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## Paycheck Protection Program Flexibility Act of 2020 Passes Senate

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The Paycheck Protection Program (“PPP”), which was enacted as part of the CARES Act, allows businesses to borrow funds that are guaranteed by the federal government to be used to pay certain operating expenses during the COVID-19 emergency. The loan bears interest at 1% and has a maturity of two years. The loan may be forgiven if at least 75% of the borrowed funds are used for qualifying payroll expenses within the eight-week period ending June 30, 2020, and if the remainder is used for qualifying payroll or other qualifying operating expenses during that period.

H.R. 7010, the Paycheck Protection Program Flexibility Act of 2020 (the “PPP Flexibility Act”), passed the House of Representatives on May 28, 2020, and passed the Senate without amendment on June 3, 2020. It provides businesses with flexibility and additional time to use PPP loan amounts and still qualify for loan forgiveness under the Paycheck Protection Program. H.R. 7010 expands the repayment period from two years to five years for loans made on or after the date of enactment, although borrowers and lenders may agree to extend the existing two-year loans to take advantage of the new rules.

The PPP Flexibility Act reduces, from 75% to 60%, the portion of a loan that must be used for payroll expenses in order to obtain forgiveness. Up to 40% of the loan amount may be expended for qualifying mortgage interest, rent, and utilities. It also expands the period over which the funds may be used to obtain forgiveness, from eight weeks to 24 weeks, with the new period ending the earlier of 24 weeks after the loan origination date or December 31, 2020. These provisions are effective as though included in the CARES Act.

The PPP Flexibility Act also extends, until December 31, 2020, the period in which an employer that has laid off or furloughed employees may rehire them or hire replacements, or restore reduced salary or wages. If they are not rehired or replaced, or salary or wages not restored, the forgivable amount of a paycheck protection loan is reduced. However, the forgivable amount of the PPP loan is not reduced if the loan recipient is (i) unable to rehire former employees and is unable to hire similarly qualified employees; or (ii) is unable to return to the same level of business activity at which it was operating before February 15, 2020, due to compliance with federal requirements or guidance related to COVID-19.

The PPP Flexibility Act also modifies the deferral period for payroll protection loans, allowing recipients to defer payments until the forgiveness amount is remitted by the Small Business Administration to the lender.

Recipients who do not apply for forgiveness of their loans will have 10 months from the expiration of the program (instead of the previous 6 months) to begin making payments.

Finally, the PPP Flexibility Act eliminates a CARES Act provision that made a PPP loan recipient whose indebtedness is forgiven ineligible to defer payroll tax payments.

With passage by both the House and Senate, the way is cleared for the President's signature.

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