The Paycheck Protection Program Flexibility Act

Background

On March 27, 2020 Congress passed the CARES Act, establishing the Paycheck Protection Program (PPP) to provide relief to small businesses during the COVID-19 crisis. Congress passed additional appropriations for the program on April 21 in the Paycheck Protection Program and Health Care Enhancement Act but kept the policy largely intact. On June 3, Congress passed substantive reforms to the PPP for the first time.

Summary of Changes in June 3 Legislation:

- **Salary Expense Requirement**
  - To qualify for full loan forgiveness under the original program, a minimum of 75% of eligible expenses had to go toward salary expenses (defined to include healthcare) and a maximum of 25% could go to other eligible expenses, like rent or utilities.
  - That ratio has been changed to a minimum of 60% salary expenses, maximum 40% other eligible expenses.
  - However, as drafted this change undoes the original arrangement for loan forgiveness. Before, if you did not meet the 75-25 requirement, the forgiveness amount was reduced in proportion. Now, if you do not meet the requirement it disqualifies forgiveness entirely. There is some question in the legal community whether this was the intent of the bill or a drafting error.

- **Extends the “Covered Period”**
  - The “covered period” refers to the time during which eligible expenses may be forgiven.
  - The original bill set an 8-week covered period. That has now been extended to 24 weeks or December 31, 2020, whichever is first.

- **Extends the Deadline to Rehire**
  - If employers terminate any employees, they are required to return to the total number of the full-time equivalent employees that the business had on February 15 to qualify for loan forgiveness.
  - Businesses can rehire the same employees or hire new employees, but the number and salaries must be equivalent to their status on February 15.
  - The previous deadline to rehire was June 30, 2020.
  - That deadline has been extended to December 31, 2020 if a business can document in good faith its inability to rehire its employees and/or an inability to hire similarly qualified employees for unfilled positions by December 31, 2020, or an inability to return to full business activity by December 31, 2020 due directly to COVID-19 governmental restrictions. NACE International expects more guidance on this to be forthcoming.

- **Extends the Loan Maturity**
• Small Business Administration (SBA) guidance set the loan maturity deadline (when full repayment is due) at 2 years.
  o Congress has now extended the deadline to 5 years.

- Changes the Deferral Period
  o For recipients of the PPP, the SBA released guidance stipulating a 6-month deferral from the receipt of the loan to the start of repayment.
  o Congress has now extended the deferral until the loan recipient receives their loan forgiveness.
  o However, Congress also set a deadline on the recipient to apply for forgiveness. The recipient must apply for forgiveness within 10 months after the last day of the covered period or the repayment will start immediately following that 10-month window.

- Allows PPP Recipients to Also Use Payroll Tax Deferral
  o The CARES Act also established a policy whereby employers and self-employed individuals could defer payment of the employer's portion of Social Security taxes (and certain railroad retirement taxes) that would otherwise have been required between March 27, 2020 and December 31, 2020. See here for more from the IRS.
  o Under the original program, recipients of the PPP could not also take advantage of this tax deferral.
  o Now, PPP and the Payroll Tax Deferral may both be used, if necessary.

It is worth noting that SBA has released multiple rounds of guidance on the PPP. However, where statutory guidance and this new legislation conflict, legislation always overrules statutory guidance.

NACE International will continue to update you on the latest developments related to the PPP as more information is made available.