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PPP Flexibility Act 2020....New Rules - Forgiveness

The Paycheck Protection Program (“PPP”) Flexibility Act of 2020, passed last week by the House and Senate was signed by the President this past Friday. As we noted last week in our Client Alert, the bill brings favorable changes and greater flexibility (in comparison to the PPP Program as enacted in the CARES Act in March) in calculating how a loan under the PPP is forgiven.

The key changes include:

- Expanding from 8 to 24 weeks the “covered period” in which to incur/pay payroll and other allowed costs, in calculating the amount of the PPP loan to be forgiven.
- Extending from 2 years to 5 years the term of the loan (to the extent not forgiven).
- Extending to December 31, 2020 (originally June 30, 2020) the date by which employees must be rehired in order avoid a decrease in the PPP loan forgiveness due to a reduction in full time employees (FTE).
- Allowing borrowers to take advantage of the CARES Act provision to defer payroll taxes for social security even if the loan is forgiven.

There are still several issues/areas for which we are awaiting further clarification, that will have an impact on the calculation of loan forgiveness. One of the most important open issues, is whether the new 24 week period merely extends the period by which to spend 8 weeks’ worth of payroll costs or whether the 24 week extended period allows for 24 weeks’ worth of payroll costs. A second open issue is whether failure to spend at least 60% of the loan proceeds on payroll costs will result in total ineligibility for loan forgiveness (which is how the new Act reads), or whether such failure will merely result in a partial elimination of loan forgiveness (which was the concept as originally enacted).

Both these issues, among others, are extremely impactful . We will keep you apprised of any developments.
