Government Provides Relief in the Paycheck Protection Program Flexibility Act

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Although brief in length, the Paycheck Protection Program Flexibility Act (the “Act”) that was signed into law by President Trump on June 5, 2020, clarifies how borrowers can use Payment Protection Program (“PPP”) loans made pursuant to the CARES Act and grants borrowers much-needed flexibility in the requirements for PPP forgiveness. The changes, while expected to make it substantially easier for many borrowers to achieve loan forgiveness, can quickly be summarized.

Protection Program Flexibility Act

1. **Extension of time to spend the PPP loan.** The Act extends the “covered period” for a borrower to spend the PPP loan from eight weeks to 24 weeks (but not beyond December 31, 2020). Borrowers whose loans predate the Act have the option to keep the eight-week covered period for their loan forgiveness
2. **Reduction of mandatory spending on payroll.** Addressing a complaint from many business owners that payroll costs have dropped in the wake of the pandemic but fixed costs like rent, utility costs, and mortgage payments have not, the Act reduces the amount of the PPP loan forgiveness attributable to payroll costs from 75% to 60% of the amounts forgiven. In other words, a borrower can spend up to 40% of the PPP loan forgiveness on eligible nonpayroll costs like rent, utility costs, and interest on mortgage loans. The language of the Act had caused some alarm that a borrower could not claim any loan forgiveness if the borrower did not spend at least 60% of the loan on payroll costs. However, the SBA Administrator and Treasury Secretary issued a joint statement on June 8, 2020, confirming that a borrower remains eligible for partial loan forgiveness even if less than 60% of the loan is spent on payroll costs.

3. **Extension of time to repay the PPP loan.** The Act extends the maturity date of a PPP loan (to the extent it is not forgiven) from two years to five years. Note, however, that this provision only applies to PPP loans made after the enactment of the Act, or June 5, 2020. The Act provides that borrowers whose loans were made before that date can request their lenders to extend the maturity of the loans from two to five years, however, it is not clear what level of discretion lenders have in considering those requests.

4. **Extension of time to rehire workers.** The Act extends the deadline for employers to restore wage and salary reductions and rehire workers in order to qualify for the loan forgiveness “safe harbors” from June 30, 2020, to December 31, 2020.

5. **Establishment of “safe harbor” for obligation to rehire workers.** Addressing another complaint from business owners (that many employees are rebuffing their requests to return to work), borrowers now have a safe harbor from loan forgiveness reductions even if FTEs have not been restored by December 31, 2020, provided the employer can (A) document “in good faith” that (i) they have been unable to rehire the FTE and (ii) have been unable to hire a similarly qualified employee for that unfilled position or (B) document that they have been unable to return to the level of business that existed prior to February 15, 2020, due to the limitations placed on the business by CDC and OSHA pertaining to COVID-19, such as sanitation, social distancing and worker and customer safety requirements.

6. **Extension of time until debt service payments are due.** The Act extends the time before payments of interest and principal are due on a PPP loan, from six months until the date the SBA pays the borrower’s loan forgiveness amount to its lender or ten months in the case of borrowers that do not make an application for PPP loan forgiveness.

7. **Deferral of payroll taxes.** The Act permits employers to delay payment of payroll taxes (social security taxes) even if they are planning to seek loan forgiveness.