

Paycheck Protection Program Flexibility Act (“PPPFA”)

June 5, 2020

Extension of Covered Period

The PPPFA extended the deadline in which the Small Business Administration can issue PPP loans and in which borrowers must use PPP loan proceeds to December 31, 2020. The initial deadline was June 30, 2020.

The PPPFA also extended the time frame in which PPP loan proceeds must be used in order for the loan principal to be eligible for forgiveness. Originally, a borrower had eight (8) weeks from receiving the PPP loan to exhaust the loan proceeds. The new time frame starts on the date the PPP loan is disbursed to the borrower and ends *the earlier of* twenty four (24) weeks after the disbursement of the loan, or December 31, 2020.

Employers that received a PPP loan before June 5, 2020, may still elect to keep the original eight-week period for exhausting the loan proceeds when applying for loan forgiveness.

Extension of Period to Rehire Employees and Reinstate Salary and Wages

Generally, the maximum amount of loan forgiveness is reduced based on the Employer’s reduction of employees or the Employer’s reduction in salaries or wages. For employees who earned \$100,000 or less in 2019, the Employer’s loan forgiveness would be reduced for each employee whose average pay (salary or hourly wage) *during the eight-week “covered period”* is less than 75% of their average pay from January 1 to March 31, 2020. The amount of the reduction in loan forgiveness is based on the amount of each employee’s reduction in pay. With respect to the reduction of employees, the Employer’s loan forgiveness would be reduced if the average number of weekly full-time equivalent employees (FTEs) *during the eight-week “covered period”* is less than the average number of FTEs during the Employer’s chosen reference period. Employers can choose between the following reference periods: (I) February 15 to June 30, 2019, or (ii) January 1 to February 29, 2020. The PPPFA extended the eight-week “covered period” used to calculate any reduction in the amount of loan forgiveness. The new time frame starts on the date the PPP loan is disbursed to the borrower and ends *the earlier of* twenty four (24) weeks after the disbursement of the loan, or December 31, 2020.

The PPPFA also extended the deadline to December 31, 2020 for Employers to satisfy the PPP Loan Forgiveness Exemption, which guarantees an Employer 100% forgiveness of loan principal if the Employer fully eliminates any reduction in FTE employees and fully eliminates any reduction in salary or wages. The Exemption’s initial deadline for eliminating any reduction in employee headcount or wages was June 30, 2020.

Furthermore, the PPPFA created a safe harbor for Employers who were unable to fully eliminate

the reduction in employee headcount by December 31, 2020. To satisfy the safe harbor, the Employer, in good faith, must be able to document either of the following:

an inability to rehire employees who were employees on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020;

or

an inability to return to the same level of business activity as it was before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers of Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning March 1, 2020 and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirements related to COVID-19.

Again, Employers that received a PPP loan before June 5, 2020, may still elect to keep the original eight-week period when applying for loan forgiveness.

Limitation on Use of Loan Proceeds

The PPPFA relaxed the 75/25 percent ratio in which an Employer must use the PPP loan proceeds to be eligible for maximum loan forgiveness to 60% payroll costs and 40% non-payroll costs.

Minimum Maturity of 5 Years for Covered Loans

The PPPFA creates a minimum maturity of 5 years for a PPP loan that has a remaining balance after loan forgiveness reductions are applied. Previously, the CARES Act only set a 10 year maximum maturity period; it did not set a minimum maturity period. This new provision will apply to any PPP loan made on or after June 5, 2020.