CARES ACT – Paycheck Protection Program Amendments

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Both Congress and the House passed H.R. 7010 which amends several of the provisions of the CARES Act related to the Paycheck Protection Program ("PPP") in significant ways. As of June 5, we await President Trump to sign the bill into law, which is expected. The PPP has become one of the most significant forms of relief for small to medium sized businesses, providing a bridge loan to fund payroll, rent and other operating expenses for a period of time while effected by the Covid-19 Pandemic. The loan was designed to be either partly or completely forgiven assuming the business owner carefully steers funds from the loan towards certain expenses over a period of time after funding (the "Covered Period"). The remaining balances of the loan were to be payable over two years. Funding for the PPP loans had run out but was re-seeded by the Treasury. As we understand the current conditions, those additional funds are also running out.

Many of our Spielman Koenigsberg & Parker LLP ("SKP") business and self-employed clients took advantage of this program and are now seeking guidance as to the forgiveness process. H.R. 7010 has amended several parts of the program, mostly related to the Covered Period and loan forgiveness process. The significant components of the proposed changes are detailed herein.

Length of the Loan – The SBA had originally released guidance that the loans under the PPP would be for a period of two years. The amendments to the law call for an extension of the loan to a five-year term. The loan interest rate continues to be set at one percent.

Covered Period – As described earlier, the covered period is the time frame from when the loan proceeds are distributed to when the spend down measurement period ends. The original PPP terms set the Covered Period to an eight-week period starting when the funds are disbursed. SKP has guided our clients with regard to this period to specifically track the spending of the funds so as to allow the client to avail themselves of as much of the loan forgiveness as possible. The Covered Period is being amended to state that it can either be the eight-week period from the date of receiving the proceeds (original law), or the earlier of 24 weeks from receipt of proceeds but ending no later than December 31, 2020. This would give businesses that are not yet allowed to operate due to the lockdown, extra time to begin spending the proceeds of the loan and better qualify for forgiveness.

Extension of Rehire and Compensation Safe Harbors – Under the original law, the program allowed for an opportunity to re-hire employees on or before June 30, 2020 to avoid any forgiveness penalties for not fully ramping up employment. The new proposed bill would extend the date of rehire and/or reduction in cash compensation to any employee to no later than December 31, 2020.

New Rehire Exemption – As a result of frequently asked questions that addressed the issue, the House and Senate added a provision whereby the forgiveness of the PPP loan would not be affected by the number of full-time equivalent employees that were reduced if such reduction was the result of documented inability to rehire similarly qualified replacement employees. Documentation of the difficulty to rehire can come in the form of 1) the inability of the business to return to the same level of business activity as before February 15, 2020 due to compliance with federal health and safety requirements or guidance issued between March 1, 2020 and December 31, 2020. Thus, this new provision protects companies that are specifically shut down due to the lockdowns or industries that cannot hire due to ability to retain qualified employees.

Limitation on Forgiveness Spending – The existing guidance from the SBA and Treasury indicates that the loan proceeds must be used at least 75% towards payroll costs (including payroll and fringe benefits paid by the company). The proposed amendment to the law includes new guidance to use at least 60% of the covered loan amount for payroll costs and may use up to 40% of such amount for any payment of interest on covered mortgage, rent obligation or covered utility payment. Comments made by key Senators on the bill have stated that you must spend 60% on payroll costs, otherwise the forgiveness calculation will result in zero forgiveness. Clearly this matter is one of interest to us, and we will be watching for clarity on the forgiveness cliff.

As with the original CARES Act law and PPP program, SKP continues to monitor and watch for frequent developments and interpretations of the law. Should you need any assistance with qualifying for the PPP program, use of the funds, or forgiveness calculations, please feel free to reach out to us for guidance.