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CLIENT ALERT

New Interim Final Rule Clarifies Key Changes in Paycheck Protection Program

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On June 11, 2020, the Small Business Administration (SBA) posted a new interim final rule (the IFR) which clarifies certain key changes made to the Paycheck Protection Program (PPP) by the Paycheck Protection Program Flexibility Act of 2020 (Act). We addressed in a previous alert how the Act, signed into law on June 5, 2020, made important changes to many aspects of the PPP, including extending the minimum maturity period, extending the forgiveness period, reducing the payroll cost limitation on forgiveness, adding exemptions to employee rehiring requirements, revising the loan deferral period, and lifting the CARES Act's prohibition on payroll tax deferral. The IFR largely implements the Act as written with the SBA providing further clarity in the IFR on two key changes.

First, the SBA clarified the Act's reduction in payroll cost limitation on forgiveness from 75% to 60%. The Act provided that to receive full loan forgiveness, a PPP loan recipient must use at least 60% of the covered loan amount for payroll costs and may use up to 40% of such amount for expenses allowed under the CARES Act. While the Act originally appeared to create a threshold requirement that eliminated any forgiveness if the 60% threshold is not met, the IFR has clarified that the 60% requirement is a proportional limit on non-payroll costs as a share of the borrower's loan forgiveness amount, rather than as a threshold for receiving any loan forgiveness. By way of example, the IFR provides that if a borrower receives a $100,000 PPP loan, and during the covered period the borrower spends $54,000 (or 54%) of its loan on payroll costs, then because the borrower used less than 60% of its loan on payroll costs, the maximum amount of loan forgiveness the borrower may receive is $90,000, with $54,000 in payroll costs constituting 60% of the forgiveness amount and $36,000 in non-payroll costs constituting 40% of the forgiveness amount.

Second, the SBA provided additional guidance on the Act's revision to the loan deferral period. The IFR provides that if a borrower submits a loan forgiveness application within 10 months after the end of its loan forgiveness covered period, it will not have to make any payments of principal or interest on its loan before the date on which SBA remits the loan forgiveness amount on such loan to the lender or notifies the lender that no loan forgiveness is allowed. The "loan forgiveness covered period" is the 24-week period beginning on the date the PPP loan was disbursed. If the PPP loan was made before June 5, 2020, the borrower may elect to have its loan forgiveness covered period be the eight week period beginning on the date its PPP loan was disbursed. Lenders are required to notify borrowers of the remittance by the SBA of the loan forgiveness amount or the SBA determination that no loan forgiveness is allowed and the date its first payment is due. Interest continues to accrue during the deferment period. The loan deferral period for those PPP loan recipients who do not apply for forgiveness is 10 months after the applicable forgiveness period ends.

In the IFR, the SBA commits to issue further revisions to its interim final rules on loan forgiveness and loan review procedures to address amendments the Act made to the loan forgiveness requirements. The SBA has issued a revised PPP loan application form, which includes updates to certifications concerning loan forgiveness to align with the IFR and the Act. We anticipate that the SBA will be issuing a revised forgiveness application as well to align with the IFR and the Act. Crowell & Moring will continue to monitor and provide updates regarding developments in the PPP.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Mana Elihu Lombardo
Partner – Los Angeles
Phone: +1 213.443.5563
Email: melombardo@crowell.com

Stephanie Marcantonio
Partner – New York
Phone: +1 212.895.4305
Email: smarcantonio@crowell.com

Amy Laderberg O'Sullivan
Partner – Washington, D.C.
Phone: +1 202.624.2563
Email: aosullivan@crowell.com

Paul J. Pollock
Partner – New York
Phone: +1 212.895.4216
Email: ppollock@crowell.com

Olivia Lynch
Counsel – Washington, D.C.
Phone: +1 202.624.2654
Email: olynch@crowell.com