

## **Paycheck Protection Program Flexibility Act Gives Small Businesses More Options**

Congress passed and the President signed H.R. 7010, the Paycheck Protection Program Flexibility Act, that provides small businesses with greater flexibility in spending PPP funds and gives the more time to use the funds and still be eligible to have the loans forgiven.

### **Key Changes to the Payroll Protection Program (PPP) made by H.R. 7010**

- **The period of time for small businesses to utilize PPP funds increases from 8 weeks from the time the loan is disbursed to 24 weeks from the time the loan is disbursed or December 31, 2020, whichever is earlier.** Businesses that received PPP funds before June 5 may still choose to use the original 8-week period or opt to use the longer, 24-week period. New PPP loans originated June 5 or after will fall under the 24-week timeframe. Except as described below, the obligation to maintain payroll levels remains in place for either the 8-week period or the 24-week period. The last day on which a lender can obtain a Small Business Administration (SBA) loan number for a PPP loan remains June 30, 2020.
- The original requirement that 75 percent of PPP loan proceeds must be used for eligible payroll expenses in order for the loan to be forgiven has been changed to provide small businesses with the ability to use more of the PPP loan proceeds for other eligible expenses. **With the passage of H.R. 7010, small businesses need only use at least 60 percent of PPP loan proceeds on payroll costs and may now use up to 40 percent of the funds on other eligible costs** including:
  - Interest on mortgage obligations incurred before February 15, 2020.
  - Rent under lease agreements in force before February 15, 2020.
  - Utilities for which service began before February 15, 2020.

The SBA continues to interpret the 60 percent threshold (as it did the 75 percent threshold) as a proportional limit on nonpayroll costs as a share of the borrower's loan forgiveness amount, rather than a hard threshold for receiving any loan forgiveness. Borrowers can still receive proportional reductions in loan forgiveness if they use less than 60 percent of their loan during the 24 or 8-week covered period for payroll costs and will not completely lose loan forgiveness if they fall under the 60 percent threshold.

- Originally for a PPP loan to be eligible for forgiveness, the small business would be required to maintain full-time employment and salary levels that were in place on February 15, 2020, and had until June 30, 2020, to restore full-time employment and salary levels for any changes that took place between February 15 and April 26 when the PPP went into place. Failure to maintain or reach the full-time employment or salary level by June 30, put forgiveness at risk. **With the passage of H.R. 7010, small businesses have been given a few exemptions from this rehiring requirement.** Now, even if a small business reduced employees and did not restore full-time employment levels to February 15 levels, the PPP loan may still be eligible for forgiveness if the small business can document in good faith:

- An inability to rehire individuals who were employees of the small business on February 15, 2020; and
  - An inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
  - Is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established by or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020, and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirements related to COVID-19.
- **The maturity date for new PPP loans made on June 5 or later will be 5 years instead of the two-year maturity limit that was in place under the original PPP.** The maturity date for PPP loans that were originated prior to June 5 remains at 2 years, however a borrower and lender may mutually agree to extend the maturity of such loans to 5 years if they choose.
  - Under the original PPP process, loan repayment (if not forgiven) was to begin 6 months after the loan was originated. **H.R. 7010 now extends the existing 6-month loan payment deferral period until the date on which the amount of forgiveness determined is remitted to the lender.** Also, H.R. 7010 added a provision providing that if a borrower fails to apply for forgiveness within 10 months of the last day of the covered period (the end of the 8 or 24 week timeframe for using the PPP proceeds), payments of principal, interest, and fees will begin on the day which is not earlier than the date that is 10 months after the last day of such covered period.
  - In addition to creating the PPP, the CARES Act also allowed businesses to defer paying employer payroll taxes through December 31, 2020, with 50 percent of the deferred payments being due by December 31, 2021, and 50 percent being due by December 31, 2022. However, the CARES Act prohibited businesses that received the benefit of a PPP loan forgiveness from this deferral. **H.R. 7010 strikes out this prohibition meaning that any businesses, included those that receive the benefit of a PPP loan forgiveness may now defer 2020 employer payroll taxes.**