Good News for PPP Borrowers: The New Paycheck Protection Program Flexibility Act of 2020

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The landmark COVID-19 stimulus package, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, has been a significant tool for assisting struggling small businesses during the current international pandemic. Indeed, it has provided much-needed financial relief and saved countless from closure or bankruptcy. However, the centerpiece of this legislation, the Paycheck Protection Plan (PPP), has been a source of confusion and frustration for many business owners seeking this aid. In an attempt to alleviate frustrations and stay true to the original intent of the bill—providing cash flow to keep people employed and businesses afloat—a new bipartisan bill was passed by the Senate and signed by President Trump on June 5, 2020. The Paycheck Protection Program Flexibility Act of 2020 modifies and provides additional flexibility to portions of the PPP to address those needs. These are the key changes in the new act:

- **An extension of time to use funds.** A major source of concern for PPP loan borrowers has been the limitation of the eight-week covered period. Only expenses incurred during this time frame were eligible for loan forgiveness. Unfortunately, many businesses were anticipating that they would not be able to utilize all of the loan proceeds during this period because of challenges like restricted operations due to mandatory stay-home orders and lockdowns, and unconventional payroll structures. The new act addresses that issue by expanding the covered period from eight weeks to the earlier of twenty-four weeks or until December 31, 2020. By extending the covered period, businesses have the flexibility to use the loan funds in a way that is more consistent with their standard practices without forfeiting their ability to take advantage of loan forgiveness.

- **A reduction in the amount required to be directed to payroll.** Under guidance provided by the Small Business Administration (SBA) and the Department of the Treasury regarding PPP loans, in order to qualify for loan forgiveness of the total amount borrowed, small businesses had to spend at least 75 percent of their loan amount on payroll expenses. The new law reduces that requirement to 60 percent. This change affords business owners the opportunity to allocate the funds toward other eligible expenses such as utilities or rent without fearing the loss of loan forgiveness. However, there is a caveat: Under the language of the new law, which may be clarified by future SBA guidance, businesses must be careful to meet the lower 60 percent threshold because failure to do so will apparently result in the total loss of loan forgiveness. Previously, the forgiveness amount would have merely been reduced.

- **A change in the loan period from two to five years.** The new law also changed how repayment of loans ineligible for loan forgiveness is handled. Rather than requiring the funds to be paid back within two years, the new act requires them to be paid back within five years. This amendment was effective immediately upon the law's enactment. For businesses that have already obtained funds from lenders, the act leaves room for the lenders to make adjustments to the maturity terms for existing loans in order to comply with these improvements. Additionally, the timeline for deferring repayment has been extended. Lenders can defer all payments—principal, interest, and fees—until the loan forgiveness amount is determined.

- **Greater flexibility for rehiring employees or returning to typical workforce size.** As was the case under the original PPP Act, businesses are still required to attempt to maintain or return to their prepandemic average number of full-time equivalent (FTE) employees in order to avoid a reduction in their loan forgiveness amount. However, the new law has provided more flexibility to businesses that seek to restore their workforce to previous levels. First, businesses have been given additional time—until December 31, 2020—to restore their workforces before incurring a reduction in their loan forgiveness amount. Next, small businesses that are still unable to meet the requirement due to challenges in rehiring for post-COVID-19-related reasons may be eligible for additional exemptions under the new legislation. To benefit from the exemptions, businesses must show that because of COVID-19-related orders from the federal government, they have been unable to restore their average number of FTE employees despite having made good-faith efforts to (1) restore the workforce and (2) restore the business to normal business functions. Documentation showing these good-faith attempts is required in order to avoid a reduction in the loan forgiveness amount.

- **Deferment of payroll taxes.** The new act expands the number of businesses allowed to defer payroll taxes. Previously, small businesses were given the opportunity to defer payroll taxes, but businesses that had obtained PPP loans were not allowed to take advantage of this option if they also planned to seek forgiveness of their loans. Now, even borrowers who seek and receive PPP loan forgiveness can defer the Social Security tax and 50 percent of the tax on self-employment income from March 27 until December 31, 2020.

Ultimately, the PPP Flexibility Act alleviates many of the pressures small business owners were facing in an attempt to comply with the original PPP requirements under the CARES Act. In light of the changes in the new PPP Flexibility Act, an updated loan forgiveness application is anticipated. Nevertheless, one thing that has not changed is that documentation will still be a critical component of applying for loan forgiveness.

June 17 Update: *SBA and Tresury issued a* ***press release*** *announcing a new* ***EZ PPP Loan Forgiveness Application*** *and a* ***Revised Full PPP Loan Forgiveness Application***.

For businesses interested in learning more about the loan forgiveness application or how to navigate their way through it, please contact Chris Young at 301-738-2033.

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