

Corporate and Business Alert
June 2020

Business and Corporate COVID-19 Update

President Signs Paycheck Protection Program Flexibility Act of 2020

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Last Friday, June 5, 2020, President Trump signed H. R. 7010 (“HR 7010”), the “Paycheck Protection Program Flexibility Act of 2020”, a bill meant to modify certain provisions related to the forgiveness of loans under the Paycheck Protection Program (“PPP”). Following criticism regarding how the forgiveness rules were not feasible for many small businesses, HR 7010 was passed by the House and the Senate with broad bipartisan support. In general, the changes allow businesses more time to bring employees back to work and to use the PPP funds without jeopardizing loan forgiveness.

Key provisions of HR 7010 include:

1. Loan maturity is extended from 2 years to 5 years.
2. The deferral period for loan repayments of principal and interest is extended from 6 months to not more than 1 year from the date of loan disbursement.
3. The covered period for using loan funds, originally only 8 weeks, has been extended to the earlier of a) December 31, 2020; or b) 24 weeks from the date of loan origination. A borrower may still elect to end the covered period for loan forgiveness at 8 weeks.
4. The Safe Harbor provisions for rehiring and restoration of Full Time Equivalent Employees (FTEs) and Salary/Wage reductions are extended from June 30, 2020 to December 31, 2020. Previously, if rehiring to previous staffing and salary / wage levels was not complete by June 30, 2020, a borrower would be ineligible for forgiveness. This was not feasible for small businesses that were unable to rehire based on state-specific shutdown orders.

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5. HR 7010 increases the ratio of non-payroll costs eligible for forgiveness from 25% to 40%. Borrowers must now document that 60% (previously it was 75%) of loan funds were used for payroll costs, thus allowing up to 40% of loan funds to be used for other qualifying expenses, such as mortgage interest, rent, and utilities.
6. The new law also provides for new exceptions from the reduction of forgiveness related to a decline in FTEs based on compliance with certain social distancing/safety requirements and/or other aspects of employee availability. Specifically, this exception applies if CDC, HHS, and OSHA standards for sanitation, social distancing, or other worker or customer safety prevents the borrower from returning to the same level of business activity as before February 15, 2020.
7. An entity that received a PPP loan can now defer federal employer payroll taxes as defined in the CARES Act. Previously, the deferral was only allowed up to the date that forgiveness was granted. Half of the deferred amount will be due December 31, 2021, and the other half will be due December 31, 2022.

With key dates extended under this Act, additional time has been granted to allow for small businesses to evaluate options with regard to the uses of funds and the effects on forgiveness, especially for small businesses located within states that are still reopening and subject to full or partial shutdown orders.

If you need any guidance or advice regarding the Paycheck Protection Program, please do not hesitate to reach out to Peter T. McNulty at pmcnulty@mhtl.com or the attorney assigned to your account.

This Client Alert was prepared by Peter T. McNulty and reviewed with Katherine Hesse, Nan O'Neill and Kier Wachterhauser. If you have any questions, please contact Peter T. McNulty or the attorney responsible for your account, or call (617) 479-5000.

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