Client Alert: PPP Flexibility Act of 2020

BY CESIRA NEWCOMB • JUNE 9, 2020

On Friday June 5, President Trump signed into law the Paycheck Protection Flexibility Act which makes the following tweaks to the original terms of the Paycheck Protection Loan Program.

EXTENSION OF THE COVERED PERIOD

- Extends the time period during which a loan recipient may spend PPP funds from 8 to 24 weeks (the "covered period").
- It was originally thought that the covered period for purposes of attaining a loan would be extended to December 31, 2020. However, in a Joint Statement issued on June 8th, the SBA and Treasury noted the last date on which a PPP loan application can be approved remains June 30, 2020.

USE OF LOAN PROCEEDS

- Requires a borrower to use at least 60% (down from 75%) of the PPP loan amount for payroll costs to receive full loan forgiveness.
- In the same Joint Statement, the SBA and Treasury made clear a borrower will continue to be eligible for partial loan forgiveness if less than 60% of the loan amount is used towards payroll costs (subject to at least 60% of the loan forgiveness amount having been used for payroll costs).

LOAN FORGIVENESS REDUCTION RELIEF

- Extends date businesses must rehire or eliminate reduction in workforce that otherwise reduces forgivable amount of PPP loan from June 30 to December 31, 2020.
- Allows PPP debt forgiveness even with reduction in workforce if employer documents:
  Inability to re-hire a worker who was employed on Feb. 15, 2020; and
  Inability to hire similarly qualified worker for unfilled positions prior to Dec. 31, 2020
  OR
  Inability to return to same level of business activity prior to Feb.15 due to compliance with safety, sanitation, and social distancing requirements or guidelines of HHS, CDC or OSHA between March and December 31, 2020
- Note that 60% of PPP loan amount must still be spent on payroll for the loan to be forgiven.

PAYROLL TAX DEFERRAL

- Allows PPP borrowers (who receive loan forgiveness) to defer payroll taxes as provided by the original CARES Act.
  - Under the original legislation, employers (other than those with forgiven PPP loans) can defer payment of 50% of such payroll taxes until December 31, 2021. They can defer payment of the remaining 50% of payroll taxes until December 31, 2022.

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- The amendment does not allow PPP borrowers to receive the refundable employment tax credit (of $5,000 per employee) provided to other employers.

EXTENSION OF REPAYMENT TERMS FOR LOAN

- Extends from two to five years the minimum maturity date for the loan balance (after debt forgiveness) for loans made after June 5.
- Borrowers and lenders may mutually agree to modify the maturity terms of existing loans made prior to enactment of the amendment.
- Borrowers can defer loan payments until the date the amount of debt forgiveness is determined and remitted by SBA to the lender.
- Borrowers who do not apply for forgiveness have 10 months after the last day of the "covered period" before first loan payment is required.

The Act provides more flexibility to borrowers participating in the PPP Loan Program. In its Joint Statement, SBA noted that it will promptly issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application implementing these legislative amendments to the PPP.

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