

Congress Approves Key Changes to PPP; Trump Set to Sign This Week

While events of the past several days have largely overshadowed the nation's COVID-19 response and the SBA's Paycheck Protection Program ("PPP") in particular, Congress this week quietly approved wholesale changes to the law that will impact all borrowers under the program. On Wednesday, June 3, 2020, H.R. 7010—coined the "Paycheck Protection Program Flexibility Act of 2020"—was passed unanimously by the Senate following overwhelming passage in the House of Representatives last week. The bill now heads to President Trump for signature, and he is expected to sign it shortly.

The new bill makes several key changes to the law:

- ◆ Borrowers had been required to spend all PPP loan proceeds in an eight-week period, beginning either on the date the PPP loan proceeds are received or the first day of the borrower's first payroll period following disbursement of the loan funds. Under the new law, this period is extended to 24 weeks or the end of the 2020 calendar year, whichever comes first.
- ◆ The term of the standard PPP loan is increased from two years to five years. **However, the increased loan term applies only to new PPP loans made following the new bill's enactment, not to loans already approved through the program.**
- ◆ Borrowers had been required to spend at least 75% of the PPP loan proceeds on payroll costs in order to qualify for full loan forgiveness. The new law would reduce this amount to 60%. However there is some confusion in the new bill as to whether this new requirement—while seemingly more flexible and favorable

to borrowers on its face—actually creates a do-or-die "cliff" that could result in none of the loan being forgiven if less than 60% of the loan proceeds are spent on payroll costs. Under current law, at least 75% of the forgiven portion of the loan must be spent on payroll costs, but this would not preclude a loan from being partially forgiven if the threshold is not satisfied. Members of Congress have proposed technical amendments to the new law, which should clarify this issue.

- ◆ Borrowers will now have until December 31, 2020, to rehire laid-off workers and still have them counted in the headcount calculation used to determine loan forgiveness. Current guidance required that employees be rehired by June 30, 2020.
- ◆ Borrowers will now have added flexibility regarding workers who they are unable to rehire. If the borrower "is able to document" that they were unable to rehire previously laid-off workers or find suitable replacements, or that their level of business activity was reduced to the point where they could not rehire the same number of workers, any such reduction in employee headcount will not be counted for purposes of determining PPP loan forgiveness.
- ◆ Borrowers may delay payment of their payroll taxes incurred during the forgiveness period, and fund the payment in 2021.

As of this week, approximately \$130 billion of available loan proceeds remain in the PPP following Congress' additional funding in April.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-19 on you or your business, please contact Joe Laferrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.



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