

COVID-19 NEWS OF INTEREST

Paycheck Protection Program Flexibility Act Extends Loan Forgiveness Period and Makes Key Changes to the Paycheck Protection Program

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On May 5, 2020, the President signed into law the [Paycheck Protection Program Flexibility Act of 2020](#) (the “Act”), making several key changes to the Small Business Administration’s (“SBA”) Paycheck Protection Program (“PPP”). The amendment extends the period for spending funds and seeking forgiveness, provides additional flexibility in how the loan may be used, extends the safe harbor for rehiring employees, extends the payment deferral and maturity periods, and allows employers who receive loan forgiveness to take advantage of the payroll tax deferral.

Loan Forgiveness Flexibility

The Act extends the loan forgiveness period from eight weeks after the disbursement of the loan to 24 weeks, although borrowers may choose to seek forgiveness if they spend the funds more quickly. The businesses that secured funding in the initial wave of applications for the PPP are now running up against the eight-week deadline with many experiencing difficulties in fully utilizing their loans as the pandemic has forced businesses to remain shut for longer than anticipated. The Act also lowers the percentage of the loan that must be spent on payroll costs in order for the loans to be forgiven from 75 percent to 60 percent. Borrowers may now spend as much as 40 percent of the funds on rent, mortgage interest, and covered utilities.

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Extension of Safe Harbor

The Act extends the deadline to benefit from the safe harbor for restoring employees or their wages, which was previously set to expire on June 30, 2020. Borrowers may now avoid any reduction in the amount of loan forgiveness due to a reduction in full-time equivalent employees or wages by restoring those employees or wages by December 31, 2020. The Act provides an additional safe harbor based on employee availability, stating that the amount of loan forgiveness will not be reduced due to a reduction in full-time equivalent employees if the borrower can, in good faith, document an inability to:

1. Rehire individuals who were employees on February 15, 2020 and is unable to hire similarly qualified employees for unfilled positions on or before December 31; or
2. Return to the same level of business that the borrower had on February 15, 2020 due to compliance with guidance from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, or Occupational Safety and Health Administration related to maintaining standards for sanitation, social distancing, or other worker or customer safety requirements related to COVID-19.

Extension of Deferral Period and Maturity Term

Originally, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) required that PPP loans be deferred for no fewer than six months and up to one year. The SBA then set the loan deferral period to six months in an interim final rule on April 2, 2020. However, the Act provides that payments on a PPP loan, including payments of principal, interest, and fees, shall be deferred until the date on which the amount of loan forgiveness is remitted to the lender. However, if the borrower fails to apply for loan forgiveness within 10 months after the last day of its covered period, now up to 24 weeks after the disbursement of the loan, then the borrower must begin making payments at that time.

Additionally, the Act has increased the maturity for PPP loans that were not forgiven from two years to five years for new loans. Borrowers and lenders can mutually agree to modify the maturity terms of existing loans to reflect the extension.

Payroll Tax Deferral

The Act removes the restriction prohibiting employers whose PPP loans are forgiven from deferring payroll taxes incurred between March 27, 2020 and December 31, 2020. As a result, employers can now take advantage of the payroll tax deferral provision in the CARES Act.

Conclusion

The Act should provide additional flexibility to small businesses who have received or are applying to receive a PPP loan, allowing them to better utilize the funds to keep their businesses operational through the duration of the pandemic. The

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Act states that these amendments to the PPP and loan forgiveness shall be effective as if included in the CARES Act and will apply to any loan made under the SBA's PPP. We anticipate that the SBA will follow up with implementing rules in the coming days.

Of note, in his [signing statement](#), the President stated that, while he signed the Act to provide greater flexibility to small business, he holds doubts regarding the proxy voting system used by the House of Representatives to pass the bill. The President urged Congress to "pass the Act anew through traditional in-person voting at the earliest available opportunity." As a result, the Administration appears to have maintained the option to call into question the validity of the statute at some point in the future.

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