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MAJOR PPP LEGISLATION INCORPORATES KEY CHANGES TO THE PROGRAM

The Paycheck Protection Program continues to evolve. The House and Senate have passed the Paycheck Protection Program Flexibility Act of 2020. It is expected that the President will sign this bill given the overwhelming bipartisan support in congress. This bill makes several key changes that help existing and new PPP participants in substantive ways:

The 8 week spending period is now 24 weeks.

This allows significantly more flexibility in terms of timing and payment. Businesses will be able to spend PPP funds across a longer period, reducing concerns about expenditure timing and creating more certainty in any subsequent forgiveness application.

The forgiveness safe harbor has been extended from June 30, 2020, to December 31, 2020.

Previously, forgiveness eligibility safe harbors relied on a June 30 date. At that time, businesses were presumed to qualify for full forgiveness if they had fully restored staffing and compensation levels. Doing so would allow a business to avoid more involved eligibility calculations and possible limitations. This deadline has been extended to December 31, giving businesses significantly more time to transition back to normal operations. While many businesses may qualify for full forgiveness without the safe harbor provisions, this extension makes the PPP more appealing for businesses experiencing continued disruptions.

The forgivable expense ratio has been changed from 75/25 to 60/40.

Businesses with significant non-payroll costs may have had difficulty spending 75% of their PPP funds on forgivable payroll costs. Relaxing the 75/25 rule, in addition to extending the 8 week spending period (as mentioned above), allows businesses to apply PPP funds in a more efficient, effective, and (most importantly) forgivable manner.

Double-dipping allowed for payroll tax deferment.

Among the many programs in the CARES Act was a payroll tax deferral. This deferral allows businesses to defer all employer social security payroll taxes for 2020, paying half of the deferred amount by the end of 2021, and the other half by the end of 2022. PPP participants previously were prevented from double-dipping by fully participating in PPP and the deferral program at the same time. That restriction has been removed.

Greater leniency in workforce restoration.

Forgiveness of PPP amounts depends not just on using funds for qualified expenses, but on maintaining or restoring staffing and compensation levels. Previous guidance allowed exceptions for

workers terminated for cause or who turned down good faith offers to return. The new bill extends those exceptions to situations where qualified workers could not be found and situations where COVID-19 continued to prevent restoring full operations.

For new participants, the application deadline has been extended from June 30, 2020, to December 31, 2020.

There is still a significant amount of money in the program for those who have been waiting for greater clarity or more flexibility.

New loans also will have a 5-year maturity on unforgiven portions, rather than the previous 2-year maturity. Deferral of payments extended to 1 year.

Originally, a PPP loan had a 6-month payment deferral period. Under the new bill, payments on a PPP loans are deferred until the earlier of (a) when a borrower applies for forgiveness, or (b) 1 year.

If you have been sitting on the sidelines, the PPP finally may have evolved into a benefit that meets your business needs. If you are trying to fit PPP expenses into your 8-week period, this bill provides relief and flexibility. For all PPP participants, the ability to combine the benefits of the loan program in conjunction with the payroll tax deferral provides cash-flow relief. With this new bill and the guidance previously provided in the **forgiveness application** with its embedded instructions and the accompanying **interim final rules on loan forgiveness**, businesses will be better able to craft a manageable and more certain PPP expense and forgiveness strategy.

We do expect these rules to be refined further. Our professionals remain available to make sure your PPP strategy is efficient and suits your business needs during this difficult period.

If you have any questions or wish to further discuss the upcoming changes to the PPP loan program, call or email **Nick** or **Clay**. We're ready to help.

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