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Saving Our Small Businesses – Law Extends PPP Forgiveness Period and Loosens Other Restrictions

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On June 3, 2020, the US Senate passed the Paycheck Protection Program Flexibility Act of 2020 (the "Act"), which passed in the House last week and is expected to be signed into law by President Trump soon. The Act amends certain provisions of the Small Business Act and the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") to provide Paycheck Protection Program borrowers with greater flexibility to use these loans, maximize forgiveness of their loans and defer payroll taxes during certain periods.

Loan Forgiveness

1. Lowered Payroll Costs Threshold. The Act reduces the percentage of the loan that must be used for payroll costs in order to be eligible for 100% forgiveness from 75% to 60%. This will allow borrowers to spend a greater percentage of the loans on other covered expenses, such as rent, interest on mortgages, and utilities.¹
2. Extended Covered Period. As an alternative to the 8-week periods already in place to be eligible for loan forgiveness, the Act allows borrowers to use the loan proceeds over a period beginning on the date of origination of the loan and ending either (a) 24 weeks from such origination date or (b) on December 31, 2020, whichever is earlier.²
3. Extended Period to Rehire Employees. If a borrower has reduced its average number of full-time equivalent ("FTE") employees, the borrower now has until December 31, 2020 to fully restore its average number of FTE employees to the 2019 levels in order to obtain relief from a reduction in its loan forgiveness amount.³
4. Exemption from Required FTE Employee Restoration. A borrower that has reduced but not fully restored its average number of FTE employees may still be eligible for full loan forgiveness if the borrower can demonstrate that (i) by December 31, 2020, the borrower is unable to rehire or adequately replace any employees that were laid off on or after February 15, 2020, or (ii) the borrower is unable to return to the same level of business activity as it had prior to February 15, 2020 due to the borrower's compliance with official guidance related to standards of sanitation, social distancing, or any other COVID-19-related worker or customer safety requirements.⁴

Paycheck Protection Program "Covered Period" Extension

The "covered period" for which borrowers may use Paycheck Protection Program funds has been extended beyond its original end date of June 30, 2020 to December 31, 2020.⁵ Although borrowers now have longer to use the loan proceeds, new commitments for PPP loans are only available through June 30, 2020. Therefore, potential borrowers should apply well in advance of June 30, 2020 to ensure the loan may be disbursed prior to such date.

1 Paycheck Protection Program Flexibility Act of 2020, H.R. 7010, 116th Con. (2020).

2 See *id.* at § 3(b)(1).

3 See *id.* at § 3(b)(2)(A).

4 See *id.* at § 3(b)(2)(B).

5 See *id.* at § 3(a).



Deferment of Payroll Taxes

The Act eliminates the mutual exclusivity of the loan forgiveness program and employment tax deferral program established under the CARES Act. Therefore, a taxpayer whose loan has been forgiven under Sections 1102 or 1106 of the CARES Act may now also defer certain applicable employment taxes.⁶

Loan Deferment and Maturity

Payments on the unforgiven portion of a loan are now deferred until the forgiven portion of the loan is remitted to the lender.⁷ If a borrower fails to apply for loan forgiveness, payments on the loan are deferred until, at a minimum, 10 months after the last day of the borrower's covered period, extending the six month deferral established under prior regulations.⁸

For loans originated on or after the date the President signs the legislation, any amount outstanding after loan forgiveness is granted pursuant to the CARES Act now has a minimum maturity of five years and a maximum maturity of ten years from the date on which the borrower applies for loan forgiveness, increased from the two year maturity date established under prior regulations.⁹ However, other maturity terms may be mutually agreed upon between borrowers and lenders, even for loans originated prior to the date the President signs the legislation¹⁰

Borrowers and lenders should review their existing PPP loan documents (and third party consents to PPP loans) to consider whether any amendments are necessary to comply with the new requirements contained in the Act.

For more information on the deferment of employment taxes and other tax-related CARES Act guidance, please see [Locke Lord QuickStudy: UPDATE: CARES Act Guide: Overview of Key Business Tax Provisions](#).

Your regular Locke Lord contact and the authors of this article would be happy to help you navigate the CARES Act and the related amendments to the Small Business Act as they relate to the Paycheck Protection Program or otherwise.

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⁶ See *id.* at § 4(a).

⁷ See *id.* at § 3(c)(1)-(2).

⁸ See *id.* at § 3(c)(3).

⁹ See *id.* at § 2(a).

¹⁰ See *id.* at § 2(b).



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