Highlights of the Payroll Protection Program Flexibility Act of 2020

06.04.2020

On June 3, 2020 the US Senate passed the Payroll Protection Program (PPP) Flexibility Act of 2020. The Act had previously passed the US House of Representatives and now awaits the signature of President Trump.

The Act gives borrowing businesses more flexibility and time to use loan money and still have the loan forgiven. The following is a summary of the key points of the PPP Flexibility Act of 2020:

- Borrowers now have five years to repay their PPP loan as opposed to two years.
- The original 8-week covered period in which Borrowers were required to use their PPP loan funds has been extended to the earlier of 24 weeks or December 31, 2020.
- Borrowers now have until December 31, 2020, as opposed to June 30, 2020, to restore workforce levels and wages to pre-pandemic levels in order to be eligible for full forgiveness of their PPP loan.
- The Act added two new exemptions under which a borrower may achieve complete PPP loan forgiveness even if they are unable to fully restore their workforce by December 31, 2020. The amount of loan forgiveness for a borrower will be determined without regard to a proportional reduction in the number of full time equivalent employees if a borrower:
  - 1. Documents its inability to (a) rehire employees who were employed by borrower as of February 15, 2020 and (b) hire similarly qualified employees on or before December 31, 2020; or
  - 2. Documents its inability to return to its pre-pandemic business activity level due to compliance with requirements established or guidance issued by the Secretary of Health, the CDC, or OSHA during the period of March 1, 2020 to December 31, 2020
- The required payroll expenditure amount under the CARES Act has been reduced from 75% to 60%. Now, to receive complete forgiveness, a borrower must use at least 60 percent of its PPP loan for payroll costs.

- The original language of the CARES Act required borrowers to reduce the amount eligible for forgiveness proportionally if less than 75% of the funds were used for payroll costs. The new language creates a “forgiveness cliff” at 60%, meaning that borrowers who do not spend at least 60% may face the possibility of having none of their loan forgiven. Congress and the Trump administration have come to an understanding about interpreting and implementing this new language to provide for proportional forgiveness and avoid the all-or-nothing threshold, but this will be something to track when it comes time for businesses to start applying for forgiveness.

- The Act now allows businesses that took a PPP loan to also delay payment of their payroll taxes. This was prohibited under the CARES Act.

Bailey Glasser stands ready to assist you if you have any questions or concerns about the PPP Flexibility Act and how it may affect your business.

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