

# Senate Passes the Paycheck Protection Program Flexibility Act of 2020

By Bruce L. Blasnik, CPA, CGMA, Partner

The Senate Passed H.R. 7010, the Paycheck Protection Program Flexibility Act of 2020, with a unanimous vote yesterday. This is the same bill that passed the House of Representatives on May 28, 2020. All that is required for the bill to become law is for the President to sign it.

## Amendments/New Provisions

This is a simple bill that amends the CARES Act Paycheck Protection Program as follows:

- It extends the date through which PPP loans can be made, subject to the availability of funds, from June 30, 2020 to December 31, 2020.
- It extends the period during which a Borrower may incur forgivable expenses from 8 weeks to 24 weeks, but not later than December 31, 2020, and it raises the non-payroll portion of forgivable expenses from a maximum of 25% to 40%.
- It extends the period in which a Borrower may rehire or eliminate reductions in employment or salaries and wages from June 30, 2020 to December 31, 2020.
- It adds a provision that eliminates the proportional reduction in loan forgiveness based on a reduction in employees if the Borrower is able to document that they were unable to rehire terminated employees or replace unfilled positions, or is unable to return to the pre-pandemic level of business activity due to compliance with the guidance established by HHS (U.S. Department of Health and Human Services), CDC (Centers for Disease Control and Prevention) or OSHA (Occupational Safety and Health Administration).
- It extends the payment deferral period from 6 months to 10 months and increases the minimum maturity from 2 years to 5 years.
- It allows Borrowers to continue to defer the payment of certain payroll taxes even after the loan is forgiven.

Presumably, the bill will also increase the maximum compensation of any single employee or business owner that is eligible for forgiveness from \$15,385 ( $\$100,000 \div 52 \text{ weeks} \times 8 \text{ weeks}$ ) to \$46,154 ( $\$100,000 \div 52 \text{ weeks} \times 24 \text{ weeks}$ ).

The bill, once signed into law, will be effective retroactive to the date the CARES Act was passed (March 27, 2020). So any business that already received a PPP loan can take advantage of these relaxed requirements. However, businesses that received a PPP loan prior to the date of this amendment may still elect to use an 8-week forgiveness period.

This amendment to the Paycheck Protection Program should be welcome news to many, if not most, PPP loan recipients, as it significantly increases a Borrower's ability to have the entire loan forgiven.

## What HR 7010 Does Not Do

The bill does not clarify any of the multitude of questions surrounding the types of expenses eligible for forgiveness, what is actually meant by expenses paid and expenses incurred, or whether or not all payroll

costs, including health and retirement benefits, are *considered to be paid* when the paychecks are distributed to employees, regardless of the date the funds were actually remitted to the benefits providers. However, with 24 weeks to incur forgivable expenses, these issues become less important in planning expenditures.

The bill also does not address what it means to replace or rehire employees or to restore pay. We still don't know whether these are single point-in-time tests or whether the rehired or replaced employees or restored pay must be maintained for some period of time in order to qualify. The bill also creates some additional questions with regard to the new safe harbor that waives the proportional reduction of forgiveness due to *an inability to rehire or replace employees*, as it fails to define what an *inability* is outside of the one example of limitations placed on the business by HHS, CDC or OSHA.

## Contact Us

As always, for further guidance and assistance, please reach out to your PKFOD engagement team members, or Bruce L. Blasnik, CPA, CGMA, Partner at [LoanForgiveness@pkfod.com](mailto:LoanForgiveness@pkfod.com). We are here to help.

## About PKF O'Connor Davies

PKF O'Connor Davies, LLP is a full-service certified public accounting and advisory firm with a long history of serving clients both domestically and internationally. With roots tracing to 1891, twelve offices in New York, New Jersey, Connecticut, Maryland and Rhode Island, and more than 800 professionals, the Firm provides a complete range of accounting, auditing, tax and management advisory services. PKF O'Connor Davies is ranked 27th on *Accounting Today's* 2020 "Top 100 Firms" list. It is also ranked among the top 20 best accounting employers to work for in North America by *Vault*.

PKF O'Connor Davies is the lead North American representative in PKF International, a global network of legally independent accounting and advisory firms located in over 400 locations, in 150 countries around the world.

Our Firm provides the information in this e-newsletter for general guidance only, and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.