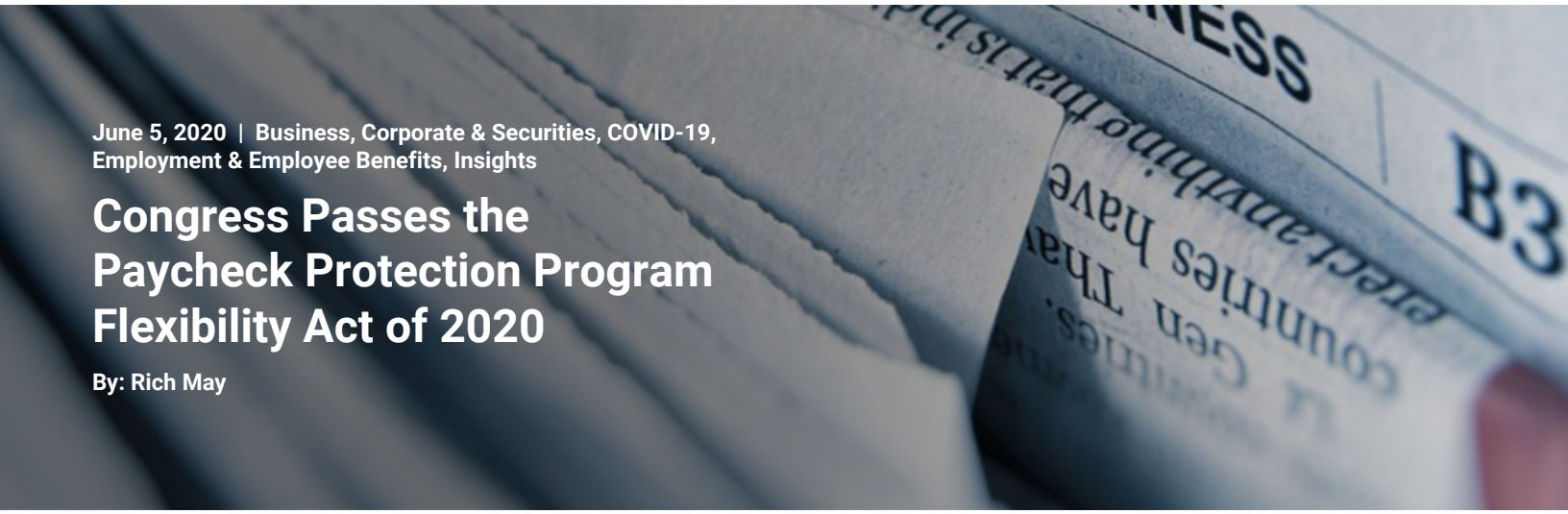


June 5, 2020 | Business, Corporate & Securities, COVID-19, Employment & Employee Benefits, Insights

Congress Passes the Paycheck Protection Program Flexibility Act of 2020

By: Rich May



On June 3, 2020, Congress passed the Paycheck Protection Program Flexibility Act of 2020 (the "PPP Flexibility Act") to address concerns raised by borrowers under the Paycheck Protection Program ("PPP"). The PPP Flexibility Act is expected to be signed into law by the President.

Key changes under the PPP Flexibility Act include:

Extension of Covered Period

The period of time during which a PPP borrower must spend their PPP funds in order to qualify for forgiveness has been extended. Instead of 8 weeks from the date of disbursement, borrowers will have until the earlier of 24 weeks from the date of disbursement or December 31, 2020 to spend the loan funds on eligible expenses. Borrowers with loans disbursed prior to the enactment of the PPP Flexibility Act may elect to retain the original 8 week covered period, should they desire.

Reduction in Percentage of Funds Required to be Used for Payroll Costs

Borrowers may now qualify for forgiveness so long as a minimum of 60% of their loan amount is used on payroll costs (wages, salary, benefits, etc.), with the remainder allowed to be used for non-payroll costs (rent, mortgage payments, utilities, etc.). Previously, borrowers would have been required to use at least 75% of the loan on payroll costs.

Changes to Safe Harbor for Wage/Salary and Headcount Reductions

Previously, loan forgiveness was to be reduced for employee salary or wage reductions, or full-time equivalent headcount reductions, which were not restored by June 30, 2020. Under the PPP Flexibility Act, borrowers now have until December 31, 2020 to restore such reductions and retain the ability to have all loan funds used for permitted purposes forgiven.

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Borrowers will also not have their forgiveness reduced for reductions in their full-time equivalent employee headcount if they are able to document in good faith their inability to rehire those who were employees as of February 15, 2020, or their inability to hire similarly qualified individuals to fill such positions by December 31, 2020.

Finally, borrowers will also be spared from a reduction in forgiveness if they can document in good faith their inability to return to pre-COVID business levels (determined with February 15, 2020 as the relevant date) due to compliance with requirements or guidance promulgated 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 from March 1, 2020 through December 31, 2020, provided that such requirements or guidance relate to COVID-19 standards for sanitation, social distancing or other worker or customer safety concern.

These changes address areas of concern for borrowers with businesses that remain subject to state and local restrictions and health guidelines such that full staffing remains impractical or unnecessary, or whose employees are reluctant to return to work due to concerns about COVID-19 risk.

Extension of Deferred Payments

Loan payments due under the PPP are now deferred until a decision on loan forgiveness is made, which may be a significant extension from the previous 6 months from the date of loan origination. Forgiveness applications are not required to be submitted until 10 months after the borrower's covered period.

Changes in FICA Tax Deferral

The PPP Flexibility Act extends the period for which borrowers can defer payment of employer-side payroll taxes due on salaries and wages. Previously, deferral was available for amounts due between March 27, 2020 and the date of loan forgiveness. Now, borrowers may defer payment of FICA taxes from March 27, 2020 through December 31, 2020, with half of the deferred amount to be paid in 2021 and the remainder in 2022.

Extension of Loan Term

For PPP loans originated on or after enactment of the PPP Flexibility Act, the term of the loan will now be 5 years rather than the previous 2, a significant extension for those borrowers who do not qualify for full forgiveness.

Once signed into law by the President, the PPP Flexibility Act will help borrowers take advantage of full loan forgiveness while dealing with the continued fluidity of a reopening process that varies greatly from state to state and industry to industry. Rich May continues to monitor the progress of this and other federal and state actions with respect to the COVID-19 outbreak and the related economic crisis, and will provide additional updates as they become available.

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not legal advice. Any specific questions about these topics should be directed to attorney Matthew Sweet.