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PPP Flexibility Act provides relief for Businesses
June 8, 2020

On Wednesday, June 3rd, 2020, the Senate passed the [Paycheck Protection Program Flexibility Act](#) (the "Flexibility Act"). The House passed the bill (H.R. 7010) last week, and the President signed the bill into law on June 5. The Flexibility Act provides much needed relief for businesses by extending the "covered period" for loan forgiveness under the Paycheck Protection Program ("PPP") to 24 weeks and reducing the amount of loan proceeds that must be spent on payroll costs to be eligible for forgiveness from 75% to 60%.

Extension of Covered Period for Loan Forgiveness

The Flexibility Act expands the covered period for loan forgiveness, which provides more time for businesses to utilize their loan proceeds in a manner that is eligible for loan forgiveness. Originally, the PPP calculated the loan forgiveness amount based on payroll costs and other expenses paid or incurred during the first 8 weeks after loan disbursement (the "covered period"). The Flexibility Act extends the covered period to the earlier of 24 weeks after disbursement or December 31, 2020. Borrowers that have already received PPP loans have the option to elect to retain the shorter 8-week covered period.

Relief from the 75/25 Payroll Cost Rule

Small Business Administration ("SBA") regulations implementing the PPP required that at least 75% of PPP loan proceeds be used for payroll costs in order to be eligible for forgiveness of the full principal amount. The Flexibility Act reduces this percentage requirement to 60%. Businesses that use at least 60% of the PPP proceeds on payroll costs are eligible for full loan forgiveness (as long as the remaining 40% goes to required uses such as mortgage interest, rent, and utilities).

New Minimum Maturity Date

While the PPP set the maximum loan maturity date at 10 years, subsequent SBA regulations imposed a two-year maturity date for all PPP loans. As such, any portion of the PPP loan that was not forgiven was required to be repaid within 2 years. The Flexibility Act now creates a five-year minimum maturity date for PPP loans. This amendment only will apply to any PPP loan made going forward, but borrowers may request that their lender modify the maturity terms of loans already made under the PPP.

Loan Deferral Period Extended

The PPP provided borrowers with complete payment deferment for a minimum period of six months. The Flexibility Act extends this deferral period until the date when the amount of loan forgiveness is determined and remitted to the lender. If the borrower does not apply for forgiveness, the deferral period is 10 months after the last day of the recipient's covered period.

Extends the Safe Harbor and Adds Exemptions for Rehiring Workers

The PPP provides that the amount of loan forgiveness will be reduced in proportion to any reduction in full time equivalent employees under established staffing level benchmarks but provided an exception to this reduction when employers rehire employees before June 30, 2020. The Flexibility Act extends this exception to cover any employees rehired before December 31, 2020. The Flexibility Act also adds certain exceptions this reduction. Now, employee reductions will not result in a reduction of the loan forgiveness amount when the business can document it was unable to rehire employees employed on February 15, 2020 and cannot hire similarly qualified employees before December 31, 2020.

If you need more information about what the Flexibility Act means for your business, please reach out to us.

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