

# CLIENT ALERT

ATTORNEYS AT LAW | 711 THIRD AVENUE | NEW YORK, NY 10017 | 212 907 7300 | WWW.GOLENBOCK.COM

## HOUSE PASSES BILL EASING RESTRICTIONS ON PPP LOAN FORGIVENESS

May 30, 2020

On May 28, 2020, the U.S. House of Representatives approved a bill that would amend certain provisions of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) concerning the Paycheck Protection Program (“PPP”). The House bill ([H.R. 7010](#)), known as the Paycheck Protection Program Flexibility Act of 2020 (the “House Bill”), passed by a vote of 417 to 1. (We summarized an earlier version of the House Bill (the “Proposed Bill”) in an Alert dated May 21, 2020.) The U.S. Senate is expected to act on the House Bill or its own similar legislation as soon as next week.

The House Bill would:

- Extend the PPP loan forgiveness period from 8 to 24 weeks (or December 31, 2020, if earlier);
- Reduce the percentage of PPP loan proceeds that must be spent on payroll costs from 75% to 60%;
- Extend the maturity date of certain PPP loans from 2 years to at least 5 years;
- Modify the deferral period for certain PPP loan payments;
- Disregard reduction in full-time equivalent employees (“FTE”) if the employer is unable to rehire or replace certain laid-off employees, or is unable to operate its business at the same

level as it had been operating at or before February 15, 2020 due to compliance with COVID-19 requirements or guidance issued by certain governmental agencies;

- Change the date employers have to restore reductions in pay or FTEs in order to avoid loss of loan forgiveness from June 30, 2020 to December 31, 2020; and
- Allow a borrower to delay payment of the employer payroll tax even if the borrower receives PPP loan forgiveness.

The House Bill differs from the Proposed Bill in several ways. First, the House Bill states that, to be eligible for PPP loan forgiveness, a borrower must “use at least 60 percent of the covered loan amount for payroll costs, and may use up to 40 percent” for covered mortgage, rent and utility payments. This would change the current Small Business Administration rule that 75% of PPP loan proceeds be used for payroll costs, but is different from the earlier Proposed Bill, which would have eliminated the requirement that any minimum percentage of loan proceeds be used for “payroll costs”.

As in the Proposed Bill, the House Bill extends the PPP loan forgiveness period from 8 to 24 weeks (or December 31, 2020, if earlier). The House Bill also

changes the deferral period for payments on PPP loans. The House Bill states that if a borrower does not apply for forgiveness within 10 months of the last day of the applicable covered period, loan payments must be deferred for at least such 10-month period. The House Bill further provides that borrowers who receive loan forgiveness may defer payments until the date on which the forgiven amount is remitted to the lender. Conceivably, this period could be less than the 6-month deferral period currently applicable to all PPP loans. And, the House Bill does not address whether there is a deferral period for borrowers who apply for PPP loan forgiveness, but for whom the SBA does not remit any forgiven amount to the lender (because, for example, the SBA determines that the borrower is not entitled to any forgiveness).

As expected, the House Bill extends the minimum term of PPP loans from 2 years to 5 years, while maintaining the current 10-year maximum term. The House Bill explicitly provides that the 5-year minimum term is effective upon enactment of the House Bill into law, and does not apply retroactively. However, the House Bill provides that lenders and borrowers may mutually agree to change the term of any PPP loan to conform with the House Bill.

Like the earlier Proposed Bill, the House Bill disregards reduction in full-time equivalent employees ("FTE") under certain circumstances for the purpose of calculating forgiveness. The House Bill, however, is different from the Proposed Bill on this issue. The House Bill provides that FTE reduction will not count against forgiveness if the borrower, in good faith, is able to document (a) both (i) an inability to rehire individuals who were employees of the eligible loan recipient on February 15, 2020 and (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or (b) an inability to "return to the same level of business activity as such business was operating at or before February 15, 2020," due to compliance with requirements or guidance issued by certain government agencies regarding sanitation, social

distancing, or worker or customer safety related to COVID-19. That latter provision is new, while the first provision combines two concepts that were independent in the Proposed Bill.

Finally, as expected, the House Bill removes a restriction in the CARES Act and allows employers receiving PPP loan forgiveness to also defer payment of the employer share of the Social Security tax.

We will continue to monitor the Bill as the Senate decides whether to take it up. We will update this Alert if the Bill, or similar legislation, is enacted into law.

For further assistance regarding PPP loans, please contact your primary GEABP attorney or any of the attorneys listed below:

**Richard Kaplan** (917) 710-7376

Email: [rkaplan@golenbock.com](mailto:rkaplan@golenbock.com)

**Alex Kaplun** (917) 710-7753

Email: [akaplun@golenbock.com](mailto:akaplun@golenbock.com)

**Matthew Weill** (410) 499-4308

Email: [mweill@golenbock.com](mailto:mweill@golenbock.com)

**Matthew Carroll** (212) 907-7385

Email: [mcarroll@golenbock.com](mailto:mcarroll@golenbock.com)

**Mark Denton** (212) 907-7386

Email: [mdenton@golenbock.com](mailto:mdenton@golenbock.com)

**Megan Rockwell** (314) 495-0590

Email: [mrockwell@golenbock.com](mailto:mrockwell@golenbock.com)

**Jeffrey Berger** (212) 907-7393

Email: [jberger@golenbock.com](mailto:jberger@golenbock.com)

---

## **GOLENBOCK EISEMAN**

---

## **ASSOR BELL & PESKOE**<sup>LLP</sup>

---

Golenbock Eiseman Assor Bell & Peskoe LLP uses Client Alerts to inform clients and other interested parties of noteworthy issues, decisions and legislation which may affect them or their businesses. A Client Alert should not be construed or relied upon as legal advice. This Client Alert may be considered advertising under applicable state laws.

© GEABP (2020)