Paycheck Protection Program Flexibility Act of 2020

On June 5, 2020, President Trump signed the Flexibility Act of 2020 into law. This Act amends the CARES Act to give small businesses and religious nonprofits greater flexibility on how and when PPP loans can be used. The Flexibility Act made several key revisions including the following:

1. **Extended covered period.** The Flexibility Act extended the covered period when employers can use PPP funds from 8 weeks to 24 weeks or December 31, 2020, whichever comes first. Employers who received a loan before June 5, 2020, may still choose to maintain the original 8-week covered period.

2. **Loan forgiveness.** Loan recipients who choose to maintain the original 8-week covered period must apply for loan forgiveness no later than 90 days after the last day of the 8-week covered period. For recipients of the second wave of PPP funds beginning on April 27, the last day of the 8-week covered period began June 22, 2020. Loan recipients that choose to extend the covered period from 8 weeks to 24 weeks must apply for loan forgiveness no later than 10 months after the last day of covered period.

3. **Deferral period.** The Flexibility Act allows employers to defer payments until the forgivable amount of the PPP loan is paid to the lender. Previously, payments could be deferred only one year.

4. **Qualified expenses.** The Flexibility Act reduces the amount of PPP loans that must be used on payroll costs from 75% to 60%. For the loan to be forgiven, at least 60% of the PPP loan must be used on payroll costs at the same level of compensation throughout the covered period.

5. **Loan maturity.** The Flexibility Act extends loan maturity from two years to five years from the time that a recipient applied for the loan. Recipients who received loans before June 5, 2020, still fall under the two-year maturity, but it is possible for recipients to negotiate that time frame with their lender.

By extending the covered period when loans can be used, the Flexibility Act allows more of the total loan amount to be used on payroll costs. **We recommend that you stretch the covered period of the loan over additional weeks in order to use 100% of the full loan amount on covering payroll costs.**

Lenders have 60 days from the time a recipient applies for forgiveness to determine whether the recipient used the loan for qualified purposes. Any amount that the lender determines is not forgivable must be paid back within two years (non-permitted uses of PPP loans, such as mortgage principal or salaries over $100,000, must be paid back immediately).

It is vital that recipients keep detailed records of how they used the loan, including tax filings, number of employees, pay rates, receipts, utility payments, mortgage interest payments, and other forms of verification. Loans might not be forgiven in their entirety if the recipient does not keep thorough and exhaustive records to prove the loan has been used for qualified purposes. Forgiven loans are not considered income when filing with the IRS.

Recipients of the PPP loan should begin working with their lender now to ensure that their loan forgiveness applications are submitted within the covered period.

For more information on the PPP, read our CARES Act White Paper here.

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