

## House Bill Provides Significant Improvements to the PPP

Coronavirus Legal Advisory

06.02.2020

Related People:

Howard M. Berkower

**UPDATE: The Paycheck Protection Program Flexibility Act became law on June 5, 2020. All of the improvements noted in this alert are therefore operative.**

On May 27, 2020, the U.S. House of Representatives overwhelmingly approved a bill which if enacted into law would make the Paycheck Protection Program (PPP) more helpful to small businesses, including through an expansion of its loan forgiveness feature. If the Paycheck Protection Program Flexibility Act, H.R. 7010, is passed by the Senate next week, the following improvements will be made to the PPP.

### **1. Increases Amount of Time to Spend PPP Funds**

The amount of time PPP loan recipients have to spend PPP loan proceeds would be extended from eight weeks to the earlier of (a) 24 weeks or (b) December 31, 2020. This addresses many critics' concerns that the current eight-week forgiveness period is not enough time to help businesses remain open (specifically bars, restaurants and salons) and to spend their received funding and recover financially, particularly in light of the other restrictions these businesses face because of COVID-19. PPP loan recipients that have already received their PPP loans would have the option to extend the covered period or continue with the original eight-week period.

### **2. Increases to 40% the Amount of a Loan that Can Be Spent on Non-Payroll Costs Rule**

The amount of the loan required to be spent on payroll costs would be lowered from 75% to 60%, and correspondingly, up to 40% of a PPP loan may be used for other approved costs, such as mortgage payments, rent and utilities. By lowering the minimum percentage of funds required to be spent on payroll, this change allows businesses will be able to spend a greater amount on other business operating expenses without sacrificing the amount of the loan that may be forgiven. The expansion of time to use the loan and the amount of the loan that can be used for non-payroll costs, will significantly increase the likelihood that PPP loan recipients will have the entire PPP loan forgiven. Of course, those loan recipients who used the loan to pay employees even though they were not open for business will likely require additional relief to restart and ramp up their businesses.

### **3. Extends Time to Re-hire Employees and Provides Additional Safe Harbor for FTE Reductions**

The deadline for re-hiring employees and receiving loan forgiveness reductions under the PPP would be extended six months from June 30, 2020 to December 31, 2020. The additional six-month period should operate to eliminate most loan forgiveness reductions resulting from a work force reduction. In addition, the loan forgiveness amount would no longer be decreased due to a reduction in the number of full-time equivalent (FTE) employees from February 15, 2020, through December 31, 2020, if the loan recipient can document:

(a) its inability to rehire individuals employed on February 15, 2020, and hire qualified replacements by December 31, 2020, **or**

(b) the company's inability to return to its activity level before February 15, 2020, due to COVID-19-related restrictions, guidance or requirements imposed by the government between March 1, 2020, and December 31, 2020. This, in conjunction with the reduced percentage of PPP loans required to be spent on payroll and the new deadline for re-hiring employees, significantly increases a small business's ability to maximize the impact of its PPP funding and obtain complete loan forgiveness.

### **4. Maturity of Loan Extended to Five Years**

PPP loans would mature in five years instead of two years. While this change will apply to all PPP loans made on or after the enactment of the law, loan recipients will be able to retroactively extend the maturity of PPP loans funded before the enactment of the law.

### **5. Payment Deferral Period Extended**

A loan recipient would not be required to make any payments of principal or interest until after the SBA funded that portion of the loan that was forgiven. The deferral period is currently only six months from the date on which the borrower received the loan proceeds. In addition, loan recipients must apply for forgiveness within ten months after the last day of their covered PPP loan period, which is the earlier of 24 weeks from origination or December 31, 2020.

### **6. Permits Employer to Defer its Portion of the 6.2% Payroll Tax**

Any loan recipient can now access the CARES Act deferral for its portion of Social Security payroll taxes up to 6.2% for payments required to be made between March 27, 2020, and December 31, 2020, regardless of whether any portion of its PPP loan is forgiven. Previously, a loan recipient could not continue to defer its portion of Social Security payments after any of its PPP loan was forgiven.

The PPP Flexibility Act, if approved by the Senate, would put some power back in employers' hands by granting greater spending and rehiring flexibility. With more time to use the funds, and more time to re-hire employees, and a decrease in the mandatory minimum funds to be spent on payroll costs, more borrowers will be able to meet the loan requirements and guarantee complete loan forgiveness for themselves.

McCarter & English, LLP can assist you with maximizing loan forgiveness and completing the loan forgiveness application. Let us help you figure out how the proposed PPP Flexibility Act could help your business secure loan forgiveness.