Insights

PPP and PPPFA Additional Guidance: No Cliff

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The SBA issued additional guidance late in the day on June 10, 2020 through a further Interim Final Rule ("June 10 IFR") that revises its First Interim Final Rule posted on April 2, 2020 to bring it into line with the changes authorized by the Paycheck Protection Program Flexibility Act ("PPPFA") on June 5, 2020. Among its key clarifications, the June 10 IFR confirms that borrowers can still seek forgiveness of the PPP loans even if they utilize less than 60% of the proceeds for payroll costs. (Additional changes under the PPPFA were addressed in our **Alert** updated on June 9, 2020.)

Under the June 10 IFR:

- *Maturity*: Loans made before June 5, 2020 will have a maturity date of two years, though the lender and the borrower can agree to extend this to five years. Loans on or after June 5 will have a five year maturity.

- *Deferral*: Payments on a PPP loan can be deferred under several scenarios. If application for loan forgiveness is made within 10 months of the end of the loan forgiveness covered period, no payments of principal or interest will be required prior to the date on which the SBA funds to the lender the amount of the loan that is forgiven. This period now extends 24 weeks after the loan origination, namely the date on which the PPP proceeds are disbursed. This period was initially 8 weeks after disbursement, and for loans in place on June 5, the borrower as the option to keep the 8 week covered period. Lenders are obligated to notify their borrowers of the amount forgiven and the date the first payment is due.

- *Forgivable Amount*: In recognition of the change by the PPPFA to a 60% marker for use of proceeds for payroll costs, the June 10 IFR confirms that the position of the SBA, in consultation with the Treasury Department, will consider this limit a proportional marker in the event a borrower does not meet the 60% threshold, rather than a "cliff" that requires this level to be met or risk having no forgiveness. We note that the wording of the PPPFA raised this issue by stating that to receive forgiveness, a borrower was required to meet the 60% target. However, guidance previously provided in a joint statement that this was considered a proportionality limit. This position is confirmed in the June 10 IFR and includes the SBA's reasoning for easing away from this "cliff." Instead, June 10 IFR requires that the amount that can be forgiven must include at least 60% of amounts used for payroll costs. For example, a borrower that receives $3 million in proceeds is expected to use at least $1.8 million for payroll costs to receive 100% forgiveness. If that borrower uses only $1 million for payroll costs, the amount eligible for forgiveness will be reduced to $1,667,000 (rounded).

- *Forgive in Whole and In Part*: Forgiveness can be provided for the full amount of principal and interest. However, if the requirements for forgiveness in full are not met, such as reductions in headcount or in wages that are not within a safe harbor, the amount eligible for forgiveness will be reduced.

Other parts of the June 10 IFR confirmed prior requirements of the PPP process, such as borrower certifications of proper use of the proceeds and documentation of the expenses for which forgiveness is being sought. The SBA also indicated that it will be issuing revisions to other interim final rules and loan review procedures to address amendments made by the PPPFA. We will issue further alerts as these revisions are issued.

Krieg DeVault is committed to helping you and your business during these unprecedented times. With your needs in mind, we have established a **COVID-19 Resource Center** to assist you through this process.

If you have any further questions, comments or concerns, please feel free to contact **Robert A. Greising**, **Corben A. Lee** or a member of our **Business, Acquisitions & Securities team**.