COVID-19

PPP Update: Everything Changes

The CARES Act was signed into law on March 27, 2020. Since that date, potential borrowers under the Paycheck Protection Program ("PPP"), their legal, financial and accounting advisers, and, seemingly the federal government, have struggled to figure out what the rules of the PPP are, and what the language of the CARES Act, various interim final rules, frequently asked questions and other guidance documents issued by the SBA and the Treasury Department mean.

Much of that changed last Friday with the passage of the Paycheck Protection Program Flexibility Act of 2020 (the "PPPFA"). The PPPFA amends many of the rules found in the original or subsequent guidance, with a focus on making complete loan forgiveness available to more small business borrowers, matching the use of PPP funds to a return to business more aligned to time frames implemented in the states, and addressing limitations on the use of the PPP loan proceeds.

Highlights include:

- Extending the time period during which loan proceeds must be spent to qualify for forgiveness, from 8 weeks to 24 weeks following disbursement of the loan. Existing borrowers may elect either the 8-week or 24-week period, but all forgiveness periods must end by December 31, 2020.

- Reducing the percentage of loan proceeds that must be spent on Eligible Payroll Costs (as opposed to other authorized expenses) from 75% to 60%, but introducing a new requirement that no loan forgiveness will be given if the borrower does not spend at least 60% of loan proceeds on Eligible Payroll Costs during the forgiveness period. The borrower is now permitted to spend up to 40% of loan proceeds on other forgivable items such as rent, utilities and certain mortgage interest.

- Changing the safe harbor deadline to rehire laid-off workers to restore Full Time Employee ("FTE") headcount and/or wages to its February 15, 2020 levels, from June 30, 2020 to December 31, 2020.

- Moving the deadline to file an application for loan forgiveness from October 31, 2020 to the date which is 10 months from the last day of the forgiveness period.

- Changing the deferral of principal and interest payments from 6 months following loan disbursement to the date on which the lender receives payment of the forgiveness amount from the federal government.

- Changing the maturity date (for new loans only) from two years following the disbursement date to five years following the disbursement date, for PPP loans that are not forgiven. Borrowers and lenders may mutually agree to modify existing loans from the original two-year maturity date to a new five-year maturity date.

- The CARES Act's reduction of the amount of loan forgiveness based on proportional reduction of employee headcount is waived if the borrower, in good faith, is able to document either (A) an inability to rehire individuals who were employees on February 15, 2020; and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or (B) an inability to return to the same level of business activity as such business was operating at before February 15, 2020, because of compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to COVID-19 maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement.

- In addition to the other relief it provides, the PPPFA also makes an important change which allows borrowers to take advantage of the CARES Act Section 2302 provision which allows deferral of an employer's payroll taxes for Social Security. Originally, the CARES Act specifically prohibited a borrower which received loan forgiveness from claiming this deferral on the forgivable portion of the loan. The choice of one form of relief or the other had been an important consideration for many would-be borrowers.

As with all things relating to the Paycheck Protection Program, the landscape and interpretation of these provisions is ever-changing. Munsch Hardt has studied the PPPFA in depth and is ready to assist you in navigating the application, compliance and forgiveness processes. For more help, please contact any of the authors below.

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