



COMPLIANCE ALERT

PPP CHANGES WITH PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT *written by, Suzanne D'Amato, Esq*

The Paycheck Protection Program Flexibility Act (PPPFA), signed into law on June 5th, makes significant changes to the Paycheck Protection Program (PPP) affecting both new and existing loans, including reducing the amount of loan proceeds that must be spent on payroll costs. Employers who have received, or are in the process of applying for, a PPP loan should consult with their lender to understand the PPPFA's impact on their loan.

The PPP Flexibility Act provides borrowers with flexibility by making the following changes:

- Extending the date by which borrowers are required to rehire employees to be eligible for full forgiveness from June 30 to December 31, 2020.
- Expanding the "covered period" during which borrowers must spend PPP loan proceeds from 8 to the earlier of 24 weeks or December 31, 2020, although borrowers who obtained a loan prior to enactment of PPPFA may elect for the covered period to end after 8 weeks.
- The minimum loan maturity is now 5 years, increased from the 2-year maturity term implemented by the SBA and Treasury.
- The loan payment deferral period is extended from 6 months to 10 months.

The PPP Flexibility Act also changes the PPP significantly by reducing the requirement that 75% of the loan proceeds be used on payroll costs. Now, only 60% will need to be used for payroll costs. But be careful – meeting the 60% threshold is now a requirement for obtaining any loan forgiveness, whereas the SBA under the original PPP allowed for reduced forgiveness if the 75% threshold was not met. Under the PPPFA, borrowers who fail to meet the 60% threshold will be deemed ineligible for loan forgiveness.

Prior to enactment of the PPP Flexibility Act, a PPP borrower had until June 30, 2020 to eliminate a reduction in headcount, salary and wages that would otherwise reduce the forgivable amount. The PPP Flexibility Act extends this safe harbor period to December 31, 2020. In addition, the PPPFA provides that borrowers will not experience a reduction in their forgiveness amount due to a decline in FTE count if the borrower can document (a) an inability to rehire employees who had been employed on February 15, 2020, and an inability to hire similarly qualified employees for unfilled positions by December 31, 2020; or (b) an inability to return to the same level of business activity at which the borrower was operating before February 15, 2020 due to compliance with federal requirements or guidance relating to standards of sanitation, social distancing, or other worker or customer safety requirements due to COVID-19.

The PPPFA applies retroactively to any PPP loan already made. There are many questions that will need to be resolved by the SBA and Treasury, such as how the PPPFA affects borrowers who have already finished their 8-week period, as well as those borrowers that have already rehired employees based upon the June 30th deadline. Borrowers should work closely with their lenders to understand how the PPP Flexibility Act affects their loan.