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President Trump Signs the Paycheck Protection Program Flexibility Act

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On June 5, 2020, President Trump signed into law the Paycheck Protection Program Flexibility Act (“PPPFA”), which makes several important changes to the Paycheck Protection Program designed to address concerns expressed by the small business community. The key features of the PPPFA include:

1. Extending the time period to use PPP funds from 8 weeks to 24 weeks. The PPP required businesses to spend funds in the 8 week period starting from the date funds were received. For businesses that were shut down, this meant spending funds when, perhaps, it would have been more advantageous to hold the funds and spend them after reopening for uses such as purchasing inventory. The PPPFA addresses this by extending the time period to spend the loan funds to 24 weeks. Businesses will still need to spend the funds on payroll and other authorized expenses, but they now have until the end of 2020 to do so. The PPPFA, however, does not require businesses to wait for 24 weeks to apply for forgiveness – they can still do so after 8 weeks if they choose.
2. Extending the maturity date of PPP loans from two years to a minimum of five years.
3. Reducing the percentage of PPP loan funds that must be spent on payroll from 75% down to 60%, thus increasing the amount of funds available for other expenses up to 40%. The list of expenses eligible for forgiveness remains unchanged, and still includes rent, mortgage payments, utilities, and interest on loans.
4. Changing the date by which employees who were laid off between February 15 to April 26, 2020, must be rehired from June 30 to December 31, 2020. This change provides companies significantly more time to ramp up their businesses.
5. Easing rehire requirements. Because the PPP was intended to preserve the number of employees on payroll as were used to calculate the amount of the PPP loan, it required businesses to rehire the same number of full time or full-time equivalent employees by June 30, 2020, with the only exception being if an employer could document an attempt to rehire an employee who rejected the offer. The PPPFA makes two main changes to this requirement. First, it extends the rehire date to December 31, 2020, and second, it adds additional exceptions for a reduced headcount. Under the PPPFA, a borrower can still receive forgiveness on payroll

amounts if it can document (a) that it was unable to rehire an individual who was an employee on or before February 15, 2020, (b) an inability to hire qualified employees for unfilled positions on or before December 31, 2020, or (c) an inability to restore its operations to comparable levels of business activity due to social distancing, sanitation requirements, or customer safety needs established 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 from March 1, 2020, to December 31, 2020.

While questions will certainly arise as the SBA implements these changes, the PPPFA should come as a welcome supplement to the very popular PPP for business owners as they transition to reopening following the extraordinary COVID-19 shutdown.