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June 5, 2020

RE: PPP Loan Forgiveness Expansion Bill

Dear Clients and Friends,

On June 5, 2020, the President signed into law H.R 7010, Paycheck Protection Program Flexibility Act of 2020 (PPPFA) to provide businesses with greater flexibility and more time to maximize forgiveness of loans received under the Paycheck Protection Program (PPP), as enacted under the CARES Act.

The PPP loan program has weathered intense criticism since the passage of the CARES Act. From early confusion regarding the loan application process to the slow pace in which the Small Business Administration (SBA) has released guidance, it has not been an easy path for borrowers. But this new Act provides hope that greater flexibility to the PPP loan forgiveness process will help many small business owners survive the Covid-19 crisis.

Key provisions of the PPPFA include:

- **Extending the loan forgiveness covered period from 8 weeks to 24 weeks** from the loan origination date, as long as the covered period does not extend beyond December 31, 2020. This means that borrowers will now be able to have all PPP loan amounts paid during this extended covered period forgiven as long as the amounts are expended for qualified purposes (payroll, rent/mortgage interest, and utilities). Borrowers who received the loan prior to the Act's date of enactment may still elect to use either the original eight-week loan forgiveness period or the new 24-week period;
- Only allowing loan forgiveness if **at least 60% of the total loan proceeds are used for payroll costs**. Previously, forgiveness was limited so that at least 75% of the forgiveness amount was for payroll costs. Borrowers must now spend at least 60% on payroll or none of the loan will be forgiven;
- **Eliminating the full-time employee equivalent employee reduction** provision if the business can document that the reduction was due to the business's inability to:
 - Rehire individuals who were employees on February 15, 2020, and hire similarly qualified employees for unfilled positions by December 31, 2020; or
 - Return to the same level of business activity as the business was operating at before February 15, 2020, due to compliance with sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19 imposed by specified federal

agencies during the period beginning on March 1, 2020, and ending December 31, 2020;

- **Allowing for a five-year rather than a two-year maturity date for:**
 - All loans made on or after the Act's date of enactment; and
 - Loans made earlier than that date, if both the lender and borrower mutually agree;
- **Deferring payments** of principal, interest, and fees on any PPP loan until the SBA remits the borrower's loan forgiveness amount to the bank (previously, this period was six months to one year from the loan origination date); and
- Allowing taxpayers to qualify for **payroll tax deferral** even if they've received PPP loan forgiveness.

Unanswered Questions

Some of the remaining unanswered questions related to the legislation include:

1. What is the earliest a borrower can apply for forgiveness? Can a borrower apply for forgiveness before the end of the initial eight-week period?
2. Will borrowers be required to amend their promissory notes and other loan documents to reflect the above changes? If so, when and how will those amendments take place?
3. Will future legislation reverse the IRS's position that payroll and other permitted expenses that were forgiven are not deductible expenses on the borrower's 2020 tax returns? A few weeks ago it seemed as though any new legislation would address this issue, but the PPPFA does not.

Final Practical Guidance for Borrowers

Finally, one of the most significant indirect benefits of PPPFA is it significantly reduces the risk of borrowers having to push the boundaries on forgivable expenses. Instead of extraordinary bonus payments, prepaying rent or other permitted expenses (it's still not clear if this is permitted), or pushing the limits on other possibly permitted expenditures, borrowers can now wait a few pay periods and have those additional payroll and other permitted expenses included in their forgiveness calculation. This will simplify their forgiveness application and make their lender's review much more efficient.

The PPP provisions have been changing quickly and the measures and interpretations described here may change. Nonetheless, our team is available to discuss this program with you and be of assistance. Do not hesitate to schedule a call so we can discuss these provisions further.

Sincerely,

DUFFY KRUSPODIN, LLP