was if an employer could document in writing an attempt to rehire an employee who rejected this offer.**

The new law makes two significant changes to these requirements. **First, it extends the rehire date to December 31, 2020, and second, it adds additional exceptions for a reduced head count.** The law states a business can still receive forgiveness on payroll amounts if it:

- Is unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020;
- Is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020; or
- Is able to demonstrate an inability to return to the same level of business activity as such business was operating at prior to February 15, 2020.

It remains unclear how to “demonstrate the inability to rehire similarly qualified employees” or what the standard “to demonstrate the inability to return to previous levels of business activity” would be, but hopefully forthcoming guidance will elaborate. **The good news appears to be that even with a reduced head count based on these exceptions, if 60% of the loan is still used on payroll throughout the**



remainder of 2020, it will be forgiven. Certainly, a business will need to document in writing as thoroughly as possible its efforts to rehire employees through December 31, 2020.

5. PPPFA extends the repayment term from 2 years to 5

The new law also eases repayment terms in the event loans or portions of them are not forgiven. A business now will have five years at 1% interest to repay the loan. Further, the first payment will be deferred for six months after the SBA makes a determination on forgiveness. **Since under current regulations your bank has 60 days to make a forgiveness determination and the SBA an additional 90 days, this means you could have up until May of 2021 to make the first payment on the loan.**

In addition, the PPPFA also allows borrowers to take advantage of the CARES Act provision allowing deferment of the employer's payroll taxes for Social Security. Previously, PPP did not permit deferment of these taxes on the forgivable portion of the loan.

Treasury guidelines still provide for SBA loan audits

While this new law certainly addresses many concerns and should ease the requirements for full forgiveness of PPP loans, it is not a complete fix. Namely, it does not address the issues around SBA audits of loans as outlined in the Treasury Department "Interim Final Rules" on PPP loans issued late on May 22.

According to PPP Loans FAQs, the SBA could audit any loan at its discretion to determine if "the borrower may be ineligible for a PPP loan, or may be ineligible to receive the loan amount or loan forgiveness amount claimed by the borrower." This includes loans under \$2 million, which have a "safe harbor" on the issue of whether economic uncertainty made the loan necessary.

So, despite the changes to PPP, the SBA can still look at how a business calculated the original loan amount and review whether it had "access to credit elsewhere" when determining if all or a portion of the loan should be forgiven. All businesses, especially those with loans in excess of \$2 million, should prepare to explain why the funds were financially necessary at the date of application.

This comes down to the issue of liquidity. Did a business have large cash reserves or lines of credit it could have tapped to stay afloat during the shutdown? If so, the SBA may determine the borrower was ineligible for the PPP loan. While borrowers should not worry about criminal penalties if such a determination is made, outright fraud excepted, they could be required to repay the loan in full.

It remains doubtful that the SBA will conduct many audits of PPP loans, as almost 4.5 million have been doled out, and it simply does not have the capacity to review many. **That being said, thorough documentation of the financial health of the business at the time of the loan application and detailed tracking of how the loan is expended will prevent any issues down the road. It is important to note that the responsibility for accurately calculating the loan amount and the forgiveness amount rests with the borrower.**

It is also positive that politicians on both sides of the aisle listened to small business owners and took quick, decisive action, putting their constituents before partisan wrangling.



Loan Size

Loan Size	Loan Count	Net Dollars	% of Count	% of Amount
\$50K and Under	2,943,201	\$54,321,982,874	64.9%	10.6%
>\$50K - \$100K	655,007	\$46,652,835,938	14.5%	9.1%
>\$100K - \$150K	284,657	\$34,851,771,625	6.3%	6.8%
>\$150K - \$350K	369,737	\$83,081,546,207	8.2%	16.2%
>\$350K - \$1M	197,098	\$112,146,690,696	4.3%	21.9%
>\$1M - \$2M	52,578	\$72,838,506,833	1.2%	14.2%
>\$2M - \$5M	24,788	\$73,686,354,483	0.5%	14.4%
>\$5M	4,817	\$33,802,483,324	0.1%	6.6%

*** Overall average loan size is: \$113K.**

Approvals through 06/06/2020

Industry by NAICS Sector

NAICS Sector Description	Loan Count	Net Dollars	% of Amount
Health Care and Social Assistance	475,706	\$66,116,892,187	12.93%
Professional, Scientific, and Technical Services	589,542	\$65,242,167,416	12.76%
Construction	434,720	\$63,578,254,948	12.43%
Manufacturing	219,814	\$53,505,238,934	10.46%
Accommodation and Food Services	344,104	\$41,066,112,230	8.03%
Retail Trade	421,687	\$39,658,145,446	7.76%
Other Services (except Public Administration)	477,316	\$30,059,675,367	5.88%
Wholesale Trade	158,519	\$27,415,340,831	5.36%
Administrative and Support and Waste Management and Remediation Services	224,768	\$25,974,183,957	5.08%
Transportation and Warehousing	157,820	\$16,293,334,981	3.19%
Real Estate and Rental and Leasing	225,139	\$15,202,496,179	2.97%
Finance and Insurance	156,429	\$11,967,840,821	2.34%
Educational Services	74,230	\$11,758,914,754	2.30%
Unclassified Establishments	223,648	\$9,961,029,864	1.95%
Information	63,984	\$9,092,167,092	1.78%
Arts, Entertainment, and Recreation	106,352	\$7,677,909,825	1.50%
Agriculture, Forestry, Fishing and Hunting	129,258	\$7,635,183,929	1.49%
Mining	20,610	\$4,477,493,683	0.88%
Public Administration	12,473	\$1,697,067,492	0.33%
Management of Companies and Enterprises	8,327	\$1,557,291,638	0.30%
Utilities	7,437	\$1,445,430,383	0.28%

Approvals through 06/06/2020

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