SBA Issues Revisions to PPP Rules Addressing Proportion of Funds Required to be Spent on Payroll Costs

Posted on June 11, 2020

On Thursday, June 11, 2020, the Small Business Administration ("SBA") and Treasury Department issued an interim final rule revising the original rule, enacted on April 2, 2020, on the Paycheck Protection Program ("PPP"), in light of the Paycheck Protection Program Flexibility Act ("PPP Flexibility Act"), H.R. 7010 being signed into law. The PPP Flexibility Act made several changes to the SBA's PPP loan program in order to make it easier for businesses to use provided funds and to receive forgiveness, including extending the period of time that a small business may use the loan funds and easing the restrictions on how those funds may be spent. While the new rule largely makes several administrative adjustments to the original rule to bring it in line with the changes made by the new law, **it also addresses at least one outstanding question raised by the PPP Flexibility Act related to the proportion of funds that must be spent on payroll costs to be eligible for forgiveness.**

Following the creation of the PPP loan program as part of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), the original rule published by the Treasury Department and SBA required that businesses use at least seventy-five percent (75%) of PPP loan funds on payroll costs, meaning that businesses could only use twenty-five percent (25%) on non-payroll costs like rent, utilities, and payments of mortgage interest. The PPP Flexibility Act eases that restriction, requiring that businesses **spend at least sixty percent (60%) of their PPP loan funds on payroll costs** and allowing businesses to **use up to forty percent (40%) on covered, non-payroll costs such as rent and utilities**.

As part of that change, there was concern that Congress had potentially created a "cliff" for purposes of obtaining forgiveness. Under the original regulation, an employer's amount of forgiveness would be subject to a proportional reduction if it did not use at least 75% of its loan proceeds on payroll costs, but the PPP Flexibility Act appeared to state that if a small business failed to meet the new 60% threshold for payroll costs, **it would not be entitled to *any* forgiveness**.

The new rule clarifies that the SBA will interpret the 60% requirement "as a proportional limit on nonpayroll costs as a share of the borrower's loan forgiveness amount, rather than as a threshold for receiving any loan forgiveness," as had been the case with the previous 75% threshold. **This means that a small business which uses less than 60% of its loan funds for payroll costs will still be eligible to receive forgiveness, and will instead only be subject to a proportional reduction in the amount of forgiveness to which it is entitled.**

The new rule also states that the SBA "will be issuing revisions to its interim final rules on loan forgiveness and loan review procedures to address amendments the [PPP Flexibility Act] made to the loan forgiveness requirements." Accordingly, businesses should check for updates from the SBA here as SBA continues to address the outstanding questions raised by the passage of the PPP Flexibility Act.

Should you have any questions about the changes to the PPP loan program or about the PPP loan program generally, please contact Nathan Duggins at nduggins@tuggleduggins.com or (336) 271-5246, Mike Wenig at mwenig@tuggleduggins.com or (336) 271-5216, Ross Hamilton at rhamilton@tuggleduggins.com or (336) 271-5279, Scott Gayle atsgayle@tuggleduggins.com or (336) 271-5232, or Daniel Stratton at dstratton@tuggleduggins.com or (336) 271-5240. Please also follow our Twitter account @TuggleDuggins at https://twitter.com/TuggleDuggins for continuing, up-to-date information related to navigating the law during the COVID-19 outbreak.

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