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New Paycheck Protection Program Flexibility Act Provides Significant Relief to Borrowers

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On Friday, June 5, 2020, President Trump signed the Paycheck Protection Program (PPP) Flexibility Act of 2020, which provides welcome relief to businesses with PPP loans by extending the period for borrowers to use PPP loan proceeds for payroll costs, extending the date for borrowers to rehire employees, reducing the amount of payroll costs required for forgiveness of the loan, and modifying the period to repay loans that are not forgiven.

Significant provisions of the Act are as follows:

- The period within which borrowers may use loan proceeds for payroll costs has been extended to give borrowers a greater opportunity to spend the amounts required for loan forgiveness. Previous SBA rules and guidance documents provided an 8-week period after loan disbursement to utilize loan proceeds for payroll costs. Borrowers can still utilize the 8-week period but can now also elect an extended “covered period” of 24 weeks after loan origination (not to extend beyond December 31, 2020) to pay payroll costs.
- The deadline for borrowers to rehire or offer to rehire furloughed employees in order to maximize forgiveness of the loan has been extended from June 30, 2020 to December 31, 2020.
- The Act adds a new basis for loan forgiveness if the borrower is able to document that it was unable to rehire its former employees or similarly qualified employees by December 31, 2020, or can document that it was unable to restore its business operations to February 15, 2020 levels because of requirements to comply with sanitation, social distancing or other safety requirements related to COVID-19.
- The Act reduces the amount required to be expended on payroll costs but establishes a floor for payroll costs in order to obtain loan

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forgiveness. The borrower can obtain forgiveness of the loan by using at least 60 percent of the loan proceeds for payroll costs instead of the previous 75 percent, but with an important difference. While previous guidance documents indicated that there would be a proportionate reduction for loan forgiveness if any amounts were used for payroll costs, the new Act provides that the borrower must use at least 60 percent of the loan for payroll costs in order to receive loan forgiveness. Several senators have indicated that this result is too harsh, and there may be technical changes to the bill to remove this floor requirement and allow forgiveness for any amount used for payroll costs.

- The CARES Act and previous regulations provided a 6-month period to defer payment of principal, interest and fees under the PPP loan. The Act now extends that deferral period until the date on which the amount of forgiveness is determined by the SBA and remitted to the lender. In any event, the Act provides a rule of construction that the borrower should apply for loan forgiveness within 10 months after the last day of the covered period because the deferral period will end at that time.
- For loans that are not forgiven, the Act extends the payment period of the loan from 2 years to 5 years. The interest rate remains at 1 percent.

With these changes, the SBA will likely amend its Loan Forgiveness Application and may also issue further guidance documents. We will continue to monitor forthcoming regulations and guidance and will provide timely updates.

Please contact the authors of this Alert with questions or to discuss your specific circumstances.

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