

Publication

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Paycheck Protection Program Flexibility Act and Other Updates to the Paycheck Protection Program

On Friday, June 5, 2020, President Trump signed into law the Paycheck Protection Program Flexibility Act ("PPPFA"). The PPPFA amends the Paycheck Protection Program ("PPP") under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") in several important respects, including the following:

- **Extends Covered Period for Forgiveness.** Changes the "covered period" for loan forgiveness from eight weeks after the date of loan disbursement to the earlier of (i) 24 weeks after the date of loan disbursement or (ii) December 31, 2020. A borrower who has already received a PPP loan can continue to use the eight-week covered period if desired.
- **Lowers the Required Percentage of Loan Proceeds Used for Payroll for Forgiveness.** Lowers the requirement that for forgiveness, a borrower must use 75% of the loan proceeds on payroll costs to 60% (and thus permits up to 40% of the loan proceeds to be used for other permitted purposes – such as interest on covered mortgage obligations, covered rent obligations and covered utility payments). The PPPFA requires that borrowers spend a minimum of 60% of the loan proceeds on payroll costs to obtain forgiveness, but the Treasury Department and SBA joint release (discussed below)

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indicates that the revised rules and guidance will provide that if a borrower uses less than 60% of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.

- **Safe Harbor for Inability to Rehire Employees.** Provides a safe harbor from reductions in loan forgiveness based on reductions in full-time equivalent employees for borrowers that, in good faith: i) are able to document an inability to rehire individuals who were employees of the borrower on February 15, 2020; and ii) are unable to hire similarly qualified employees for unfilled positions by December 31, 2020.
- **Safe Harbor for Inability to Return to Same Business Level based on Safety Requirements.** Provides a safe harbor from reductions in loan forgiveness based on reductions in full-time equivalent employees for borrowers that, in good faith, are able to document that they are unable to return to the same level of business activity the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued between March 1, 2020 and December 31, 2020 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, related to worker or customer safety requirements related to COVID-19.
- **Extends Deferral Period for P&I Payments.** Extends the deferral period for borrower payments of principal, interest and fees on PPP loans to the date that SBA remits the borrower's loan forgiveness

amount to the lender, or, if the borrower does not apply for loan forgiveness, to 10 months after the end of the borrower's covered period.

- **Extends the Maturity Date for New PPP Loans to 5 Years.** Extends the maturity date for PPP loans that are approved by SBA on or after June 5, 2020, to the extent not forgiven, to a minimum of five years. The PPPFA also permits borrower and lenders to modify the maturity of loans made prior to such date to conform with the amendments made by the PPPFA to the term of the PPP loans.
- **Permits Borrowers to Delay Payroll Taxes as permitted under the CARES Act.** Eliminates the provision in the CARES Act that prevents a taxpayer from delaying employer payroll taxes as permitted under the CARES Act if the taxpayer has a PPP loan forgiven.

On June 8, 2020, U.S. Treasury Secretary Steven Mnuchin and SBA Administrator Jovita Carranza issued a joint statement indicating that the SBA, in consultation with Treasury, will promptly issue rules and guidance, a modified borrower application form, and a modified loan forgiveness application implementing these legislative amendments to the PPP.

The press release also indicated that the new rules will confirm that June 30, 2020 remains the last date on which a PPP loan application can be approved.

Neal Gerber Eisenberg will be issuing additional Client Releases as such additional guidance becomes available.

The SBA has also recently released Interim Final Rules with respect to the eligibility of certain electric cooperatives and certain telephone cooperatives.



If you have questions about this guidance or any other matters related to the PPP program, please contact Chadwick Hoyt, Michael Gray, Robert Gerber, David Milligan, Bruce Fox, Tom Wolford, Rudy Radasevich or your Neal Gerber Eisenberg attorney.

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