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PPP Forgiveness Application Offers More Guidance, but More Changes May Be Forthcoming – May 20

Vandenack Weaver has updated its planning and calculator spreadsheet tool for Paycheck Protection Program ("PPP") loans to reflect the guidance described below. You can find the spreadsheet here.

The Small Business Administration ("SBA") and the U.S. Department of the Treasury ("Treasury") have released a forgiveness application ("Application") for PPP loans. The application can be found here.

Key guidance resulting from the release of the Application is as follows:

- Certain borrowers can delay the beginning of the eight-week "covered period" to the first date of a "pay period" that begins after the origination date of the PPP loan. The alternative calculation is only available to borrowers who use a biweekly or more frequent (i.e., weekly) pay period. Borrowers using semimonthly or monthly payrolls must start the "covered period" on the origination date.

- "Safe harbors" for both the "FTE ratio" and "salary reduction" adjustments to the forgiveness amount are provided.

    - If a borrower's FTE count on June 30 is reinstated to the FTE count on February 15, then the "FTE ratio" used to potentially reduce forgiveness is restored to 1.0 or 100 percent.

    - Likewise, if an employee's salary was reduced more than 25 percent after February 15, there will be no penalty if that salary is fully restored by June 30

    - The statutory language indicated that only a portion of the FTE ratio or salary reduction adjustments might be restored by reinstating such by June 30, but the Application reflects lobbying for a full restoration.

- Borrowers can exclude certain employee positions from the FTE ratio calculation. FTE ratio will not be affected by positions for which:

    - The borrower made a good-faith written offer to re-hire which was rejected;

    - The employee was fired for cause;

    - The employee voluntarily resigned: or

    - The employee requested and received a voluntary reduction of hours.

- Clarification as to forgivable expenses being "incurred but not paid" during the eight-week period. Forgiveness will be allowed for payments "incurred" during the eight-week period so long as payment is made on the next payroll date (for payroll costs) or the next applicable due date (for non-payroll costs).

- Employers are provided a simplified method to calculate FTEs as an option. FTEs can be calculated on the basis of either:
    - hours paid per week divided by 40 (capped at 1.0); or
    - all part-time employees counted as 0.5 FTE.

Although the new guidance provides some new clarity for borrowers, there may still be additional changes in the works.

On Twitter on May 17, Sen. Marco Rubio – a principal architect of and advocate for the PPP – stated that a “legislative fix” was being developed to permit borrowers to spend PPP proceeds over a period longer than eight weeks and retain forgiveness. Additional flexibility to the requirement that 75 percent of forgiveness be spent on payroll costs is also being discussed. At a congressional hearing on May 19, however, Secretary of the Treasury Steven Mnuchin stated that Treasury was unlikely to change the 75 percent rule unless Congress acted to make the change.

Sen. Rubio stated that the intent is to adopt new legislation before the first wave of borrowers reached the end of the eight-week period, but he indicated it may be difficult to accomplish that goal.