

MEMORANDUM

June 7, 2020

TO: Virginia SBDC Network
FROM: MD Austin, Access to Capital Counselor
SUBJECT: **Payroll Protection Program Flexibility Act as of 6/7/2020**

Attached is a first effort to review the changes to the Payroll Protection Program (PPP) that became law on June 5th. Please keep in mind that these changes are based on the reading of the law and does not reflect the implementation of the Act by the SBA and/or the US Treasury. Based on prior guidance from the SBA, the agency took at times a very obscure or unexpected interpretation of the intent of Congress.

Once the SBA does issue their next "Interim Final Rule" this document will be updated. However, given the widespread interest in the PPP forgiveness process and the impact of the most recent legislative changes, it was deemed appropriate to provide this information to the Network to assist counselors and clients decipher the PPP forgiveness gauntlet.

It should be noted that over \$110 Billion remains unspent from the 2nd round of PPP funding, and that the program is set to expire on 6/30/2020. Questions remain as to whether this will be extended.

Original PPP	PPP Flex Act
75% of amount requested for forgiveness must be for payroll-related expenses	60% of loan must be used for payroll-related expenses, but this means that if that percentage is not met then no forgiveness can be granted
Advances must be made within 8 weeks of funding to achieve safe harbor exemption	The covered period has been extended to the earlier of 24 weeks after funding or 12/31/2020. However, borrowers that received funding prior to 6/5/2020 can apply for forgiveness if they fully fund the loan sooner
Any portion converted to a loan must be repaid over 2 years at 1%	For loans approved on or after 6/5/2020, the repayment term for converted funds will be 5 years at 1%. Loans approved before this date can be extended to 5 years if lender and borrower agree
Compensation capped at \$15,385	At this time this requirement has not changed, but further clarification by the SBA might change this cap
Forgiveness could be limited if FTE's not restored by 6/30/2020	FTE restoration changed to 12/31/2020.
Forgiveness could be limited if wages not restored by 6/30/2020	Forgiveness for wage restoration has been extended to 12/31/2020
FTE safe harbor achieved if employees refused to return to work or were terminated for cause	Additional reasons have been achieved: an inability to rehire former employees, the employer cannot hire qualified replacements, or if the business could not return to pre-2/15/2020 levels due to maintenance of sanitation, social distancing, or other worker or customer safety requirements related to COVID-19
Employer could only defer their share of 2020 FICA until the end of 2021 until their loan was forgiven	Employers can defer all 2020 FICA payments to 2021 and 2022 even if the PPP loan is forgiven prior to 12/31/2020
Eligible expenses included payroll-related costs, along with utilities, mortgage interest, rent, etc.	This is currently unchanged but could be modified by SBA guidance
Lenders were required to defer payments of principal and interest for a period of not less than 6 months and not more than one year	Deferral of principal and interest until the date the lender receives the forgiveness amount from the SBA, which in practice take considerably longer. A new provision: if a borrower does not apply for forgiveness within 10 months after the end of the borrower's covered period, payments will begin at the end of the 10-month period. Also, pre 6/5/2020 borrowers that use the 8-week covered period, payments will commence 10 months after the end of the 8-week period if they do not seek forgiveness
The PPP loan program ends 6/30/2020	This remains unchanged, subject to SBA guidelines
SBA reserves the right to audit/review any PPP loans approved and funded	Unchanged
Borrowers can obtain only one PPP loan	Unchanged
Loans can be increased but only if lender approves the increase prior to filing their first 1502 report with SBA	Unchanged
IRS rule prevents deducting operating expenses forgiven as part of PPP	Unchanged