

RELIEF FROM SOME PPP RESTRICTIONS

Hodgson Russ Banking & Finance Alert
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As small businesses received Paycheck Protection Program ("PPP") loans and began to consider the best way to maximize loan forgiveness, many argued the initial scope of forgiveness was too narrow to address the challenges they faced in these difficult times. Congress appears to have heard many of these borrowers' concerns, and on June 3 passed the Paycheck Protection Program Flexibility Act of 2020 (the "Act") to alleviate some of these issues. The President is expected to sign the Act into law in the coming days.

We previously published several alerts addressing the PPP, most recently explaining then-current PPP forgiveness guidance. While additional interpretive guidance will certainly follow from the Small Business Administration ("SBA"), the Act changes the PPP, and particularly the approach to forgiveness, in a number of significant and, for the most part, borrower-friendly ways. A summary of the existing PPP rules, together with the changes under the Act, are outlined as follows:

- **LOAN TERMS**

Original Rule: Loan maturity date of two years

New Rule: Loan maturity of a minimum of five years

- Applies to PPP loans made after the Act becomes effective
- For loans made before the Act becomes effective, the Act permits renegotiation of maturity

Original Rule: Deferral of principal and interest payments for six months from loan date

New Rule: Principal and interest payments are deferred until the date the lender receives the forgiveness amount from SBA.

- The Act is not clear on what happens to the deferral if no forgiveness is awarded
- If a borrower does not apply for forgiveness, loan payments will be due beginning ten months after the last day of the covered period for forgiveness expenses (more on that below)

- **LOAN FORGIVENESS**

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Original Rule: Forgivable expenses must be incurred or paid within eight weeks after the loan is funded.

New Rule: Forgivable expenses must be incurred or paid within a period ending on the earlier of (1) 24 weeks from the date the loan is funded or (2) December 31, 2020.

- Borrowers may still elect to use the 8 week period, helpful for those who have spent proceeds and are already in a position to apply for forgiveness

Original Rule: At least 75% of any amount forgiven must be attributable to payroll costs.

New Rule: To be eligible for forgiveness, at least 60% of loan proceeds must be spent on payroll costs

- As written, creates a “cliff”, which is a potential problem for unwary borrowers. For example, if 59% of loan proceeds are spent on payroll costs, the borrower could lose eligibility for forgiveness entirely
- Congress has indicated a cliff was not their intention, so stay tuned for additional guidance on this point from SBA.

Original Rule: If wage or headcount reductions taken between February 15 and April 26, 2020 are restored by June 30, 2020, forgiveness will not be reduced

New Rule: If wage or headcount reductions taken between February 15 and April 26, 2020 are restored by December 31, 2020, forgiveness will not be reduced

New Loan Forgiveness Reduction Exemption: Forgiveness will not be reduced if borrower experiences a loss of full time equivalent employees during the period February 15, 2020 to December 31, 2020, but is able to document:

1. An inability to rehire individuals who were employees of the borrower on February 15, 2020; and
2. An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020

or

The borrower was unable to return to the same level of business activity as in effect on February 15, 2020 due to compliance with COVID-19 safety requirements or guidance issued by Health and Human Services, the Centers for Disease Control, or Occupational Safety and Health Administration during the period March 1, 2020 to December 31, 2020.

• OTHER PROGRAMS

Original Rule: Borrowers who receive loan forgiveness are not eligible to take advantage of the CARES Act payroll tax deferral.

New Rule: The payroll tax deferral program is now available to PPP borrowers, including those who receive forgiveness of their loans.

PPP guidance continues to evolve daily. If you are considering applying for a PPP loan, or have received a loan, and would like to better understand SBA guidance on forgiveness or any other facet of the program, please contact Chris Fattey (716.848.1757) or Valerie Stevens (646.218.7614).

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Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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