

### **PPP Update: Paycheck Protection Program Flexibility Act**

Congress has recently passed the Paycheck Protection Program Flexibility Act of 2020 (the “Act”). It is anticipated that the President will sign the bill, at which point it will become law. This Act makes several important changes to the Paycheck Protection Program (the “PPP”). A summary of the changes has been provided below:

1. PPP loan maturity has been updated to 5 years for loans that have outstanding balances after the borrower has applied for forgiveness, compared to the 2 years previously set by the Small Business Administration (the “SBA”). Loan maturity needs to be mutually agreed upon with the lender.
2. The covered period has been extended, and borrowers may elect to apply PPP loan proceeds to covered expenses (payroll costs, utilities, rent, and interest expense) for up to 24 weeks after disbursement of the loan proceeds, compared to the 8 weeks under previous law.
3. FTEE and Wage Reduction Safe Harbors: The Act extends the deadline for reestablishing workforce, based on either a reduction in FTEE count or wages, and borrowers now have until December 31, 2020 to reestablish their workforce to avoid a reduction in forgiveness based on workforce reduction. Previously, borrowers were required to reestablish their workforce by June 30, 2020 to avoid a reduction in forgiveness based on workforce reduction.
4. The test for determining a reduction in forgiveness based on FTEE has been updated to provide an exemption based on employee availability. For reductions in FTEE count made between February 15, 2020 and December 31, 2020, the amount of forgiveness will not be reduced if a borrower makes a good faith certification that:
  - a. The borrower is unable to rehire employees who were employed on February 15, 2020 and is also unable to hire similarly qualified employees for those unfilled positions by December 31, 2020; OR
  - b. The borrower is unable to return to the same level of business activity that the borrower was operating at before February 15, 2020 due to compliance with requirements established or guidance related the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19 issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupation Safety and Health Administration between March 1, 2020 and December 31, 2020.
5. The Act reduces the amount of the PPP loan proceeds that must be applied to payroll costs to 60%, down from 75%. Borrowers are now permitted to use up to 40% of the

loan proceeds for rent, utilities, and interest expenses without impacting eligibility for forgiveness.

6. Payments of principal, interest, and fees on any PPP loan balances that are outstanding after a borrower has applied for forgiveness are deferred until the forgiveness application is remitted to the lender from the SBA.
7. If a borrower does not apply for loan forgiveness within 10 months of the last day of the covered period, payments of principal, interest, and fees will start on the date that is 10 months from the last day of the covered period.
8. Borrowers who have PPP loan forgiveness may now also delay payment of their payroll taxes under Section 2302(a) of the CARES Act. This was previously prohibited.

It is anticipated that additional guidance will be issued by the SBA to clarify how the Paycheck Protection Program Flexibility Act of 2020 will impact applications for forgiveness, and other key aspects of the PPP. We encourage all PPP borrowers to monitor for updated guidance from the SBA. The attorneys at Rembolt Ludtke are working diligently to ensure that our clients are informed and up to date on the resources available to them in response to the coronavirus pandemic. Please reach out to one of our attorneys if you have any questions whatsoever.