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PPP Changes Signed Into Law, June 30 Application Deadline Still in Place

On June 5, 2020, the Paycheck Protection Program Flexibility Act of 2020 (Act) was signed into law. The Act made a number of notable changes to the Paycheck Protection Program (PPP).

Below is a summary of key points for current and prospective PPP borrowers.

Current Borrowers

For current borrowers, the Act:

- *Imposes New Payroll Cost Requirement for Forgiveness:* The Act imposes a new requirement that borrowers use at least 60 percent of the PPP loan amount for payroll costs in order to receive loan forgiveness. This means that no more than 40 percent of the PPP loan amount may be used on non-payroll costs such as rent, utility and mortgage interest expenses.
  - On June 8, 2020, in a joint statement by U.S. Small Business Administration (SBA) Administrator Jovita Carranza and U.S. Treasury Secretary Steven T. Mnuchin, the SBA and Treasury Department stated that they will interpret the Act as continuing to allow for partial forgiveness of PPP loans even if the borrower does not use at least 60 percent of the PPP loan amount for payroll costs. In an interim final rule released on June 11, 2020, the SBA indicated where a borrower falls short of the 60 percent threshold, the SBA will simply cap loan forgiveness as if the borrower had spent 60 percent on payroll costs based on what they actually spent on qualifying payroll costs. For example, if a borrower had a $500,000 PPP loan, but only spent $200,000 on qualifying payroll costs, the SBA would cap the borrower's possible loan forgiveness at $333,333 (60 percent of $333,333 is $200,000).
- *Gives Option to Extend Forgiveness Period:* The Act gives Borrowers who have already received PPP loans the option to use a longer period for determining forgiveness eligible expenses. This longer period will be from the date of the first PPP loan disbursement to the earlier of (1) the date which is 24 weeks after the date of the first PPP loan disbursement; or (2) December 31, 2020. Borrowers who have received PPP loans prior to the date of the enactment of the Act who wish to keep the current eight- week forgiveness period may do so.
- *Pushes Back Salary/Wage Reduction and FTE Reduction "Safe Harbors":* The Act changes the relevant dates for determining whether a borrower qualifies for a

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"safe harbor" exception to salary/wage reductions or full-time equivalent (FTE) reductions to loan forgiveness which would otherwise apply. Generally speaking, a borrower qualifies for one of these safe harbors by eliminating salary/wage reductions with respect to certain employees or FTE reductions with respect to the borrower's business by a particular date. Under the Act, eligibility for these safe harbors will be determined on December 31, 2020, rather than on June 30, 2020 (as was previously the case). This gives borrowers more time to restore salary/wages or FTE levels, but means that borrowers who were hoping to avail themselves of these safe harbors must re-evaluate whether they will qualify.

- *Changes Payment Deferrals:* Under the Act, all PPP borrowers will not be required to make any payments of principal or interest on their PPP loan until the date that the amount of loan forgiveness under the loan is remitted to the lender. Given that lenders have up to 60 days to review PPP loan forgiveness applications and the SBA has a further 90 days to review the lender's decisions, this change could extend the payment deferral period for many borrowers. Previously, the PPP loan terms included a six-month deferral of payments. If a borrower does not apply for PPP loan forgiveness by the date which is 10 months from the date of the end of the borrower's applicable period for determining forgiveness eligible expenses, the Act specifies that the borrower will have to begin making payments of principal, interest and fees.

- *Provides Additional Forgiveness Relief:* The Act provides that borrowers' loan forgiveness will be determined without regard to an FTE reduction if the borrower is able to document either (1) an inability to rehire employees who were employed as of February 15, 2020, and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or (2) an inability to return to the same level of business activity as before February 15, 2020, due to compliance with requirements or guidelines established by the CDC, HHS or OSHA during the period between March 1, 2020 to December 31, 2020, related to sanitation, social distancing or any other worker or customer safety requirement related to COVID-19. We will monitor how the SBA will integrate this forgiveness relief into its existing PPP forgiveness application and what documentation the SBA determines is necessary under the Act for this relief.

- *Allows for Employer Payroll Tax Deferral:* The Act also allows PPP borrowers to avail themselves of the deferral of the employer's share of payroll taxes under the CARES Act, notwithstanding the borrower's receipt of PPP loan forgiveness.

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Previously, a PPP borrower was ineligible for the CARES Act payroll tax deferral after receipt of a decision from the lender that the PPP loan was forgiven.

Prospective Borrowers

For prospective borrowers, the Act:

- *Extends Minimum Length of Loans:* The Act imposes a minimum maturity date of five years and a maximum maturity date of 10 years for PPP loans. The SBA previously fixed the maturity date of all PPP loans at two years. This will only apply to PPP loans made on or after the date of enactment of the Act, but the Act specifically states that current borrowers and their lenders may agree to modify the maturity terms of existing PPP loans to match these new maturity terms.
- *Does* Not *Extend Period Where PPP Loans May Be Obtained:* While it initially appeared that the Act may extend the period where PPP loans could be obtained to December 31, 2020, in the June 8, 2020 Joint Statement and the June 11, 2020 interim final rule, the SBA and Treasury Department indicated this date will not change pursuant to the Act. *PPP loans will still only be available until June 30, 2020.*

We will continue to monitor further developments and guidance on PPP loans, including PPP loan forgiveness. If you have any questions regarding any aspect of your PPP loan, please reach out to your Reinhart attorney.

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