

CARES Act: Small Business Loan Program Update

Insights

June 5, 2020

New Law Improves SBA's Paycheck Protection Program for Borrowers

On June 5, 2020, the President signed the bipartisan **Paycheck Protection Program Flexibility Act of 2020** (the "PPP Flexibility Act") into law. The new law amends the Small Business Act and the CARES Act to significantly modify the forgiveness and other provisions of the SBA's Paycheck Protection Program ("PPP"), including:

- Extending the program until December 31, 2020. However, subsequent statements made by the SBA and the Treasury Department (based on congressional intent inserted by the Senate into the Congressional Record) have clarified that, despite the statutory language extending the program, June 30, 2020 remains the last date on which a PPP loan application can be approved. Clients considering applying for a PPP loan should, therefore, do so well in advance of June 30.
- As of May 30, 2020, the SBA reported having approved \$510.2 billion of loans from the \$659.0 billion in total funds that Congress has appropriated to the program.
- Extending the "covered period" during which borrowers can use PPP proceeds for forgivable expenses from 8 weeks to 24 weeks following origination of the loan (but ending no later than December 31, 2020).
- Borrowers with loans outstanding before the enactment of the PPP Flexibility Act may still choose to have their covered period end 8 weeks following origination of their loans.

- Requiring PPP borrowers to use at least 60% of the loan proceeds on payroll costs in order to receive any loan forgiveness.
- Under current SBA guidance, borrowers that spend less than 75% of PPP proceeds on payroll costs during the covered period suffer a reduction in their forgiveness amount, and borrowers that knowingly use less than 75% of the loan proceeds on payroll costs may be subject to prosecution for fraud.
- Further SBA guidance is expected to clarify the extent to which the existing 75% thresholds will be modified or replaced by the new 60% threshold.
- Creating two new exemptions from the forgiveness reduction resulting from decreases in employee headcount for PPP borrowers, so long as the borrowers can document in good faith that they were:

1. Unable to:

- Rehire individuals who were employees of the borrower on February 15, 2020 and subsequently terminated; and
- Hire similarly qualified employees for unfilled positions before December 31, 2020.

OR

2. Unable to return to pre-pandemic levels of business activity due to compliance with certain federal requirements or guidance related to worker or customer safety in response to COVID-19.
- Extending the deferral of the loan repayment period on the non-forgiven portion of any PPP loans until the forgiveness determination is made and the forgiveness amount is remitted to the lender, provided that the borrower applies for forgiveness within 10 months following the end of the borrower's covered period.
 - For borrowers who choose not to apply for forgiveness, the repayment period for the PPP loan would not begin until ten months after the last day of the borrower's covered period.
 - Allowing borrowers that receive forgiveness of a PPP loan to also defer payroll taxes through the end of 2020 pursuant to Section 2302(a) of the CARES Act, which had been previously prohibited if a borrower obtained PPP loan forgiveness.
 - Increasing the repayment term from 2 years to 5 years for the non-forgiven portion of any PPP loan issued **after** enactment of the PPP Flexibility Act.

The passage of the PPP Flexibility Act will require significant updates to the SBA's recently released PPP forgiveness application and related guidance. Clients that have received a PPP loan should check with their Gunderson Dettmer attorneys before applying for forgiveness.

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