GEORGIA CHAMBER

COVID19 Resource & Recovery

June 5, 2020

Summary of the 'Paycheck Protection Program Flexibility Act'

On June 5, the Paycheck Protection Program (PPP) Flexibility Act was signed into law by the President of the United States. The bill provides for a few small, but helpful edits to the original Paycheck Protection Program set out in the CARES Act. The Paycheck Protection Program does still have money available for lending and is open to applicants through June 30, 2020.

Extension of "Covered Period"

The bill extends the covered period during which a loan recipient may use such funds for certain expenses while remaining eligible for forgiveness. The original "covered period" in the CARES Act was 8 weeks; this new legislation extends that period to 24 weeks in most cases. In the PPP Flexibility Act, the term "covered period" is updated to mean the period beginning on the date of the origination of a covered loan and ending the earlier of **(1)** the date that is 24 weeks after such date of origination; or **(2)** December 31, 2020.

Lessening of Payroll Expenditure Requirements for Loan Forgiveness

The bill raises the non-payroll portion of a forgivable covered loan amount from the current 25% up to 40%. Whereas the CARES Act required that 75% of PPP funds be used for "payroll expenses", the PPP Flexibility Act changes the percentage to 60%. Now PPP borrowers may spend up to 40% of loan proceeds on non-payroll expenses while spending the remain 60% on payroll and still qualify for forgiveness of the loan. For a review of "payroll" versus "non-payroll" expenses see the Georgia Chamber's guidance here and the U.S. Chamber's guidance here.

Easing of Employee Retainment Requirements for Loan Forgiveness

The bill extends the period in which an employer may rehire or eliminate a reduction in employment, salary, or wages that would otherwise reduce the forgivable amount of a paycheck protection loan. Now businesses have until December 31, 2020, to reach pre-pandemic employment levels and qualify for full loan forgiveness. Additionally, the bill states that the forgivable amount must be determined without regard to a reduction in the number of employees if the recipient is **(1)** unable to rehire former employees *and* is unable to hire similarly qualified employees, or **(2)** unable to return to the same level of business activity due to compliance with federal requirements or guidance related to COVID-19.

For additional guidance on how employee retention effects loan forgiveness and exemptions to retainment requirements, please see ***How do I calculate whether I have kept enough employees for forgiveness*** as well as ***What are the exceptions to the FTE rule*** on the Georgia Chamber's guidance here.

Loan Maturity

The bill establishes a minimum maturity of five years for a paycheck protection loan with a remaining balance after forgiveness. This is an extension of the 2-year maturity originally set out in the CARES Act.

Deferral Period and Payroll Tax

The bill revises the deferral period for paycheck protection loans, allowing recipients to defer payments until they receive compensation for forgiven amounts. Recipients who do not apply for forgiveness will have 10 months from the program's expiration to begin making payments.

The bill also eliminates a provision in the CARES Act that made a paycheck protection loan recipient, who has such indebtedness forgiven, ineligible to defer payroll tax payments.