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LEGAL UPDATES

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Senate Passes House Bill Modifying the PPP Loan Program

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Last night, the Senate unanimously passed the House Bill known as the Paycheck Protection Program Flexibility Act of 2020. The signing of this Act into law by the President is imminent. This bipartisan legislation extends the Paycheck Protection Program (PPP), and provides some additional relief to borrowers looking to fully benefit from the Program and maximize loan forgiveness. In this Alert, we identify some of the key changes to the PPP provided for in this new legislation.

8-Week Covered Period Extended to 24 Weeks

Borrowers seeking loan forgiveness now have up to 24 weeks or until December 31, 2020 (whichever occurs first), to spend PPP funds on payroll costs and nonpayroll costs eligible for forgiveness. Alternatively, borrowers that received a PPP loan prior to this amendment may elect to keep their covered period at 8 weeks. For a discussion of the forgivable uses of PPP funds, please see our Frequently Asked Questions on loan forgiveness.

75% Payroll Costs Threshold Reduced to 60%

Prior to this amendment, the SBA required that at least 75% of the PPP loan funds be spent on payroll costs, while the remaining 25% could be spent on eligible nonpayroll costs (i.e., payment of interest on covered mortgage obligations, payment of covered rent obligations, and covered utility payments). This amendment now provides that, to receive loan forgiveness, at least 60% of the loan funds must be used for payroll costs, while up to 40% may be used for eligible nonpayroll costs.

It should be noted that some senators expressed concern that this new language could be interpreted as an all-or-nothing threshold, meaning that if a borrower spends less than 60% on payroll costs it would receive zero forgiveness rather than allowing a proportional forgiveness. However, Law360 is reporting that "Small Business Committee Chairman Marco Rubio and other senators hammered out an understanding with the Trump administration about interpreting and implementing the law in a way that avoids the all-or-nothing threshold." Therefore, we expect additional guidance from the SBA and Treasury regarding this important development.

Payroll Tax Deferrals Now Available to Borrowers With Forgiven PPP Loans

Notably, the provision of the CARES Act precluding PPP borrowers that received forgiveness from also taking advantage of the deferral of employer payroll taxes has been removed. Consequently, all PPP borrowers may now defer payments of applicable employment taxes during the payroll tax deferral period.

FTE Reduction Safe Harbor and Salary/Hourly Wage Reduction Safe Harbor Deadline Extended to December 31, 2020

The June 30, 2020 deadline for borrowers to take advantage of the FTE Reduction Safe Harbor and the Salary/Hourly Wage Reduction Safe Harbor by restoring FTE employee levels and salary/hourly wages has been extended to December 31, 2020.

New Exemptions to FTE Reduction When Calculating Loan Forgiveness

A borrower's loan forgiveness will not be proportionally reduced for a decrease in full-time equivalency employees if the borrower, in good faith:

1. Can provide documentation of its inability to: (a) rehire employees who were employed on February 15, 2020 and (b) hire "similarly qualified employees" for unfilled positions on or before December 31, 2020; or

2. Can provide documentation of its inability to return to the same level of business activity such borrower was operating at before February 15, 2020 due to compliance with requirements established or guidance issued by HHS, the CDC or OSHA during the period beginning on March 1, 2020 and ending December 31, 2020, related to maintenance of standards for sanitation, social distancing or any other worker or customer service requirement related to COVID-19.

5-Year Loan Maturity for New PPP Loans

For borrowers obtaining PPP loans on or after the date of this amendment, the maturity date of such loans must be at least 5 years. Thus, borrowers that do not receive forgiveness on part or all of their PPP loan have at least 5 years to pay it back.

The maturity date for existing PPP loans remains at 2 years. However, this amendment provides that lenders and borrowers shall not be prohibited from “mutually agreeing to modify the maturity terms” of an existing PPP loan. Therefore, borrowers with PPP loans obtained prior to the date of this amendment should consider speaking with their lenders about such a modification.

6-Month Payment Deferral Period Extended

Prior to this amendment, payments of principal, interest, and fees on PPP loans were deferred for 6 months from the date of the loan. This amendment extends the 6-month deferral period to the date on which the lender receives payment of the forgiven portion of the borrower’s loan from the SBA. At such time, the borrower will be required to begin repaying any loan amount not forgiven.

Additionally, borrowers that fail to apply for loan forgiveness within ten (10) months after the last day of their covered period will now be required to begin making payments of principal, interest and fees on their PPP loan beginning on the day that is not earlier than the date that is ten (10) months after the last day of their covered period.

Borrowers with PPP loans existing prior to the date of this amendment are encouraged to connect with their lenders and to confirm how this extension of the 6-month deferral period will be addressed in their existing loan documents.

Contact Us

If you have any further questions or require more information regarding this update, please contact Jessica Zeratsky, Kirstin Salzman, Lauren Hawkins, Christopher Peterson or your Husch Blackwell attorney.

Comprehensive CARES Act and COVID-19 Guidance

Husch Blackwell’s CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.