Jones Waldo Legal Alert

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Senate Passes Changes to Paycheck Protection Program

On June 3rd the Senate approved changes to the Paycheck Protection Program based on a House bill called the Paycheck Protection Flexibility Act (the "PPP Flexibility Act"), that will allow small businesses more flexibility in using the loan funds. The bill is was signed into law by President Trump on June 4th. The PPP Flexibility Act will make the following changes to the PPP:

Current PPP borrowers can choose to extend the eight-week period to 24 weeks, or they can keep the original eight-week period. New PPP borrowers will have a 24-week covered period, but the covered period can't extend beyond Dec. 31, 2020, which is designed to make it easier for more borrowers to reach full, or almost full, forgiveness.

Borrowers can use the 24-week period to restore their workforce levels and wages to the pre-pandemic levels required for full forgiveness-this must be done by Dec. 31 (a change from the previous deadline of June 30).

Under current PPP guidance, a borrower must use 75% of the loan proceeds for "payroll costs", which include wages, tips, bonuses and certain employee benefit costs. Currently, a borrower is required to reduce the amount eligible for forgiveness if less than 75% of eligible loan proceeds are used for payroll costs, but forgiveness isn't eliminated if the 75% threshold isn't met. Under the language in the House bill, however, the payroll expenditure requirement drops to 60% from 75% but borrowers must spend at least 60% of the loan proceeds on payroll costs or none of the loan will be forgiven. This significant issue was raised by several representatives and senators, so it seems likely that technical tweaks will be made by the SBA and Treasury after passage to clarify the issue and return loan forgiveness to a sliding scale rather than a cliff.

The bill includes two new exceptions allowing borrowers to achieve full PPP loan forgiveness even if they don't fully restore their workforce. The SBA's interim final rule on loan forgiveness issued on May 22, 2020 already allowed borrowers to exclude from those calculations employees who turned down good faith offers to be rehired at the same hours and wages as before the pandemic. Under the new bill, borrowers will be allowed to adjust because they could not find qualified employees or were unable to restore business operations to Feb. 15, 2020 levels due to pandemic related operating restrictions.

New borrowers now have five years to repay a PPP loan instead of two, and existing PPP loans can be extended up to 5 years if the lender and borrower agree (the interest rate remains at 1%).

Although previously prohibited under the CARES Act, the bill would allow businesses that took a PPP loan to also delay payment of their payroll taxes.

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