



CCM COVID-19 ALERT

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Clingen Callow & McLean, LLC

House Bill Would Amend Key PPP Loan Provisions

On May 15, 2020, Republican Representative Chip Roy of Texas introduced in the U.S. House of Representatives a bill known as the Paycheck Protection Program Flexibility Act of 2020 (the “Bill”). The Bill would amend certain Paycheck Protection Program (“PPP”) provisions of the CARES Act. The Bill has bipartisan support, and is designed to provide more flexibility to the PPP, extend the maturity date of any part of PPP loans that are not forgiven, and provide additional payroll tax relief to PPP borrowers with PPP loans that have been forgiven. The text of the bill is now available [here](#).

The Bill addresses concerns that have plagued PPP loan borrowers as they seek to use PPP loan funds in a manner that maximizes the amount of the PPP loan that can be forgiven.

Expansion of Covered Period

The Bill would amend Section 1106 of the CARES Act to provide that the “covered period” – for purposes of determining payroll costs and eligible nonpayroll costs – would be increased to the earlier of 24 weeks after the date of the origination of the PPP loan, or December 31, 2020. The present eight-week covered period has left many PPP borrowers scrambling to determine how to maximize “payroll costs” and otherwise use the PPP loan funds in a way that maximizes the loan forgiveness rather than requiring repayment of the loan.

Extension of Rehiring Safe Harbor to December 31, 2020

The Bill would also amend Section 1106 of the CARES Act, which provides that in order to avoid cutback of the PPP loan forgiveness, employees must be rehired or compensation must be reinstated by June 30, 2020. The Bill would change this date to December 31, 2020. In addition, the Bill would provide that for the measuring period of February 15, 2020 through December 31, 2020, loan forgiveness would not be reduced if the number of full-time equivalent employees is reduced because the affected PPP loan borrower is (i) unable to rehire an individual as an employee, or (ii) able to demonstrate that it is unable to hire similarly qualified employees on or before December 31, 2020.

Elimination of 75% of Payroll Costs Requirement

The Bill would also amend Section 1106 to prohibit the SBA from limiting the nonpayroll portion of an otherwise forgivable PPP loan amount, which would replace the 75% payroll cost requirement that the SBA mandated in its interim guidance.

Extended Maturity Date for Remaining PPP Loan Balances

The Bill would increase the minimum maturity date for any PPP loan balance that is not forgiven from two years to five years.

Payroll Tax Relief

The Bill would also amend the CARES Act to permit borrowers that have PPP loans forgiven to nonetheless defer payment of FICA taxes otherwise payable for the period from March 27, 2020–December 31, 2020 to December 31, 2021 (50%) and December 31, 2022 (50%). At present, the CARES Act requires payment of FICA taxes

that had been otherwise deferred to be repaid by a borrower if its PPP loan is forgiven.

These changes, which have bipartisan support, are a welcome relief to those PPP loan borrowers who were successful in obtaining PPP loans only to discover significant obstacles to PPP loan forgiveness. We hope that Congress can act quickly to pass the Bill after the Memorial Day holiday. Time is of the essence for many borrowers that are approaching the end of the eight-week “covered period” under the CARES Act.

If you have any questions about the PPP loan program including PPP loan forgiveness, please contact CCM.

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