PPP Flexibility Act: Congress Passes Relief for PPP Loan Recipients

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On June 3, 2020, the Senate approved the House-passed Paycheck Protection Program Flexibility Act (the “Act”) and the bill now heads to President Trump for enactment. The Act brings much needed relief to recipients of Paycheck Protection Program (“PPP”) loans.

Extension of PPP

• The Act extends the PPP program from June 30, 2020 to December 31, 2020.

Forgiveness Time Period

• The Act increases the cover period from 8 weeks to 24 weeks beginning on the date of the origination of the loan (the employer has the option to maintain the 8-week covered period). This means that employers now have 24 weeks to spend their PPP money and have such expenses qualify for forgiveness; provided, however, that any such expenses paid after December 31, 2020 will not qualify for forgiveness even if the 24 weeks has not yet expired. This is a welcome extension as many employers borrowed the maximum amount possible without considering that they would be unable to spend the entire amount in the 8 weeks following the origination of the loan.

Re-Hiring of Employees and Wage Correction

• Employers now have until December 31, 2020 to rehire an employee who was terminated during the period of February 15, 2020 and April 26, 2020 (or to find a replacement for that employee) in order to prevent the staff reduction from reducing the amount of loan forgiveness. However, the
following exceptions apply:

- The amount of loan forgiveness will not be affected if the employer was unable to rehire a fired employee (e.g., the employee refuses to come back to work) or find a qualified replacement for such fired employee.
- The amount of loan forgiveness will not be affected if the employer was unable to rehire a fired employee due to compliance with COVID-19 safety standards issued by HSS, the CDC or OSHA between March 1, 2020 and December 31, 2020.

- Employers now have until December 31, 2020 to increase the wages of an employee who received a pay cut during the period of February 15, 2020 and April 26, 2020 in order to prevent the wage reduction from reducing the amount of loan forgiveness.

Limitation on Non-Payroll Expenses Qualifying for Forgiveness

- Under the existing PPP program, an employer’s loan forgiveness for expenses paid on non-payroll costs (rent, utilities, etc.) was limited to no more than 25% of the total forgiveness amount. The Act increases that number to 40%. Another way of looking at this is that at least 60% of the total amount of loan forgiveness must be attributed to payroll costs. For example, if the employer spends $60,000 on payroll costs and $40,000 on non-payroll costs, the employer may be eligible for up to the entire $100,000 of forgiveness. However, if the employer spends $50,000 on payroll costs and $50,000 on non-payroll costs, the employer may only be eligible for up to $83,333.33 of forgiveness (i.e., $83,333.33 x 60% = $50,000).

Repayment

- The beginning date for repayment of unforgiven loan proceeds has been changed from 6 months after the origination of the loan, to 10 months after the 24-week (or 8-week at the election of the employer) covered period ends.

- The term of the loan has been extended from 2 years (as set by the regulations) to a minimum of 5 years.
Deadline for Forgiveness Application

- The employer has 10 months after the 24-week (or 8-week at the election of the employer) covered period ends by which to apply for forgiveness; otherwise, the loan will not be forgiven and will need to be repaid.

Delay of Payroll Taxes

- PPP loan recipients are now eligible to delay payment of payroll taxes under the CARES Act.