



LAW ALERT

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Important Changes to the Payroll Protection Program

On or about June 5, 2020, in an effort to provide businesses with greater flexibility and more time to keep employees on payroll as the country reopens for business, Congress passed the Payroll Protection Program (“PPP”) Flexibility Act, which changed a number of provisions of the PPP. The key changes to the PPP are summarized below:

- The “Covered Period” for purposes of loan forgiveness, initially provided that to be eligible for forgiveness, the PPP loan proceeds would have to be spent on eligible expenses (payroll expenses (including wages, commissions, and tips, costs and premiums for group health insurance coverage, paid leave; and state and local taxes assessed against compensation), rent, utilities, and interests on mortgage obligations as well as interest on pre-existing loan obligations) within eight (8) weeks of the date the loan proceeds were disbursed. That has been extended so that the Covered Period is now the earlier of (a) twenty four (24) weeks from the date of disbursement or (b) December 31, 2020. Borrowers who received their PPP loans prior to June 5, 2020 may elect the eight (8) week or the twenty four (24) week Covered Period for loan forgiveness.
- The PPP initially provided that in order to be eligible for forgiveness, the borrower had to have documented that at least 75% of the PPP loan proceeds were expended for payroll expenses. Under the PPP Flexibility Act, in order to be eligible for forgiveness of the PPP loan, the borrower now has to document that it spent at least 60% of the loan proceeds on payroll and 40% of such amount for payment of any covered rent obligation, utility payment or other covered obligations. Treasury Secretary Steve Mnuchin and SBA Administrator Jovita Carranza, stated in a joint statement, that although not expressly clear from the legislation, if a Borrower uses less than 60% of the PPP loan proceeds on payroll costs during the Covered Period, the Borrower may yet be eligible for partial loan forgiveness as long as the borrower used at least 60 percent of the loan forgiveness amount for payroll costs.



- Initially, the PPP provided for reductions in the loan forgiveness that the borrower would be eligible to receive if the borrower experienced a reduction in the number of full time equivalent employees during the Covered Period. Under the PPP Flexibility Act, Safe harbors for full forgiveness in spite of reductions in full time equivalent employees were established. These safe harbors allow for PPP loan forgiveness despite reductions in the number of full time equivalent employees provided that during the period beginning February 15, 2020 and ending December 31, 202, the borrower is able to (A) document, in good faith (i) the inability to rehire individuals who were employees of the borrower on February 15, 2020; and (ii) inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or (B) document the inability of the borrower to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19 and 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.
- Initially, the PPP loans provided for a maximum maturity of two (2) years, but for loans made after June 5, 2020, the PPP Flexibility Act now provides for a maximum maturity of five (5) years.
- The PPP initially provided for a deferral of payment of principal and interest on PPP loans of six (6) months to a maximum of one (1) year. The PPP Flexibility Act now provides for a deferral of payment of principal, interest, and fees on PPP loans (i) to the date that the borrower's loan forgiveness amount is remitted by the SBA to the lender, or (ii) if the borrower does not apply for loan forgiveness, ten (10) months after the end of the borrower's loan forgiveness covered period.
- The PPP Flexibility Act also confirms that June 30, 2020, remains the last date on which a PPP loan application can be approved.

It is anticipated that the SBA, in consultation with Treasury, will be issuing rules and guidance imminently, as well as a modified borrower application form, and a modified loan forgiveness application implementing the amendments to the PPP pursuant to the Payroll Protection Program Flexibility Act of 2020. If you have any questions about the PPP or any other disaster relief programs enacted during the COVID-19 national emergency, please contact

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