

Client Alert: Here We Go Again: Congress Again Amends the Paycheck Protection Program in Response to Criticism, but Is It the Last Time?

Publications

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As detailed in several prior alerts, the Paycheck Protection Program (PPP)—Congress’s signature small business relief program in the historic Coronavirus Aid, Relief, and Economic Security Act (CARES Act)—was rolled out in early April to immediate, overwhelming demand and weeks of questions and controversy. Borrowers quickly soaked up its initial \$349 billion, leading Congress to authorize an additional \$310 billion in funding in late April with the enactment of the Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act).[1] Recently, PPP lending slowed as criticism grew over the Small Business Administration’s (SBA) implementation of the program, to the point that on some days more money is being paid back by borrowers who no longer want to participate in the program than to applicants seeking loans. Chiefly, critics have noted that the program’s rigid rules requiring how the funds had to be used in order to obtain loan forgiveness, along with the short window in which the funds had to be expended, were a poor fit for the current crisis. As a result, many expressed concerns that a program intended to lift up small businesses could result in saddling them with debt that will be difficult to repay.[2]

In response, on June 5, 2020, Congress enacted the Paycheck Protection Program Flexibility Act of 2020 (Flexibility Act),[3] addressing some of those criticisms, and making numerous other tweaks to broaden how borrowers can use and repay PPP funds. For example, the Act reduces the requirement for using funds on payroll expenses from the 75% level originally mandated by the SBA to 60%, and extends the time that borrowers must use PPP funds to obtain forgiveness from eight to 24 weeks. The Flexibility Act also extends the deferral period so that some borrowers may be able to avoid making payments on their loans, if not forgiven, for up to nearly 16 months, and broadens exceptions to forgiveness reductions. It further extends the term of loans issued after June 5, 2020, to five years, but with the window for loan applications currently scheduled to close at the end of June, this provision may have limited impact unless lenders agree to modify the terms of PPP loans made before that date. Although the SBA issued updates to the program rules in accordance with the Flexibility Act on June 11, 2020, the update only touched on some of the

revisions contained in the Flexibility Act and we expect additional guidance to be forthcoming shortly.[4]

This client alert summarizes the key provisions of the Flexibility Act, as informed by recent regulatory guidance. It builds on our prior alerts (available [here](#), [here](#), and [here](#)) about the program. What follows below is a summary of the currently available information, which will soon be further updated by the SBA. As a result, we encourage you to follow up with any questions.

Jenner & Block offers a wide array of resources and lawyers with experience necessary to help our clients navigate the implications of these important new programs, led by our COVID-19 Response Team. This team, features lawyers who played key, leading roles in the country's response to the last economic crisis and who have been recognized nationally for their insight into this one. It includes government veterans whose senior positions meant that they were intimately involved in the design of many of the government's most recent bailout programs, oversaw the loan application and distribution processes that were a key part of them, and ran and responded to the investigations that followed. It also includes transactional lawyers who are engaged with clients seeking to avail themselves of aspects of the current government programs.

To read the full alert, please [click here](#).

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