

President Signs PPP Flexibility

On Wednesday evening, the U.S. Senate approved the House's version of the Paycheck Protection Program Flexibility Act by unanimous voice vote. This bipartisan amendment to the Payroll Protection Program ("PPP"), which the President has already signed into law, is a positive development for those businesses and nonprofits that have secured loans through this emergency program.

This latest amendment is Congress's attempt to alleviate the concerns of many of its small business owner-constituents by allowing them additional flexibility in how these borrowed funds are spent and by making loan forgiveness more easily attainable.

First, the PPP Flexibility Act gives borrowers the option of extending what was originally an 8-week covered period into a 24-week period. This affords borrowers more time to restore their workforces' headcounts and wages to their pre-COVID levels, which should help maximize the amount of the loan that will ultimately be forgiven. Additionally, this longer period gives borrowers the option of spreading their funds out over a longer period of time, thereby allowing for more prudent spending without sacrificing future forgiveness.

Second, the new amendment adjusts the PPP's requirement that 75% of the loan be spent on "payroll costs," now reducing this threshold to 60%. Importantly, the 60% threshold functions as a cliff – borrowers who do not spend at least 60% of their loans on payroll costs are not eligible for any forgiveness.

Third, the PPP Flexibility Act creates new exceptions for employers who experience difficulty in restoring their workforce headcounts to their pre-COVID levels while the pandemic is ongoing. Now, if an employer is able to document its inability to rehire its pre-pandemic staff and an inability to fill these vacancies with similarly-qualified employees by December 31, the SBA will calculate that employer's loan forgiveness without regard to its workforce reduction. Or, as an alternative avenue for getting the SBA to excuse reduced headcounts, employers can show that Federal safety or social distancing requirements prevented the employer from reaching its pre-pandemic level of business activity.

Fourth, those borrowers who do not achieve total forgiveness now have five years to repay their loans, as opposed to the two-year deadline articulated in the original PPP.

And **Fifth**, the PPP Flexibility Act opens up the CARES Act's payroll tax deferral period to PPP borrowers. This deferral period, which was previously unavailable to PPP loan recipients, gives taxpayers until January 1, 2021 to submit their payroll taxes without penalty.

For those employers who have obtained PPP loans (or for those who are still considering doing so), we encourage you to reach out to your financial advisors and legal counsel with any specific questions regarding this new legislation. We will, of course, continue to keep you informed as new guidance is released and new laws are enacted that could be pertinent to the health of your businesses. Now more than ever, your workforce is our priority.