PERSPECTIVE

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House bill would extend Paycheck Protection Program to cover 24 weeks

By Robert W. Wood

The House has passed a bill to expand Payment Protection Program, or PPP, loans in key ways. The Senate has its own version under consideration. This bill is not yet law, but it the Senate acts favorably and the President signs it, it would make key improvements.

The Paycheck Protection Program allows loans of up to $10 million at 1% interest to employers with fewer than 500 workers to cover two months of payroll and overhead. If you keep your workers and do not cut their wages, the government will forgive most or all of the loan and even repay the bank that actually made you the loan. The loan amounts will be forgiven as long as: (1) The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and (2) employee and compensation levels are maintained. Payroll costs are capped at $100,000 for each employee. Small Business Association lenders have details, though there has been controversy and hiccups in rolling out the program.

And there have also been comments from taxpayers and advisers that the eight-week and other restrictions do not adequately deal with the long lockdown and the inevitably slow recovery. Even the tax impact of the expenses has been controversial, with the IRS saying that expenses will not be deductible. In the meantime, businesses needs answers, and relief as they sit on loans they have obtained or are considering.

The House passed bill would make the following changes:

Allowing loan forgiveness for expenses beyond the eight-week covered period to 24 weeks and extending the rehiring deadline. Back in March, the PPP program was established as an eight-week program, ending on June 30. However, it is clear that the economic effects of the pandemic will affect small businesses long past June 30. The current eight-week timeline does not work for local businesses that could only very recently have customers and those that are only allowed to open with very heavy restrictions. Small businesses need the flexibility to spread the loan proceeds over the full course of the crisis, until demand returns.

Increasing the current limitation on the use of loan proceeds for non-payroll expenses from 25% to 40%. Currently, under regulations issued by the Trump Administration, the PPP loans require that no more than 25% of loan proceeds can be spent on non-payroll expenses such as rent, mortgage interest, and utilities. This limitation has prevented many small businesses, such as independent restaurants, from applying to the program because their rent is significantly more than 25% of their monthly expenses. The 40% limitation in this bill is much more realistic.

Extending the program from June 30 to December 31. By ensuring the PPP program will operate for 24 weeks, rather than only eight, this bill will ensure that many more truly small businesses will be able to take advantage of the program.

Extending loan terms from two years to five years. According to the American Hotel and Lodging Association, full recovery for that industry following both the September 11, 2001 terrorist attacks and the 2008 recession took more than two full years. This was also true for many other industries. If the past is any indication of the future, it will take many businesses more than two years to achieve sufficient revenues to pay back the loan.

Ensuring full access to payroll tax deferment for businesses that take PPP loans. The purpose of PPP and the payroll tax deferment was to provide businesses with liquidity to weather the crisis. Receiving both should not be considered double-dipping. Businesses need access to both sources of cash flow to survive.

As a reminder, all businesses can apply, even if the business is just you as a self-employed independent contractor. The provision covers any business with 500 or fewer employees. That covers a lot of territory. You need to complete the PPP loan application and submit the application with the required payroll and other documentation to an approved lender. A key feature is forgiveness of the loan. You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the eight weeks after getting the loan. The IRS says that not more than 25% of the forgiven amount may be for non-payroll costs. You will also owe money if you do not maintain your staff and payroll.

Your loan forgiveness will be reduced if you decrease your full-time employee headcount. Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019. You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

You also have to specifically request loan forgiveness. You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

Forgiveness applications are now out, and there are plenty of questions emerging. Stay tuned.

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