

CLIENT ALERT

President Signs New Paycheck Protection Program Changes into Law Offering Greater Flexibility

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On June 5, 2020, President Trump signed the [Paycheck Protection Program Flexibility Act of 2020](#), which makes the following key changes to the Paycheck Protection Program:

1. Extends Maturity Period from 2 to 5 Years

For any loan made on or after June 5, 2020, the minimum maturity for loans that are not completely forgiven has been increased from two to a minimum of five years. While this does not automatically change the maturity for PPP loans already made, the Act notes that none of the relevant statutes will be construed to prohibit lenders and borrowers from mutually agreeing to modify the maturity terms.

2. Extends Forgiveness Period from 8 up to 24 Weeks

The Act extends the period of forgiveness from eight to up to twenty-four weeks. Now for any PPP loan, the forgiveness period is defined as the period beginning on the date of the loan origination and ending the earlier of 24 weeks later or December 31, 2020. But, the Act allows those recipients whose PPP loans were made before June 5, 2020 to elect to use the eight-week period of forgiveness.

3. Reduces Payroll Cost Limitation on Forgiveness from 75% to 60%

The Act changes the amount of the loan that the Small Business Administration had determined must be used for payroll costs, providing that a PPP loan recipient must use at least 60 percent of the covered loan amount for payroll costs and may use up to 40 percent of such amount for expenses allowed under the CARES Act (e.g., payment of mortgage interest, rent, and utility payments). The Act eliminates any forgiveness if the 60% threshold is not met.

4. Adds Exemptions to Employee Rehiring Requirement

The Act adds two exemptions to the forgiveness reduction penalties. It provides that the forgivable amount will be determined without regard to a reduction in the number of employees if the recipient, in good faith, is able to document that it is (1) unable to rehire former employees and/or is unable to hire similarly qualified employees for unfilled positions by December 31, 2020, or (2) unable to return to the same level of business activity due to compliance with certain federal requirements or guidance related to COVID-19.

5. Revision of Loan Deferral Period

The Act allows recipients to defer payments of principal, interest, and fees until the amount of forgiveness is determined and remitted to the lender. The loan deferral period for those PPP loan recipients who do not apply for forgiveness is 10 months after the applicable forgiveness period ends.

6. Lifts Prohibition on Payroll Tax Deferral

The CARES Act delayed payment of employer payroll taxes for all but PPP loan recipients who received forgiveness. The Paycheck Protection Program Flexibility Act lifts this ban.

Although the PPP Loan Forgiveness Application (the Application) posted by the SBA on May 16, 2020 is still available on the SBA website and could still be used by a borrower that decides to continue to use the 8 week covered period, the Application is inconsistent with the new legislation. We anticipate the Application will be updated to reflect the above referenced changes. 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

Olivia Lynch

Partner – Washington, D.C.
Phone: +1 202.624.2654
Email: olynch@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

W. Scott Douglas

Senior Policy Director – Washington, D.C.
Phone: +1 202.508.8944
Email: sdouglas@crowell.com