



## Tax Alert 6/5/20- Paycheck Protection Program Flexibility Act

Today the president signed legislation that modifies the Paycheck Protection Program (PPP) retroactively to the date of the passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The key provisions of the bill are as follows:

- **Covered period:** The Act extends the covered period from an **eight-week period to 24 weeks** or until the end of the year, whichever comes first. This gives the borrower additional time to spend the funds on covered expenses. However, this also means that the borrower is subject to the full-time employee (FTE) and wage reduction rules for 24 weeks.

Borrowers with loans already in place can elect to keep the eight-week covered period. This may make sense for borrowers who have already spent the loan on covered amounts and expect all or most of it to be forgiven. Also, electing the eight-week covered period should facilitate getting closure and certainty of forgiveness before the end of calendar year 2020.

- **Payroll percentage:** A significant concern with use of loan proceeds was the Treasury's added requirement that at least 75% of the PPP loan be spent on payroll costs. **The Act has reduced that percentage to 60% for all PPP loans.**

However, this change also includes a "cliff" requirement in that if the amount spent on payroll costs is less than 60%, then none of the PPP loan is forgiven. Senate Small Business and Entrepreneurship Chair Marco Rubio sought guidance last week from the Treasury on whether that issue can be addressed through regulation. The Treasury and the Small Business Administration (SBA) haven't responded to requests for comment.

- **FTE/wages reduction:** If FTE headcount or wages are reduced during the covered period, the amount of PPP loan eligible for loan forgiveness is reduced. Under the CARES Act, this reduction was set aside if the FTE and wages were restored by June 30<sup>th</sup>. Due to the longer shelter-in-place/safer-at-home periods, businesses said it would not be possible to meet those provisions by June 30<sup>th</sup>. The Act extends that date to December 31, 2020, giving businesses additional time to restore headcount and wages to pre-February 15<sup>th</sup> levels.

In addition, the forgivable amount can now be determined without regard to a

reduction in the number of FTEs if the borrower is able to document it is: 1) unable to rehire individuals who were employees on February 15, 2020, and also is unable to hire similarly qualified employees on or before December 31, 2020, or 2) unable to return to a pre February 15<sup>th</sup> level of business activity due to compliance with federal requirements or guidance related to COVID-19.

· **Deferral period:** The Act revises the deferral period for paycheck protection loans, allowing borrowers to defer payments until the SBA has remitted the loan principal to the lender. This removes the potential situation where borrowers would have to start making loan payments prior to the end of the expanded 24-week covered period. **Borrowers must apply for loan forgiveness within 10 months of the program's expiration date, or loan amortization on the full outstanding balance will commence.**

For loans entered after enactment of this Act, businesses have a **minimum of five years, instead of two years**, to amortize any balance due on a loan. The bill provides that there is nothing prohibiting lenders and borrowers from mutually agreeing to modify the maturity date of existing PPP loans.

· **Employer-share of FICA tax payments:** The Act amends the CARES Act to permit all borrowers to defer the employer-share of FICA tax payments for periods through December 31, 2020, even if a notice of forgiveness of some or all of the loan is received prior to that date. This obsoletes the IRS's Notice 2020-32 that required deferral to cease upon receipt of any such notice.

Repayment terms for amounts deferred continue to be owed on the terms and conditions of the CARES Act. The requirement to pay 50% of the deferral at December 31, 2021, and December 31, 2022, remains the unchanged.

If you have any questions concerning the loan forgiveness application and would like our assistance please contact us at [info@cflgcpa.com](mailto:info@cflgcpa.com).

Email Us

