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2020 COVID-19 Guidance

2020 COVID-19 News

Payroll Update

President Signs Paycheck Protection Program Flexibility Act, Payroll Update (06/08/2020)

President Signs Paycheck Protection Program Flexibility Act

On June 5, 2020, President Trump signed the Paycheck Protection Program **Flexibility (PPPF) Act (H.R. 7010)** into law, which provides more loan **flexibility** for participants in the Paycheck Protection Program (PPP), including allowing those participants to defer the payment of certain payroll taxes that the Coronavirus Aid, Relief and Economic Security (CARES) **Act (PL 116-136)** prevented them from deferring.

PPP loans. The CARES **Act** authorizes the Small Business Administration (SBA) to make loans to qualified businesses under certain circumstances. The provision established the PPP, which provides up to eight weeks of cash-flow assistance through 100% federally guaranteed loans to eligible recipients to maintain payroll during the coronavirus (COVID-19) pandemic and to cover certain other expenses.

If the loan recipient maintains full-time staffing and wage levels, up to 100% of the loan is forgivable by the SBA if the loan proceeds are used to cover the first eight weeks of payroll, rent, mortgage interest, or utilities following loan origination. No more than 25% of the forgiven amount may be for non-payroll costs. If full-time staffing is decreased or wages are reduced by more than 25%, the level of forgiveness is reduced (see Payroll Guide ¶20,913).

Payroll tax deposit deferral and exception. The CARES **Act** also allows for employers to defer the payment of certain payroll taxes (50% of the payment until the end of 2021 and the other 50% until the end of 2022). However, a CARES **Act** exception stopped employers that received a loan under the SBA **Act**, as provided in the PPP, from participating in the deferral of the payment of certain payroll taxes (see Payroll Guide ¶20,908).

PPPF legislation. The PPPF **Act** modifies provisions related to the forgiveness of loans made to small businesses under the PPP implemented in response to COVID-19. Specifically, it eliminates the CARES **Act** exception that stopped PPP loan recipients from also deferring the payment of certain payroll taxes. As a result, employers that took a PPP loan can now also defer the payment of certain payroll taxes.

Also, the PPF: (1) increases the period of time to use loan proceeds from eight weeks to 24 weeks; (2) lowers the percentage that loan proceeds must be used on payroll costs from 75% to 60%, thereby increasing the percentage that may be used for nonpayroll costs such as rent, mortgage interest and utilities from 25% to 40%; (3) allows borrowers to restore full-time employment and salary levels by December 31, 2020 (currently, June 30, 2020) for loan forgiveness eligibility; and (4) amends the loan deferral from six months to "until the date on which the amount of forgiveness determined under Section 1106 of the CARES **Act** is remitted to the lender."

In addition, the PPPF provides an exemption from reduction in forgiveness if: (1) the borrower can document that employees on February 15, 2020 could not be rehired and similarly qualified employees were not available for the unfilled positions on or before December 31, 2020; or (2) the borrower can document that it could not return to the same level of business activity as February 15, 2020 due to compliance of COVID-19 health requirements as directed by Department of Health and Human Services, Centers for Disease Control and Prevention or Occupational Safety and Health Administration.

Finally, the PPPF also provides that borrowers who fail to apply for forgiveness within 10 months after the last day of the covered period (the earlier of 24 weeks or December 31, 2020) must make loan repayments of principal, interest, and fees beginning on the date that is 10 months after the covered period.

Effective date. The amendments in the PPPF are to be effective as if there were included in the CARES **Act**.

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