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Paycheck Protection Program Flexibility Act[1]

On Friday, June 5th, the Paycheck Protection Program Flexibility Act was signed into law modifying terms within the Paycheck Protection Program, which was established by the Coronavirus Aid, Relief and Economic Security (CARES) Act in response to COVID-19. The key changes, noted below, provide more flexibility to borrowers in order to maximize their forgiveness amount.

Loan Maturity

The PPPFA establishes that for new PPP loans that have a remaining loan balance after a portion is forgiven by the SBA, the minimum maturity on these loans must be 5 years. For legacy PPP loans made prior to the PPPFA, borrowers and lenders must agree to modify the maturity; the borrower does not have the sole discretion to make this modification.

8 week to 24 week period

The PPPFA extends the "covered period", which is the period borrowers are allowed to seek loan forgiveness, from 8 weeks to 24 weeks or December 31, 2020 (whichever occurs first). Borrowers who have received a PPP loan before PPPFA was signed into law will also have the option to extend their covered period to 24 weeks.

Importantly, the shift in covered period from 8 weeks to 24 weeks substantially moves back the expected timing of forgiveness payments from the SBA. When one combines both this provision and the provision related to interest deferral, the cash flow events now seem to point to Q1 or Q2 of 2021 fee recognition of forgiven amount.

Deferral Period

Borrowers will have the ability to defer their loan payments to the date that the loan forgiveness amount is remitted to the lender. This has been extended from the prior 6 month period. If a borrower fails to apply for forgiveness within 10 months after their "covered period" ends, the borrower must make loan payments starting from that point.

Loan Proceeds Allocation

Under the PPPFA, at least 60% of the loan amount must be allocated towards payroll costs versus 75% under the initial guidance. Additionally, a maximum of 40% of the funds can be attributed to non-payroll costs, up from 25%.

Full Time Employee Safe Harbor Period Extended

The Safe Harbor period to rehire employees and/or restore reduction in employees' pay has been extended from June 30, 2020 to December 31, 2020. Borrowers will not experience a reduction in forgiveness as long as these full-time employees' salary levels are returned to the same level they were on February 15, 2020.

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[1] The Paycheck Protection Flexibility Act was passed on June 5, 2020 (https://www.congress.gov/bill/116th-congress/house-bill/7010?q=%7B%22search%22%3A%5B%22Paycheck+protection+program%22%5D%7D&r=1&s=5)

New Re-Hire Safe Harbor

The PPPFA established an additional Full Time Employee (FTE) safe harbor for employers who are unable to rehire employees by December 31, 2020. There will not be any reduction in the forgiveness amount based on this reduction to FTEs if the borrower can document in good faith[2]:

1. An inability (i) to rehire individuals who were its employees as of February 15, 2020; and (ii) to hire similarly qualified employees for unfilled positions by December 31, 2020; or
2. An inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by Health & Human Services, the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

Payroll Tax Deferral

Under the PPPFA, borrowers that receive loan forgiveness are also eligible for the payroll tax deferral. Before, borrowers had to choose one of these two.

[2] PPPFA Bill: https://www.congress.gov/bill/116th-congress/house-bill/7010/text?q=%7B%22search%22%3A%5B%22Paycheck+protection+program%22%5D%7D&r=1&s=5

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