

Additional Clarification of Paycheck Protection Program Changes

The Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act), which became law on June 5, made significant changes in the Paycheck Protection Program (PPP). Cozen O'Connor's June 5 Alert provided a summary and analysis of the changes and noted that changes in SBA rules and forms are necessary to implement the Flexibility Act. On June 8, the Small Business Administration and Department of the Treasury issued a joint statement concerning these changes. The changes mostly confirm the Flexibility Act's provisions, and they offer one significant clarification, which was anticipated in our alert.

Covered Period Extension

The covered period for loan forgiveness will be extended from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement. Borrowers who have already received PPP loans retain the option to use an eight-week covered period.

Unless changed by the SBA through further rulemaking, it appears that salary reduction and FTE adjustments will be applied based on the entirety of whatever covered period a borrower elects. Presumably, the cash compensation cap for the 24-week covered period will be \$46,154, compared to \$15,385 for the eight-week covered period. These amounts equal \$100,000 divided by 52 and multiplied by the number of weeks in the covered period.

Use of Proceeds

The requirements that 75 percent of a borrower's loan proceeds must be used for payroll costs and that 75 percent of the loan forgiveness amount must have been spent on payroll costs during the 24-week loan forgiveness covered period will be lowered to 60 percent for each of these requirements.

As noted in our June 5 Alert, the Flexibility Act could be interpreted to require 60 percent of total proceeds to be spent on payroll in order for any of the loan to be forgiven. The SBA has previously interpreted its 75 percent requirement to apply only to forgiveness, rather than to the entire loan. Fortunately, the joint statement indicates that the same interpretation will be used for the 60 percent requirement. Thus, if a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.

FTE Adjustment Safe Harbor

A safe harbor will be provided from reductions in loan forgiveness based on reductions in full-time equivalent employees for borrowers that are unable to return to the same level of business activity the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued between March 1, 2020, and December 31, 2020, 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, related to worker or customer safety requirements related to COVID-19.

Inability to Hire Safe Harbor

A safe harbor will be provided from reductions in loan forgiveness based on reductions in full-time equivalent employees, for borrowers that are both unable to rehire individuals who were employees of the borrower on February 15, 2020, and unable to hire similarly qualified employees for unfilled



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positions by December 31, 2020.

Five-Year Maturity

The maturity of PPP loans will increase to five years. This extension will apply to all loans for which the SBA assigns a loan number on or after June 5, 2020. The statement does not call for any change in the interest rate on loans, which is currently set at 1 percent, in spite of the extension of the maturity date from two to five years.

Extension of Deferral Period

The deferral period for borrower payments of principal, interest, and fees on PPP loans will be extended to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period).

No Extension of PPP

The new rules will provide that June 30, 2020, is the last date on which a PPP loan application can be approved. Thus, businesses that have not yet received PPP loans and wish to take advantage of the program's new flexibility need to move quickly.

No Other Changes

Other aspects of PPP, such as need, size requirements and affiliation rules, other eligibility limitations, and permitted types of expenditures, remain unchanged. Borrowers and prospective borrowers should look to existing SBA guidance on those matters. Previous Cozen O'Connor PPP Alerts are [available here](#), including summaries and analyses of that guidance.
