PPPF Act Guidance:

What has changed and what do I do now?

Kiamesha-Sylvia Colom
Partner
kcolom@taftlaw.com

Lonnie Johnson
Partner
ljohnson@taftlaw.com

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What does the PPPF Act change?

What additional guidance has been issued as a result of the PPPF Act?

Paycheck Protection Program Flexibility Act (PPPF Act)

- Signed into law on June 5, 2020.
- Modifies Title 1 of the CARES Act and additional guidance issued in Interim Final Rule (IFR) #1 (April 2, 2020), IFR #3 (April 14, 2020), IFR #4 (April 24, 2020), IFR #6 (April 28,2020), and IFR #14 (May 22, 2020).
- Additional IFRs have been issued:
  - IFR #16, expanded eligibility to certain telephone cooperatives (June 5, 2020).
  - IFR #17, revised IFR #1.
  - IFR #18, further revised IFR #1, expanded eligibility to certain previously excluded applicants with a prior felony.
  - IFR #19, revised IFR #3 and IFR #6

“Covered Period”

- There are two distinct “covered period” concepts under the CARES Act, each of which is impacted by the PPPF Act.

  1. Section 1102 of the CARES Act provides for a “covered period” concept that dictates the *period of time in which lenders can issue a PPP loan* <u>and</u> the *borrower can use the proceeds of a PPP loan* in its business.
  2. Section 1106 of the CARES Act provides for a “covered period” concept that dictates the *period of time in which PPP proceeds spent will be eligible for forgiveness*.

“Covered Period”

- The “covered period” in Section 1102 of the CARES Act (i.e., period of time to use PPP funds) is extended from June 30, 2020 to December 31, 2020.
- This extension *does not* extend the period of time lenders can issue new PPP loans. All PPP loans must still be issued by June 30, 2020.
- There is no change to the limit that each borrower can only obtain one PPP loan.

“Covered Period”

- The “covered period” defined in Section 1106 of the CARES Act is expanded the 8-week forgiveness period to the earlier of:
  - (1) 24-week period from the loan funding date, or
  - (2) December 31, 2020.
- *Only* borrowers that obtained a PPP loan prior to the enactment of the PPPF Act on June 5, 2020 have the option to elect the original 8-week period or 24-week period.

Payroll Maximum

- The payroll maximum per employee has been changed during the revised 24-week covered period option to $46,154.
- However, the maximum amount is still $15,385 for borrowers using the original 8-week covered period.
- Owner-employees, self-employed individuals and general partners are limited during the 8-week period to $15,385, and $20,833 during the 24-week period.

Loan Term

- The two-year loan term is changed to a minimum of 5 through a maximum of 10 years for loans issued after June 5, 2020. However, subsequent SBA regulations (IFR #19) capped the loan term at 5 years.
- For all existing PPP loans issued before June 5, 2020, the lender and borrower must mutually agree to a change in terms and document the same because it is not automatic. Term cannot exceed 5 years.
- The language within Section 1109 of the CARES Act may support a borrower's request to have a lender amend the maturity date of the Note.

Payment Deferral Period

- The payment deferral period differs between borrowers seeking forgiveness and those that do not:
  - **Borrowers seeking forgiveness:** The 6-month payment deferral period is extended to the date loan forgiveness is determined.
  - **Borrowers *not* seeking forgiveness:** The payment deferral period is now 10 months from the end of the applicable forgiveness period.
- Payments of principal, interest, and fees on such PPP loan begin thereafter.
- This change supersedes language in PPP promissory notes to the contrary.

Payroll Tax Deferral

- Previously, the IRS issued guidance allowing borrowers to take advantage of a deferral for the employer's share of Social Security payroll taxes until the borrower received notice that some or all of its PPP loan would be forgiven.
- Now, borrowers may avail themselves of this deferral until December 31, 2020 regardless of the forgiveness decision.
- Payment on half of the deferred amount is due to the Internal Revenue Service (IRS) by December 31, 2021, and the remaining half is due by December 31, 2022.

Forgiveness Ratio

- The forgiveness ratio is modified to a 60%/40% split instead of 75%/25%.
  - 60% of the requested loan forgiveness amount must be used on eligible payroll costs. To be eligible for complete loan forgiveness 60% of the loan proceeds must be spent on eligible payroll costs.
  - 40% of the requested loan forgiveness amount can be spent on eligible non-payroll expenses (i.e., lease payments, mortgage interest only payments, and utilities) in addition to eligible payroll costs.
- "All or nothing" approach was revised by IFR #17. Loan forgiveness is on a sliding scale.

Loan Forgiveness

- What portion of a PPP loan is eligible for forgiveness?
  - **Payroll Costs:** 56 or 168 days of eligible payroll costs. Can only include eligible payroll expenses during the covered period or the "alternative payroll covered period."
  - **Non-Payroll Costs:** Eligible non-payroll costs paid during the covered period or incurred during the covered period and paid on or before the next due date. The "alternative payroll covered period" concept is not applicable to non-payroll costs.

Loan Forgiveness Reductions

- The amount of loan forgiveness can be effected by:
  - Borrower's FTE count,
  - Salary reductions in excess of 25% for employees making less than $100,000.00, and
  - Use of proceeds not in conformance with the 60%/40% split or in accordance with eligible uses.
- Safe harbor date to rehire employees or restore compensation cuts is changed from June 30, 2020 to December 31, 2020.
- The measurement period for FTE and compensation calculations will be over the full 8- or 24-week period applicable to the borrower.

Loan Forgiveness Exemptions

- The PPPF Act also allows an exemption from loan forgiveness reduction if an employer documents that it:
  - is not able to hire individuals who were employees as of February 15, 2020,
  - could not find qualified employees to backfill its FTE workforce reduction, and
  - the "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 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 the maintenance of standards for sanitation, social distancing, *or* any other worker or customer safety requirement related to COVID–19". This final exemption within the recently issued Loan Forgiveness Application was noted as a safe harbor; however, this is not how it is referred to in law or authoritative guidance.

Loan Forgiveness Exemptions

- Prior guidance allows FTE exemptions for:
  - written offers to rehire that are not accepted, so long as it is for the same position and the employer notifies the unemployment agency of the employee's denial of such offer,
  - an employee's voluntary termination or reduction in hours, and
  - an employee being fired for cause (must not be a protected COVID -19 cause under the Families First Coronavirus Act).

Loan Forgiveness Application Process

- Borrowers have 10 months from conclusion of its chosen covered period to apply for loan forgiveness.
- A revised Loan Forgiveness Application was issued on June 16, 2020. It has been split into 2 parts: application instructions and application. Introduction of *EZ* Loan Forgiveness Application and instructions.
- Once the lender is provided with a completed forgiveness application it has 60 days to make a forgiveness decision, it then provides its decision and package to the SBA for review. The SBA has 90 days to complete its review and make a decision.

SBA and Treasury Guidance

- IFR #17: Revised IFR #1 by:
  - Modifies the 75%/25% split to 60%/40% and provides for sliding loan forgiveness scale
- IFR #19: Revised IFR #3 and IFR #6 by:
  - PPPF Act states loans can have up to 10 year maturity, *but* within IFR #19 the SBA states 5 years is sufficient for loans after 6/5/20, or for loans before 6/5/20, upon mutual agreement between lender and borrower the term can be changed from 2 to 5 years;
  - Amended IFR #3 stating 60% of the loan proceeds shall be used for payroll costs, instead of 75%;
  - Modified the owner-employee and self-employment compensation maximum to $20,833 for the 24-week period;
  - Confirms any forgiven PPP loan amount must have 60% of such amount attributable to eligible payroll costs.

Resources & Updates

- IFR #18 amends the felony exclusionary rule period for most felonies to one year.
- Revised borrower and lender PPP loan applications have been posted.
- Disaster loan portal is open to all eligible applicants once again.
- Taft's COVID-19 Resource Toolkit – SBA Task Force:
  - www.taftlaw.com
  - Taft SBA Article Series – Parts 1-17

Questions?

Kiamesha Colom
kcolom@taftlaw.com
317.713.4430

Lonnie Johnson
ljohnson@taftlaw.com
317.713.3613

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