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**Senate Passes House Bill H.R. 7010 -PPP Borrowers Breathe A Great Sigh Of Relief**

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1.   **Borrowers Can Extend the 8 Week Period to 24 Weeks.**This will make it much easier for borrowers to get full or close to full forgiveness on their loans, but also makes it more challenging to keep a full workforce in place to qualify for full forgiveness, as further discussed below. This legislation would also allow borrowers with outstanding loans as of the date of the enactment of this legislation to make an election to have the original 8-week period apply in lieu of the 24-week period. This election would make sense for borrowers that have already spent the funds on sufficient expenses that provide for full forgiveness, so they can confirm their loan forgiveness and be better able to borrow, attract capital, have cleaner balance sheets, and better mental health.

Notwithstanding this extension, borrowers, and their bankers and accountants, will be best advised to file the application promptly after the 8 weeks, if they can qualify for full forgiveness in order to get the debt off of the books in case they will need bank financing, and to receive full forgiveness before the rules may change or the SBA bureaucracy might break down or delay the process. Even if somewhat aggressive (but justifiable) positions are taken to qualify for 100% forgiveness in the first 8 weeks, most likely a new law would allow forgivable expenses paid during the longer period of time to apply in the event of an audit.

2.   **The 75% Test Now Becomes a 60% Cliff!** The Bill would change the 75% test that was issued by the SBA which requires that at least 75% of the amounts forgiven have to be spent on payroll expenses, meaning that if otherwise countable interest, rent and utilities exceed 1/3 of what is spent on payroll, health insurance or retirement plans, then the forgiveness will be reduced. It is questionable whether the SBA had the authority to pass this rule, and years of litigation were certain to keep many lawyers busy and borrowers in doubt, so Congress is hopefully stepping in to clear this up.

To be eligible to receive loan forgiveness under this new legislation, an eligible recipient of a PPP loan will now be required to use at least 60% of the loan amount for payroll costs, and may use up to 40% for permitted rent, utilities, and interest on secured debt, as defined in the law.

3.   **Penalties and Calculations for the Reduction in Work Force – June 30th Rolled Back to December 31st.**The loan forgiveness rules that are currently in place contain a provision which generally reduces forgiveness in proportion to the reduction of the loan recipient’s workforce during the 8-week period, if the same number of employees are not hired or rehired by June 30th. This new law would modify this provision by using the 24-week period instead of the current 8-week period, while also extending the June 30th “amnesty rehire date” to December 31st. An example of how this would work is as follows: If a business that had 100 employees before the virus reduces its workforce to 50 employees during the 24-week period, it will nevertheless receive complete forgiveness of its loan if it spends what was borrowed on payroll, health insurance, retirement plan contributions and permitted interest rent and utilities during the 24-week period, as long as it has 100 employees on December 31, 2020, and they apparently do not have to be the same employees, or even doing the same things as the pre-virus employees.

4.   **Some May Still Be Hurt.**Some businesses will be better able to have the 100 employees on June 30th while they are still operational with a chance to survive, as opposed to waiting until December 31st as the alternate testing date. However, if we do recover from this virus-caused recession, or whatever it is, most businesses will find this change to be advantageous, assuming that they stay open and can be back to full force, or implement some other configuration that provides for the equal number of full-time employee equivalents on December 31st. So, do you need to plan on working New Year’s Eve if you are employed in December by a PPP borrower? Fortunately not, in that receiving earned Paid Time-Off is counted as working for purposes of this rule, and getting to what may be a virtual New Year’s celebration for many.

5.   **New “We Tried to Rehire But We Really Couldn’t Exception”**. The legislation also provides an exemption from a reduction in loan forgiveness for employers that have reduced their workforce if, during the period beginning on February 15, 2020, and ending on December 31, 2020, the employer, in good faith, is able to document one of the following:

A.  **Could Not Find Qualified Employees to Hire**. To qualify for this exception, borrowers must establish an inability to rehire individuals who were employees on February 15, 2020, and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020. This requirement seems as if it would be easy to satisfy for most employers given the large unemployment rate, but in some sectors of the economy it is hard to find qualified employees, and the health industry and other parts of the economy are hiring workers that had formerly been available for other sectors. On the other hand, please send any resumes for experienced corporate or estate planning paralegals who would like to live in Clearwater, Florida to me as soon as possible.

B.  **Could Not Restore Business To Comparable Level of Activity Because of Social Distancing or Other Federal Health Guidance**. To qualify for this exception, the borrower establishes an inability to return to the same level of business activity that the business was operating at before February 15, 2020, due to compliance with requirements established 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 requirement related to COVID-19.

This will be a somewhat vague standard, as many businesses will not be able to come back to full size because of many factors, and in some cases only indirectly by reason of Federal guidelines. Hopefully, the Senate will provide language that will be more clear, but the above may be what we receive, and many businesses will need to save their cash to see if they are able to fully staff up by December 31st, based upon what the Governmental agencies do between now and then.

6.   **Repayment Period Extended to Five Years with 1% Interest During the Five Year Term**.  The proposed legislation would also extend the period for repayment of loans still owed, after being reduced for expenses that qualify for forgiveness and the EIDL grants (of up to $10,000), from 2 years to 5 years, and allow for payments on the loans to be deferred until the date on which the SBA makes a determination on loan forgiveness of the applicable borrower (which could be up to 150 days after submission of the loan forgiveness application under current guidance). We are not sure what this means, but it sounds good. The interest rate for these loans would remain at 1%.

7.   **Two Year Deferral of Employer’s Share of Payroll Taxes for All Employers.**The final change under this Bill would be that borrowers will be eligible for the deferral of payment of the employer’s share of Social Security payroll taxes (6.2%), regardless of whether the borrower receives loan forgiveness. This allows borrowers to now defer the payment of the employer’s share until 2021 when 50% of such taxes must be paid, with the remaining 50% due in 2022.

There are many issues still remaining with respect to how the somewhat ambiguous and to some extent inconsistent CARES Act provisions and SBA interpretation, as soon modified, will apply to tens of thousands of struggling businesses. We will do the best we can to help separate what can be known to what will remain murky, but a much higher percentage of borrowers can rest easier during a week of protests and national awareness knowing that their government is doing the right thing, or at least the best it can on this front.