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On Wednesday, June 3, 2020, the Senate unanimously passed the Paycheck Protection Program Flexibility Act of 2020, which passed through the house last week. This legislation alters the landscape for all borrowers under the Paycheck Protection Program (PPP) and provides much needed relief for many of those borrowers. Unfortunately for some coming to the end of their original covered period, these changes may result in a ‘too little, too late’ conundrum. Below are the highlights of this Act:

- **COVERED PERIOD**
  - **ORIGINALLY:** Covered period extended 8 weeks from the date the funds were disbursed.
  - **NOW:** Extends up to the earlier of 24 weeks or December 31, 2020.
  - **WHAT YOU NEED TO KNOW:** This will allow many more businesses to meet the required thresholds for payroll without having to worry about which payroll period is included and which isn’t allowed. It will force those who have remained in operation to keep Full Time Equivalent (FTE) count for a longer period.
- **PAYROLL vs. NON-PAYROLL ALLOCATION**
  - **ORIGINALLY:** Loan forgiveness was based on 75% of payroll costs with the other 25% allowed to be allocated to non-payroll costs.
  - **NOW:** Payroll cost percentage has been lowered to 60% of the loan proceeds.
  - **WHAT YOU NEED TO KNOW:** This was a push by many in high real estate cost areas. The non-payroll costs in normal economic conditions heavily outweighed payroll, and the lobbying was successful.
- **BINARY FORGIVENESS CALCULATION**
  - **ORIGINALLY:** Forgiveness was a function of payroll, as referenced by payroll divided by 75% on line 10 of the initial forgiveness application.
  - **NOW:** At least 60% of loan proceeds must be spent on payroll in order to be eligible for any forgiveness.
  - **WHAT YOU NEED TO KNOW:** This shouldn’t pose a problem for many businesses, but it could. The maximum loan amount hasn’t changed, which was essentially calculated as 10 weeks of payroll. A covered period of 6 months should allow most employers to get to that amount, but it means delaying the forgiveness application until that is met. This could shift back to the approach as was previously written. Without additional guidance however, this would remain a binary test.
- **ELECTION OF EIGHT WEEK COVERED PERIOD**
  - **ORIGINALLY:** All covered periods totaled 8 weeks.
  - **NOW:** By the election of the borrower, a covered period of 8 weeks can be used, and the borrower is bound by the rules as they were prior to the enactment of this law, if the loan was in place prior to enactment.
  - **WHAT YOU NEED TO KNOW:** How lenders will approach this remains to be seen. Would they use the previously issued, now outdated application form? Will they wait for the updated application form? Will Treasury issue an application form that reflects this election appropriately?

- **EXCEPTION BASED ON EMPLOYEE AVAILABILITY**
    - **ORIGINALLY:** FTE count must be restored to original levels
    - **NOW:** If an employer is not able to find similarly qualified individuals to restore employment levels, the FTE reduction will not apply. If an employer cannot restore business activity to the level it was on March 1, 2020, due to governmental restriction, it will also be exempt.
    - **WHAT YOU NEED TO KNOW:** It will be interesting to see how the business activity exemption is interpreted by Treasury. This could provide substantial relief to businesses who lost momentum due to required stay-at-home orders, social distancing requirements, or other restrictions.
- **MATURITY OF REMAINING BALANCES**
    - **ORIGINALLY:** Remaining balances due 2 years from the loan issue date.
    - **NOW:** Remaining balances have a minimum of 5 years and a maximum of 10 years.
    - **WHAT YOU NEED TO KNOW:** The original law only stated that the maximum was 10 years and the SBA and Treasury settled on 2 years. Knowing that, it shouldn't be a surprise if the additional guidance sets the loan maturity at the minimum of 5 years for all balances not forgiven.
- **EXTENSION OF DEFERRAL PERIOD**
    - **ORIGINALLY:** The deferral period for payments of principal, interest, and fees, was 6 months from the date the funds were disbursed.
    - **NOW:** All payments due for principal, interest, and fees are deferred until the date in which forgiveness is determined, or 10 months following the close of the covered period, whichever is later.
    - **WHAT YOU NEED TO KNOW:** This seems to make more sense that nothing is due until the amount of the loan is likely to be determined.
- **DELAYED PAYMENT OF PAYROLL TAXES**
    - **ORIGINALLY:** Payroll taxes due from March 15, 2020 until December 31, 2020, or until a forgiveness decision was made, were eligible to be deferred, with half due on December 31, 2021 and the rest due December 31, 2022.
    - **NOW:** All payroll taxes accrued for the period through December 31, 2020 are deferred with half due on December 31, 2021 and the rest due December 31, 2022.
    - **WHAT YOU NEED TO KNOW:** The law changes the restriction that those businesses receiving forgiveness on a PPP loan will not be eligible for deferral. This is a substantial cashflow benefit for many employers.

As with previous changes to the Paycheck Protection Program, more information is needed to determine what will be necessary to receive forgiveness on these loans. Treasury's interpretation of the new laws has created some surprises along the way, and we expect this will be no different. We will be providing updates as they occur so please continue to monitor our COVID-19 Resource center (https://www.peasecpa.com/covid-19-resource-center/) for the latest developing information.