



ATTORNEYS AT LAW

HOUSE PASSES AMENDMENTS TO PAYROLL PROTECTION PROGRAM

By Anthony J. Vizzoni, Esq. and Christopher Leddy, Esq.

In the ever changing landscape of the Payroll Protection Program ("PPP"), last night, June 3, 2020, the Senate passed the House version of H.R.7010 - Paycheck Protection Program Flexibility Act of 2020 (the "Act"). The Act has now been sent to the President's desk for enactment.

The purpose of the Act is to give more flexibility in the use and the timing of use of PPP funds, and in doing so amends significant provisions of the PPP.

The following is a high-level summary of the amendments the Act would make if signed by the President:

1. The maturity date of PPP loans is revised from 2 years to 5 years.
2. The covered period of the forgiveness is now 24 weeks from date of loan origination (previously 8 weeks), or December 31, 2021, whichever occurs first. However, recipients can still utilize the 8-week period if they wish.
3. To avoid a reduction in forgiveness based on FTE headcounts, the Act states recipients have until December 31, 2020 to rehire (previously June 30, 2020).
4. Recipients will not be penalized for reductions in FTEs if, in good faith, recipients (a) can document an inability to hire individuals who were employees on February 15, 2020 and an inability to hire similarly qualified employees for the unfilled positions by December 31, 2020; or (b) can document an inability to return to the same level of business activity pre-February 15, 2020 due to compliance issued by the Secretary of Health and Human Services, CDC, or OSHA during the period of March 1, 2020 through December 31, 2020, related to the maintenance standards for sanitation, social distancing, or any other worker, or customer safety requirement related to COVID-19.
5. In lieu of the requirement that 75% of PPP funds be utilized toward payroll, the Act amends this to state that at least 60% of all PPP funds must be used to fund payroll during the covered period in order to achieve forgiveness; up to 40% can be used towards covered mortgage obligations, covered rent obligations, and covered utility payments.
6. With regard to the repayment aspect of the PPP Loans, payment of principal, interest and fees are now deferred until the date on which the amount of forgiveness determined is remitted the lender.
7. Recipients now have 10 months from the time the covered period ends to apply for forgiveness.
8. Section 2302 of Act provides for a deferral of the deposit and payment of an employer's portion of social security taxes. Previously, after forgiveness was achieved, deferral thereafter was not permitted. Now, under the Act, deferral is permitted, regardless of forgiveness, for 2 years (half due 2021, rest due in 2022).

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We suggest that PPP borrowers check with their specific SBA lenders to confirm various aspects of these amendments since the lenders may impose their internal rules as to forgiveness. As the PPP has been very fluid with a significant amount of guidance being released by the SBA and the Treasury Department since its enactment in March 2020, we expect that the SBA and Treasury Department will provide additional guidance with respect to the Act for borrowers as to forgiveness and other PPP matters.

About the Authors:



About Anthony J. Vizzoni, Esq.:

Anthony J. Vizzoni is Chair of the Firm's Business Services Group. He focuses his practice on commercial real estate, financing and transactional matters. Prior to joining Becker LLC, Anthony was in-house counsel to a real estate development firm where he focused his efforts on business development. His prior experiences in the world of business have positioned Anthony to provide practical guidance to his clients as they navigate the many challenges that businesses face in the market.



About Christopher Leddy Esq.:

Chris is a partner in the firm's Corporate and Transportation Departments. Chris has experience handling and litigating complex employment law issues as well as counseling all aspects of the employment/contractor relationship. Chris provides counsel with the goal of maintaining essential trust relationships and protracting costly legal disputes

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