



Paycheck Protection Program Flexibility Act of 2020

June 5, 2020

On June 3, 2020, Congress passed the Paycheck Protection Program Flexibility Act of 2020 (the “**PPP Flexibility Act**”) which modifies certain provisions of the Paycheck Protection Program implemented by the Coronavirus Aid Relief and Economic Security Act. The President signed the Paycheck Protection Program Flexibility Act of 2020 into law on June 5, 2020. The amendments include:

Extension of Maturity Date

Paycheck Protection Program Loans (a “**PPP Loan**”) made on or after the date of enactment will have a minimum maturity of five years. For past recipients of a PPP Loan, the PPP Flexibility Act provides that lenders and borrowers are not prohibited from mutually agreeing to modify the maturity term of prior loans.

Extension of Covered Period

The “Covered Period” for using PPP Loan proceeds is extended from June 30, 2020 to December 31, 2020. The PPP Flexibility Act also extends the “Covered Period” for PPP Loan forgiveness to the earlier of: (a) the date that is 24 weeks from the origination date; or (b) December 31, 2020. This amendment is effective for all PPP Loan recipients. Recipients of PPP Loans prior to the date of enactment may still elect to use a “Covered Period” that commences on the date of origination and runs for a period of 8 weeks.

Exemption Based on Employee Availability

The amount of loan forgiveness that a PPP Loan recipient is eligible to receive shall be determined without regard to a proportional reduction in the number of full-time equivalent employees (frequently referred to as the “headcount rule” or “headcount test”) if an eligible recipient, in good faith:

(A) is able to document–

- i. an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and
- ii. an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

(B) is able to document–

- i. an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 31, 2020 and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

This amendment is effective for all PPP Loan recipients.

Modification of 75/25 Forgiveness Rule

The requirement that 75% of a PPP Loan be used for payroll costs is modified by the PPP Flexibility Act so that borrowers must only use 60% of the loan proceeds for eligible payroll costs. Borrowers are now permitted to use 40% (previously capped at 25%) of the covered loan amount for the payment of interest on covered mortgage obligations (excluding any prepayment or payment of principal), any payment on any covered rent obligation, or any covered utility payment. This amendment is effective for all PPP Loan recipients.

Extension of Deferral Period

The six-month deferral period is eliminated and replaced with a deferral until the date on which the amount of forgiveness determined under the CARES Act is remitted to the lender. If a borrower fails to apply for forgiveness within 10 months after the last day of the Covered Period, (i.e., the earlier of 24 weeks from origination or December 31, 2020), the borrower must then begin to make payments of principal, interest, and fees on the PPP Loan. This amendment is effective for all PPP Loan recipients.

Delay of Payment of Employer Payroll Taxes

The PPP Flexibility Act allows all employers to take advantage of the CARES Act deferral of the 6.2 percent employer portion of social security payroll taxes, regardless of whether they have had a PPP Loan forgiven.

UKS will continue to monitor this developing issue and provide updates as necessary. The UKS Covid-19 Response Team is standing by, ready to help you and your business with questions or concerns regarding a wide range of legal issues relating to the Covid-19 pandemic. For further information on the Paycheck Protection Program, please contact Attorney [John F. \(Jef\) Wolter](#), [Attorney Gregg J. Lallier](#), or Attorney [John J. Alissi](#).

Attorney Wolter is a member of the Firm's Commercial Lending & Banking Practice Group. In the commercial finance area, Attorney Wolter concentrates in the transactional representation of banks, financial institutions, and small business investment companies. Attorney Wolter may be reached at jwolter@uks.com or at (860) 548-2645.

Attorney Gregg J. Lallier is the Chair of the Firm's Venture Capital & Private Equity Practice Group. Attorney Lallier focuses his practice within the technology, private equity, and venture capital industries. Attorney Lallier may be reached at glallier@uks.com or at (203) 786-8313.

Attorney Alissi is the Firm's President and is a member of the Firm's Commercial Lending & Banking Practice Group. Attorney Alissi represents commercial banks, finance companies and other debt and equity providers in all aspects of commercial lending. Attorney Alissi may be reached at jalissi@uks.com or at (860) 548-2619.

Updike, Kelly & Spellacy, PC would like to thank associate [Michael J. Paciorek](#) for his contributions to this client alert.

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