

Paycheck Protection Flexibility Act: Changes to the Paycheck Protection Program

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Albert Lee; alee@tuckerlaw.com; 412 594-5611
Barry Nelson; bnelson@tuckerlaw.com; 412 594-3901
Christopher Voltz; cvoltz@tuckerlaw.com; 412 594-5580

As business owners and their advisors who received Paycheck Protection Program loans focus on the Loan Forgiveness Application, Congress passed an Act that makes significant changes to the Program. The House of Representatives passed the Paycheck Protection Flexibility Act of 2020 on May 28, 2020. On June 3rd, the Senate unanimously passed the Act by voice vote without amendment and sent it to the President's desk for signature.

If signed by President Donald Trump, the Act will:

- **Extend the PPP Program and give borrowers a longer period of time to spend the PPP loan proceeds.**

As originally drafted, the Paycheck Protection Program was set to expire on June 30, 2020. The Act extends the Program to December 31, 2020 by amending the definition of "covered period" set forth in the Small Business Act. This change will, among other things, permit business owners to apply for PPP loans after June 30, 2020 and allow borrowers to use the proceeds over a longer period of time.

In addition, the Act extends the "covered" period for loan forgiveness. Currently, all permitted expenses must be incurred or spent within the 8 weeks of receiving the loan proceeds if the borrower intends to seek forgiveness. Under the Act, the "covered period" for forgiveness purposes would end on the earlier of: 1) 24 weeks after the date of origination; or 2) December 31, 2020. This change will, among other things, allow borrowers to spend the money over an extended period of time and still seek forgiveness.

For borrowers who received a loan prior to this amendment, the Act provides that they may elect to keep their 8-week covered period.

- **Extend the rehiring and wage restoration deadline to December 31, 2020.**

The current version of Section 1106(d) of the CARES Act generally provides that the amount of forgiveness will not be reduced if borrowers, by June 30, 2020: 1) rehire employees who were let go; or 2) reverse salary cuts of greater than 25%. Under the Act, the new restoration deadline is December 31, 2020.

In addition, the amount of loan forgiveness will not be reduced due to a reduction in the number of full-time equivalent employees if the borrower: 1) is unable to rehire a former employee; or 2) can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020.

Finally, the Act will not require reduction in forgiveness amounts due to a reduction in employees, if the borrower can demonstrate that this decrease is due to compliance with guidance or requirements issued by appropriate federal agencies related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

For borrowers who received a loan prior to this amendment, the Act provides that they may elect to keep their 8-week covered period.

- **Eliminate restrictions limiting non-payroll expenses to 25% of loan proceeds.**

In early April, the SBA issued rules requiring that at least 75% of loan proceeds must be used for payroll expenses. Under the Act, that number is reduced to 60%. In other words, an eligible recipient must use at least 60 percent of the covered loan amount for payroll costs and may use up to 40 percent of such amount for permitted mortgage interest, rent or utility payments.

- **Eliminate restrictions that limit loan terms to 2 years.**

In early April, the SBA issued rules requiring that the term of any loan be limited to 2 years. Under the Act, the minimum maturity of the loan would be 5 years and the maximum maturity of the loan would remain at 10 years. This amendment would apply to any loan made on or after the date of enactment. For existing loans, the Act permits lenders and borrowers to modify the maturity terms to conform with the Act.

- **Extend the Deferral Period Until Forgiveness is Determined.**

Currently, Section 7(a)(36)(M) of the Small Business Act provides that lenders must provide complete payment deferral relief for borrowers for a period of not less than 6 months, including payment on principal, interest and fees, and not more than 1 year. The Act would eliminate the six-month deferral of payments due under PPP loans and replace it with deferral until the date on which the amount of loan forgiveness is remitted to the lender.

In addition, borrowers that don't apply for forgiveness will be given at least 10 months after the program expires on December 31, 2020 to start making payments.

- **Ensure full access to payroll tax deferment for businesses that take PPP loans.**

Section 2302(a)(1) of the CARES Act permits employers to forgo timely payment of the employer portions of employment taxes. Paragraph (3) of Section 2302(a) of the CARES Act, however, removes this benefit for taxpayers who had their PPP loan forgiven. Under the Act, Paragraph (3) is eliminated and employers who receive PPP loan forgiveness can defer payroll taxes incurred between March 27, 2020 and December 31, 2020.

The Paycheck Protection Flexibility Act of 2020 is intended to provide a quick fix to issues faced by small businesses seeking loan forgiveness under the Program. While these changes should be welcome by most borrowers that received loans, every borrower should be aware of the new requirements. A copy of the Act is available here.

For additional information contact Christopher Voltz, Albert Lee or Barry Nelson. You can access all the recent articles regarding business solutions to challenges posed by the COVID-19 pandemic at:

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