Paycheck Protection Program Flexibility Act extends spending period for forgiveness

Date: June 5, 2020

Soon after the CARES Act, its PPP loan program, and its subsequent round of additional funding were provided to aid employers questions arose regarding the availability of the funds and, more pointedly, whether the forgiveness provisions would match the current economic developments of businesses finally beginning to reopen. Multiple proposals were made. Ultimately, Congress was able to craft a widely approved measure to address the original PPP program's perceived shortcomings. After passing the House and Senate without issue, President Trump signed the Paycheck Protection Program Flexibility Act into law on June 5, 2020.

The new law contains several helpful provisions for those organizations seeking to maximize their PPP proceeds. However, the new law also presents some administrative and record-keeping burdens in executing on that plan.

The PPP Flexibility Act's significant changes are:

- Employers will now be able to choose to their PPP proceeds, and avail themselves to the forgiveness provisions, over the original 8-week period, or a choice between over a 24-week time period (after loan origination) versus by December 31, 2020, whichever arrives earlier. This is relief from the previous 8-week spending period for forgiveness.
- The percentage of the loan amount to be spent on payroll costs was reduced from 75% to 60%, but Congress added a cliff disqualification caveat where if 60% is not spent on payroll costs, then none of the loan principal amount can be forgiven. It is expected that Congress may amend this provision to restore the previous pro-rated forgiveness scale that existed when 75% was the target threshold, but that remains to be seen.
- Employers must document their attempts to rehire employees. The new law sets forth a safe harbor provision where the employer can still avail itself to the forgiveness provisions if the employer maintains a record that its reduction in force was due to an inability to return to the same level of business it once had or its inability to hire similarly qualified employees.
- Loan payments may now be deferred for up to one (1) year (previously six months).
- Future borrowers (with new PPP applications) can negotiate for a longer repayment period, while still maintaining the 1% interest rate.
- The new law did not change recent Treasury regulation that the employer/applicant is responsible for the record-keeping and calculation of its own requested forgiveness amount.

The new law is intended to be a reflection of business demands where activity has been slower to rebound than originally expected. Thus, the 24-week (or longer) extension allows organizations to spend their PPP funds on non-payroll costs (i.e. rent) as they being to reopen and bring back employees. This is being viewed as significant relief for brick-and-mortar-based businesses, which under many governor-mandated orders, are only able to operate at 50-75% of their normal capacity.

What remains to be dealt with under the new law is the added layer of administrative complexity. The PPP Flexibility Act still places heavy responsibilities on the borrowers to ensure they are (1) compliant and (2) taking steps to maximize their ability to obtain forgiveness. To this end, employers will have to balance important decisions regarding managing headcount, documenting that headcount, spending PPP funds on payroll versus non-payroll costs, and forecasting the pace of its spending (what is optimal—the 8 week, 24 week, or longer forgiveness period?). Employers must do this all the while managing its plan to reopen and keep its staff, customers, and other visitors safe.

Your Henderson Brothers team is here to assist you with framing these decisions and helping provide you with the relevant information so that you can make the best choice for your organization. Please reach out to us with any questions.