Client Alert: House and Senate Pass Paycheck Protection Program Flexibility Act

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On June 3, 2020, the United States Senate passed the Paycheck Protection Program Flexibility Act (the "**Act**"), as passed by the House on May 27, 2020, amending certain aspects of the Small Business Administration Act and the Paycheck Protection Program (the "**PPP**"), created by Division A, Title I of the Coronavirus Aid, Relief, and Economic Stability Act (the "**CARES Act**"). The Act will now go to President Trump, who is expected to sign same.

Generally speaking, the Act modifies the Small Business Administration Act and the PPP as follows:

Loan Maturity (limited applicability)

• Loans made after the enactment of the Act shall have a minimum maturity of five (5) years and a maximum maturity of ten (10) years. Lenders and Borrowers that are parties to loans made after the enactment of the Act may mutually agree to modify the terms of existing loans to conform to the new maturity terms.

Loan Deferral (applicable to all Borrowers)

• Payment of principal, interest, and fees shall be deferred until the date on which the amount of forgiveness determined under Section 1106 of the CARES Act is remitted to the lender.

Loan Forgiveness Terms (applicable to all Borrowers)

• To qualify for loan forgiveness, Borrowers must use at least 60% of the PPP loan proceeds for payroll costs and may use up to 40% of the PPP loan proceeds for non-payroll costs.
• The "Covered Period" for loan forgiveness purposes (as defined in Section 1106(a)(3) of the CARES Act) has been extended to run from the date of origination of the loan (e.g., funding) through the earlier of (i) 24 weeks after the date of origination or (ii) December 31, 2020. The original "Covered Period" for loan forgiveness purposes ran for eight (8) weeks after the date of origination. Any Borrower that received PPP loans prior to the enactment of the Act may still elect for the "Covered Period" applicable to its PPP loan to end on the date that is eight (8) weeks after the date of the origination of its PPP loan.
• The deadline for a Borrower to eliminate reductions in full-time equivalent employees or salary/wages for qualifying employees has been extended to December 31, 2020. The original safe harbor deadline was June 30, 2020.
• Loan forgiveness shall be calculated without regard to reduction of full-time equivalent

employees if: (a) Borrower is able to document (i) an inability to rehire individuals employed prior to February 15, 2020, or (ii) an inability to hire similarly qualified employees for unfilled positions prior to December 31, 2020; OR (b) Borrower is able to document inability to return to the same level of business that Borrower enjoyed prior to February 15, 2020, due to compliance with COVID-19 worker or customer safety requirements issued between March 1, 2020, and December 31, 2020.

- Borrowers failing to apply for loan forgiveness within ten (10) months of expiration of the "Covered Period" must commence payments of principal, interest, and fees beginning no sooner than the date that is ten (10) months after the last day of the "Covered Period".

Payroll Taxes (applicable to all Borrowers)

- Borrowers receiving loan forgiveness under the PPP can now benefit from the permitted delay of payment of applicable employment/payroll taxes paid by employers.

A PDF of the Act can be found **here**.

If you have any questions relating to particular aspects of the modified PPP Rules, please feel free to contact our office. As with all COVID-19 related legal developments, RIW will continue to provide updates and guidance relative to the CARES Act.

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