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Chapman Client Alert

June 10, 2020 Current Issues Relevant to Our Clients

Paycheck Protection Program Flexibility Act of 2020: Changes to the PPP Ahead of Its June 30 Termination Date

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020[1] (PPPFA) was signed into law and made key changes to the Paycheck Protection Program (PPP) just a few weeks before the program's official termination on June 30, 2020. The Small Business Administration (SBA) has committed to releasing rules and guidance, including an updated borrower application form and loan forgiveness application, to implement these changes, which are briefly summarized below.

Loan Maturity Extended

PPP loans approved on or after June 5, 2020, will have a minimum five-year maturity, instead of the previous two-year maturity established by the SBA. While the PPPFA does not automatically extend the maturity of PPP loans originated before June 5, 2020, lenders and borrowers may mutually agree to modify the maturity of existing PPP loans consistent with the PPPFA.

Payment Deferral Extended

Originally, all payments on a PPP loan were deferred for six months after the loan's disbursement. The PPPFA extends that deferral period to the date on which the SBA remits the loan forgiveness amount to the applicable lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's "covered period").

Time to Use Loan Proceeds Extended

Borrowers originally had eight weeks in which to use their PPP loan proceeds and qualify for loan forgiveness, their so-called "covered period." Under the PPPFA, the covered period during which to use PPP loan proceeds is now 24 weeks from the loan's disbursement. Borrowers who have already received PPP loans still have the option to use an eight-week covered period. Until the SBA's revised guidance is available, it remains unclear whether, but possible that, borrowers who elect the 24-week covered period will need to comply with the requirements to maintain employment and salary/wage levels throughout the entire covered period.

Amount of Loan Proceeds Required to be Spent on Payroll Expenses Reduced

Borrowers used to qualify for full loan forgiveness if at least 75% of their PPP loan proceeds were used for payroll expenses. The PPPFA reduced that percentage to 60%. If a borrower uses less than 60% of the PPP loan proceeds for payroll expenses, the borrower may still be eligible for partial loan forgiveness.

Safe Harbor Date to Rehire Employees and Restore Wages Extended

The PPP's safe harbor allows a PPP borrower to avoid having its loan forgiveness amount reduced even if the borrower has reduced employment or salary/wage levels after February 15, 2020. Under the original safe harbor, if a borrower restores those levels by June 30, 2020, its loan forgiveness amount will not be reduced. The PPPFA extends that date to December 31, 2020.

1 Pub. L. No. 116-142, *available at* https://www.congress.gov/bill/116th-congress/house-bill/7010/text

Rehiring Safe Harbor Expanded

The PPPFA adds categories to the safe harbor to protect a borrower that is both unable to rehire individuals who were employees of the borrower on February 15, 2020, and unable to hire similarly qualified employees for unfilled positions by December 31, 2020. It also protects a borrower from loan forgiveness reductions when the borrower is unable to return to its pre-February 15, 2020, level of business activity due to COVID-19-related worker or customer safety requirements.

For More Information

If you would like further information concerning the matters discussed in this article, please contact the Chapman attorney with whom you regularly work.

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