KRAMER RAYSON LLP

ATTORNEYS AT LAW

COVID-19, also known as the Coronavirus, has significantly impacted small businesses in our state and across our country. In response, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or the "Act"). The CARES Act was designed to give relief to small businesses in the form of Small Business Interruption Loans, which are administered under the Small Business Administration ("SBA") Section 7(a) small business loan program. For further information on these loans, including the Paycheck Protection Program ("PPP") loans, please refer to our previous guidance. On June 5, 2020 President Trump signed into law the Paycheck Protection Program Flexibility Act ("PPPFA"), which addresses concerns expressed about the PPP. Likewise, on June 30, 2020, the Senate extended the application period for the PPP. The effects of the PPPFA and PPP extension are summarized below.

A. Paycheck Protection Program application is extended until August 8, 2020

On June 30, 2020, the Senate unanimously passed an extension of the application period for the Paycheck Protection Program, originally set to end on that day. The House of Representatives joined the next day in passing the measure by unanimous consent. This extension allows applications for forgivable loans to be accepted through August 8, 2020. The bill is expected to be signed into law by the President.

B. Required payroll expenditures to receive forgiveness is reduced to 60%

Originally, the PPP required that 75% of a business's loan proceeds be spent on payroll costs, as defined by the Act, to qualify for forgiveness. Under the PPPFA, that amount has now been reduced to 60%. This means that businesses may use 40% of funds available for other forgivable expenses, such as rent and utilities. The PPPFA does not change the list of expenses eligible for forgiveness, which are discussed in more detail in our previous guidance. The bill also allows businesses that took a PPP loan to delay payment of their payroll taxes, which was previously prohibited under the Act.

C. Time period to use available funds extended from 8 weeks to 24 weeks

The PPPFA extends the time period to appropriately spend loan funds to twenty-four weeks to make complete loan forgiveness more likely. Those who have already borrowed prior to June 5, 2020 can choose to extend the eight-week period to twenty-four weeks or maintain the original eight-week period. New PPP borrowers, however, will have a twenty-four-week covered period. This twenty-four-week period cannot extend past December. 31, 2020.

D. Deadline to rehire workers extended to December 31, 2020

Under the Act, a business's loan forgiveness is reduced if it terminates employees during the covered period. However, businesses would not have their forgiveness amount reduced if they rehired the employees by June 30, 2020. Under the PPPFA, businesses now have until December 31, 2020 to rehire employees. Employee compensation that is eligible for forgiveness is still capped at $100,000, and employer owners or contractors are still capped at $15,285.

E. Rehire requirements lessened

Under the Act, the only exception to rehiring was if an employer could document in writing an attempt to rehire an employee. Now, under the PPPFA, businesses can still receive forgiveness if the business: 1) is unable to rehire an individual who was an employee of the eligible recipient on or before February 15, 2020; 2) is able to demonstrate an inability to hire similarly qualified employees on or before December 31, 2020; or 3) is able to demonstrate an inability to return to the same level of business activity the business was operating at prior to February 15, 2020. The SBA is expected to help clarify what documentation is necessary to satisfy these exceptions.

F. Repayment term extended from two years to five years

Under PPPFA, existing PPP loans can be extended up to five years if the lender and borrower agree. The interest rate remains at 1%. Also, after the SBA makes a determination on forgiveness, the first payment can be deferred for six months. Additionally, the PPPFA allows borrowers to use the Act provision allowing deferment of the employer's payroll taxes for Social Security, whereas the PPP did not permit these taxes on the forgivable portion of the loan to be deferred.

Under the PPPFA, lenders are required to provide complete payment deferment relief for impacted borrowers, including payment of principal, interest, and fees, until the date on which the amount of forgiveness is remitted to the lender. The Act originally required deferment for at least six months, but no longer than one year.

Additionally, if a borrower applies for forgiveness within the ten months following the last day of the covered period and receives forgiveness, the borrower need not make payment of principal, interest, or fees on the forgiven portion of the covered loan. If an eligible recipient fails to apply for forgiveness of a covered loan within the ten months following the last day of the covered period, payments are deferred until ten months after the last day of the covered period.

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Our professionals are now back in the office serving clients while following the appropriate social distancing precautions. We also remain ready and willing to assist you remotely through telephone, email, and videoconferences with the CARES Act and any other issues that may arise during this challenging time. Should you need to consult with one of our professionals, do not hesitate to contact us.