

ALERT

June 2020

Paycheck Protection Program Flexibility Act Of 2020

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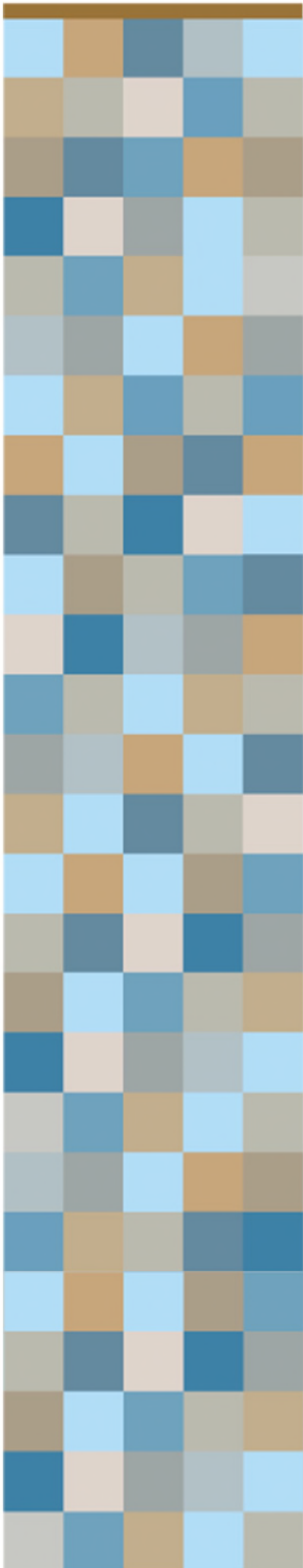
On March 27, 2020, the President signed the *Coronavirus Aid, Relief, and Economic Security Act* (the “CARES Act”) into law providing, among other relief, up to \$349 billion to fund loans to small businesses affected by the outbreak of COVID-19 (the “Paycheck Protection Program”). On April 24, 2020, funding for the Paycheck Protection Program was reauthorized in the amount of \$310 billion when the President signed H.R.266 – the *Paycheck Protection Program and Health Care Enhancement Act* into law.

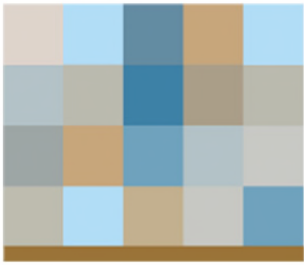
On June 3, 2020, H.R – 7010 – the *Paycheck Protection Program Flexibility Act of 2020* (the “PFA”) was passed by the Senate (after being passed by the House last week) and is currently awaiting signature from the President so that it can become law. If this newest legislation becomes law, it will dramatically change the framework of the Paycheck Protection Program, greatly benefiting borrowers and their ability to achieve loan forgiveness. A summary of the proposed changes is as follows:

	<u>Current Legislation</u>	<u>Legislation under the PFA</u>
Time period during which loan proceeds must be spent by borrowers (the “Covered Period”) ¹	8 weeks from loan origination	The earlier of 24 weeks from loan origination or December 31, 2020
Percentage of loan proceeds that must be spent on Eligible Payroll Costs ²	75% or more	60% or more

¹ An existing borrower can choose to the 8 week period or the 24 week period.

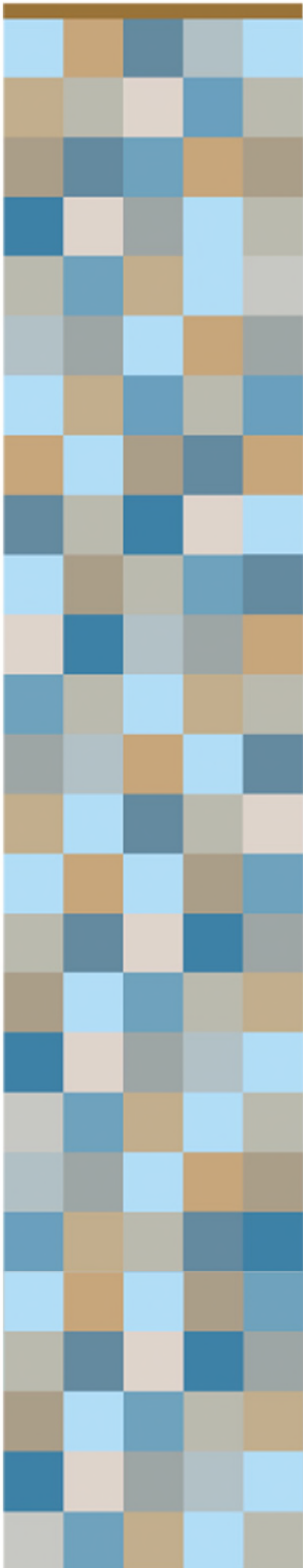
² The legislation as currently drafted creates a cliff, wherein if the minimum of 60% is not spent by borrower on Eligible Payroll Costs, then no portion of the loan will be forgiven, rather than just causing a reduction in





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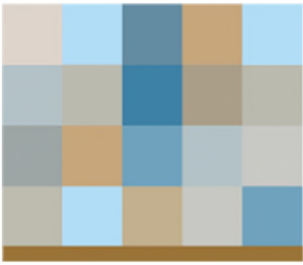
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Percentage of the loan proceeds that can be spent on Eligible Non-Payroll Costs	25% or less	40% or less
Deadline to rehire laid-off workers to restore its Full Time Employee (“FTE”) headcount and/or wages to its February 15, 2020 levels	On or before June 30, 2020	On or before December 31, 2020
Maturity Date	For existing loans (those prior to the PFA): 2 years. Provided however, that borrowers and lenders can mutually agree to modify the term to 5 years	For new loans: 5 years
Payment Deferment Period	6 months from the date of disbursement	Deferral now runs until the date that the lender receives the forgiveness amount from the SBA
Deadline to file application for loan forgiveness	October 31, 2020	Must file within 10 months from the last day of the Covered Period
Exemption From Proportional Reduction of FTE	The loan forgiveness will be proportionally reduced if the average number of employees is reduced during the covered period when compared to the same period in 2019	Subject to satisfaction of certain requirements ³ , during the period beginning on February 15, 2020 and ending on December 31, 2020, the amount eligible for loan forgiveness shall be determined without regard to the borrower’s proportional reduction in the number of FTE

the forgivable amount, as the current legislation provides. It is unclear if this was simply a drafting error by the House that will be corrected, or if this was intended.

³ Borrower must be able to document in good faith: (i) there was an inability to rehire individuals who were employees of the borrower on February 15, 2020 and (ii) there was an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; **OR** (b) borrower is able to document an inability to return to the same level of business activity as such business was operating at or before February 15, 2020, due to compliance with requirements established or guidance issued 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 beginning on March 1, 2020 and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customary safety requirements related to COVID-19.



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Christine H. Price, an associate of the firm, focuses her practice on all aspects of complex commercial lending and real estate matters.

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Brian Boland, an associate of the firm, concentrates his practice in all aspects of complex commercial real estate and asset-based lending, including Small Business Administration financing.

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In light of the new legislation, it is important to note that an update to the Paycheck Protection Program Loan Forgiveness Application (SBA Form 3508) (05/20) is expected. We also anticipate that the SBA will rollout regulations and further guidance to borrowers to help them complete the updated forgiveness application. Borrowers should not rush to submit their forgiveness application until the updated form is released and guidance is issued.

We are closely monitoring this continually developing area and will endeavor to keep our clients updated as the Paycheck Protection Program progresses. We encourage our clients to reach out not only to us, but also to their local lenders with any questions that they may have regarding the economic assistance programs available.

If you have any questions, please feel free to reach out to our Commercial Finance and Secured Lending attorneys:

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