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House approves Paycheck Protection Program enhancements

The House of Representatives voted 417-1 on May 28 to approve a bipartisan proposal that would expand the loan forgiveness rules and make other enhancements to the Paycheck Protection Program, which was enacted in March as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

The Paycheck Protection Program Flexibility Act of 2020 (H.R. 7010), which was introduced on May 15 by Democratic Rep. Dean Phillips of Minnesota and Republican Rep. Chip Roy of Texas, cleared the chamber under an expedited process known as "suspension of the rules," which requires a two-thirds majority vote for passage.
URL: https://docs.house.gov/billsthisweek/20200525/BILLS-116hr7010-SUS.pdf

A separate measure (H.R. 6782) which, among other things, would have required the government to publicly disclose information about approved Paycheck Protection Program loans – such as the identities of loan recipients and the lenders or intermediaries providing the funds – was also brought up as a "suspension" bill but failed to clinch a two-thirds majority and was defeated.
URL: https://www.congress.gov/bill/116th-congress/house-bill/6782/text?q=%7B%22search%22%3A%5B%22h.r.+6782%22%5D%7D&r=1&s=2

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Paycheck Protection Flexibility Act: Key provisions

As enacted in the CARES Act, the Paycheck Protection Program (PPP) makes loans available to most businesses with fewer than 500 employees and to hospitality industry businesses with fewer than 500 employees per location. The loans are intended to be used largely for payroll, along with rent, utilities, and certain other expenses, and are generally forgivable if the business maintains its staff and payroll numbers through June 30. (See separate coverage in this issue for details on recent guidance addressing PPP loan forgiveness requirements for borrowers and lenders.)

The House-approved bill generally would make the PPP more flexible for borrowers by extending current-law deadlines and loan terms, adjusting limitations imposed by the Small Business Administration (SBA) on the percentage of loan proceeds that borrowers can use to cover nonpayroll expenses, expanding the list of specific expenses that can be paid for with PPP loan proceeds, and rescinding restrictions that prevented borrowers under the program from also taking advantage of certain other CARES Act tax incentives.

The provisions in H.R. 7010 would take effect retroactively, as if they had originally been enacted in the CARES Act, which was signed into law on March 27.

Covered loan period: The CARES Act provides that the “covered period” under the PPP’s loan forgiveness rules applies to expenses incurred within eight weeks after the loan origination date, a limitation that some businesses, as well as lawmakers in both parties, came to regard as impractical once the program was up and running.

H.R. 7010 would extend the covered period to include expenses incurred through the earlier of December 31, 2020, or 24 weeks after the loan origination date. Borrowers that received a PPP loan before the legislation’s enactment date would be permitted, at their election, to continue using the 8-week covered loan period originally included in the CARES Act.

Limitations on payroll v. nonpayroll expenses: The House-passed bill would modify restrictions imposed in regulations issued by the Treasury Department and SBA implementing the Paycheck Protection Program which provide that a loan is forgivable if an employer spends no more than 25 percent of PPP loan proceeds on nonpayroll expenses.

Lawmakers in both parties – along with a number of business groups – have cited that limitation as a source of concern, and a bipartisan group of Senate members – including several taxwriters – recently urged Treasury and the SBA to modify the cap, calling it “problematic for several business sectors, especially those whose mortgage, rent, or utility payments constitute a large portion of fixed monthly expenses.” (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)
URL: https://www.menendez.senate.gov/imo/media/doc/PPP%20forgiveness%20letter_final_.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html

Under H.R. 7010 as approved, borrowers would be able to spend up to 40 percent of their loan proceeds on nonpayroll costs and remain eligible for loan forgiveness. The bill as introduced would have eliminated the SBA restriction altogether, but the measure was modified before it reached the floor in the wake of efforts by House leaders this week to pre-negotiate a possible compromise bill with the Senate.

Sponsor Chip Roy told *CQ Rollcall* that “[t]here were concerns about us zeroing out the 75 percent requirement that the SBA put in place, and we agreed to a 60 percent version of it – just giving some relief but leaving some measure in place.”

Interaction with payroll tax deferral: The measure provides that employers participating in the PPP would also be permitted take advantage of the CARES Act’s payroll tax deferral provisions.

Under the CARES Act, employers (and self-employed individuals) are allowed to defer payment of the 6.2 percent employer-side Social Security payroll tax for wages paid between the date of that bill’s enactment and December 31, 2020 (with remittance due in equal installments by December 31, 2021, and December 31, 2022). Though recipients of forgiven PPP loans were generally precluded from also utilizing the payroll tax deferral provision, the IRS clarified on an FAQ page published last month (Question 4) that PPP loan recipients can, in fact, defer payment on wages paid up until the point of loan forgiveness, but not beyond that date.
URL: https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020

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Under H.R. 7010, even recipients of forgiven PPP loans would be able to continue to defer payment of payroll taxes on wages paid through the end of 2020. An identical provision is also included in The Heroes Act (H.R. 6800), the $3 trillion coronavirus response package that was approved in the House on May 15. (The Heroes Act is not expected to pass the Senate without substantial changes and has drawn a veto threat from President Trump. For additional details on that legislation, see *Tax News & Views*, Vol. 21, No. 27, May 15, 2020.)
URL: https://www.congress.gov/bill/116th-congress/house-bill/6800/text?q=%7B%22search%22%3A%5B%22h.r.+6800%22%5D%7D&r=1&s=2
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1.html

Deadline for rehiring employees: As enacted, the CARES Act requires an employer participating in the PPP to rehire employees by June 30, 2020 to be eligible for loan forgiveness. H.R. 7010 would extend that deadline to December 31, 2020. The measure also includes a safe harbor for certain employers that are required to open at reduced capacity.

Loan terms: The measure also would eliminate restrictions in the CARES Act that limit the term of non-forgiven PPP loans to two years.

Treatment of 'otherwise deductible expenses' not addressed

H.R. 7010 does *not* include a proposal to clarify that otherwise deductible expenses funded with PPP loan proceeds would remain deductible even if the loan is forgiven.

The IRS recently held in Notice 2020-32 that these expenses are not deductible. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 24, May 1, 2020). But some prominent congressional taxwriters, including Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., along with House Ways and Means Committee Chairman Richard Neal, D-Mass., subsequently challenged that position in a letter to Treasury Secretary Steven Mnuchin, arguing that it was contrary to congressional intent and urging the Service to reconsider. Grassley, Wyden, and several other Finance Committee members also introduced legislation that would clarify the treatment of these expenses. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)
URL: https://www.irs.gov/pub/irs-drop/n-20-32.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200501_1.html
URL: https://www.finance.senate.gov/imo/media/doc/2020-05-05%20CEG,%20RW,%20RN%20to%20Treasury%20(PPP%20Business%20Deductions).pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html

The House-passed Heroes Act also would clarify the deductibility of these expenses and would expand the list of expenses that can give rise to PPP loan forgiveness to include certain interest on debts incurred prior to the covered period of PPP and costs related to providing personal protective equipment to employees.

Compromise with the Senate?

There is bipartisan support on the other side of the Capitol for making the Paycheck Protection Program more flexible. A companion bill to H.R. 7010 was introduced on May 21 by Senate Finance Committee member Steve Daines, R-Mont., and Sen. Angus King, I-Maine, and a similar proposal was introduced earlier this month by Small Business Committee Chairman Marco Rubio, R-Fla., and ranking member Ben Cardin, D-Md.

Text of the Rubio-Cardin proposal – the Paycheck Protection Program Extension Act of 2020 – was not available at press time, but according to a summary released by Maine Republican Sen. Susan Collins (one of the original co-sponsors) that measure would:

- Extend the deadline to apply for a PPP loan to December 31, 2020 (like H.R. 7010 and the Senate companion proposal);
- Extend the covered period for loan forgiveness to include expenses incurred within 16 weeks from the loan origination date (compared to 24 weeks under H.R. 7010 and the Senate companion legislation and 8 weeks under current law); and
- Allow borrowers to use loan funds to purchase personal protective equipment for employees and to pay for the cost of adapting commercial property to comply with guidelines from the Centers for Disease Control and other relevant agencies – a provision not included in H.R. 7010 and the Senate companion bill.

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House and Senate leaders have been negotiating the contours of a possible compromise bill over the past week and House Majority Leader Steny Hoyer, D-Md., told reporters May 26 that he is optimistic that the two chambers would be able to reach an agreement.

"I don't really think there's a lot to resolve," he said.

Rep. Chip Roy told *CQ Rollcall* that the decision to add modified limitations on payroll and nonpayroll expenses to H.R. 7010 could help clear the way to a compromise.

"I'm hopeful that will shake some things loose, and hopefully, if we get it through here, then they can glide path it through the Senate."

The Senate was out of session this week for its Memorial Day recess, but lawmakers in that chamber could take up PPP legislation when they return to Washington the week of June 1.

Senate action on larger bill likely weeks away

Although a House-Senate accord on modifications to the Paycheck Protection Program appeared to be within reach this week, agreement on a larger coronavirus mitigation and response package does not seem as imminent.

Majority Leader Mitch McConnell, R-Ky., who has already said his chamber will not take up the House-approved Heroes Act, told reporters in Louisville May 26 that "in the next month or so we'll begin talking about possibly another bill."

McConnell has maintained in recent weeks that he intends to gauge the effects of the recovery bills that have been enacted to date before taking up substantial new legislation.

But the majority leader thus far has said little about the specific contents of the next recovery bill, other than that it should be narrowly targeted, have a price tag of roughly $1 trillion (significantly below the estimated $3 trillion cost of The Heroes Act), and include liability protections for health care workers, business owners, and employees as the country emerges from its lockdown over the coming weeks and months. (In remarks on the Senate floor earlier this month, he called liability protections "a hard red line.")

McConnell also has indicated that he will not accept Democratic proposals to extend the enhanced unemployment insurance benefits enacted in the CARES Act. Some Senate Republicans – including Finance Committee member Rob Portman, R-Ohio – are floating alternative proposals that would provide temporary back-to-work bonus payments to unemployed individuals who return to the workforce.

White House economic advisor Larry Kudlow told reporters this week that a back-to-work bonus is "something [the Trump administration is] looking at very carefully."

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Coronavirus guidance addresses PPP loan forgiveness, NOL carrybacks, alternative energy projects

The government this week issued new guidance addressing the Paycheck Protection Program, net operating loss provisions, and the aviation excise tax holiday enacted under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136), along with a safe harbor for certain alternative energy projects affected by pandemic-related supply chain interruptions and information for certain foreign travelers who have been unable to leave the US because of the coronavirus.

The IRS also announced another round of filing deadline extensions for certain taxpayers affected by the pandemic.

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Paycheck Protection Program loan forgiveness

The Treasury Department and the Small Business Administration (SBA) on May 22 released an interim final rule addressing loan forgiveness requirements for borrowers under the Paycheck Protection Program (PPP, CARES Act section 1102). The guidance, which is presented in a question-and-answer format, provides details on:
URL: https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf

- The loan forgiveness process;
- Payroll and nonpayroll costs that are eligible for loan forgiveness;
- The statutory loan forgiveness reduction formulas and how they operate, as well as factors that could result in a reduction in a borrower's loan forgiveness amount; and
- Documentation borrowers will need to provide when they request loan forgiveness.

A separate interim final rule, also released on May 22, explains lenders' responsibilities in the PPP loan forgiveness process, including procedures for reviewing applications for loan forgiveness, the timeline for issuing decisions, and follow-up actions required once a decision has been made. The guidance also addresses issues around lender fees and discusses the SBA's role in reviewing certain loans.
URL: https://home.treasury.gov/system/files/136/PPP-IFR-SBA-Loan-Review-Procedures-and-Related-Borrower-and-Lender-Responsibilities.pdf

Release of these two items came just days after Treasury and the SBA published the PPP loan forgiveness application form and detailed instructions for completing the application.
URL: https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf

The House this week also approved and sent to the Senate legislation that would modify the PPP, including some of the provisions around loan forgiveness. (See separate coverage in this issue for details.)

C-corp NOL carrybacks and AMT

In other CARES Act guidance, the IRS posted an FAQ page on May 27 discussing issues affecting subchapter C corporation taxpayers that are carrying back net operating losses (NOLs) to years in which the corporate alternative minimum tax (AMT) applies.
URL: https://www.irs.gov/newsroom/questions-and-answers-about-nol-carrybacks-of-c-corporations-to-taxable-years-in-which-the-alternative-minimum-tax-applies

CARES Act section 2303 allows taxpayers to carry back NOLs arising in 2018, 2019, and 2020 to the five prior tax years, and also allows NOLs incurred in these years to fully offset prior-year taxable income. CARES Act section 2305 allows corporations to claim 100 percent of AMT credits in 2019 as fully refundable and provides an election to accelerate claims to 2018, with eligibility for accelerated refunds.

Safe harbors for renewable energy projects

Also this week, the IRS on May 27 issued Notice 2020-41, which adds an extra year to the four-year "continuity safe harbor" under the energy production tax credit and the energy investment tax credit for certain alternative energy projects that began construction in 2016 or 2017. If these projects are placed in service within five years, construction will be deemed continuous.
URL: https://www.irs.gov/pub/irs-drop/n-20-41.pdf

A bipartisan group of senators – including Finance Committee Chairman Charles Grassley, R-Iowa – requested the extension in a letter sent to the Treasury Department last month. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)
URL: https://www.grassley.senate.gov/sites/default/files/2020-04-23%20CEG%2C%20RW%2C%20et%20al%20to%20Treasury%20%28Energy%20Tax%20Credits%20Safe%20Harbor%29.pdf
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html

The notice also provides a safe harbor under the "three-and-a-half month rule" for services or property paid for by the taxpayer on or after September 16, 2019, and received by October 15, 2020.

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The IRS explained in a news release that it provided the relief in response the economic slowdown resulting from the coronavirus pandemic – specifically, industry-wide delays in the supply chain for components needed to complete renewable energy projects.

Tax filing deadlines

The IRS in Notice 2020-35 extended, generally through July 15, the filing deadlines for certain employment taxes, employee benefit plans, exempt organizations, individual retirement arrangements, Coverdell education savings accounts, health savings accounts, and Archer and Medicare Advantage medical saving accounts.
URL: https://www.irs.gov/pub/irs-drop/n-20-35.pdf

Aviation excise taxes

In a recently published FAQ page, the IRS explains issues related to a provision in the CARES Act (section 4007) that temporarily suspends certain aviation excise taxes. The aviation excise tax holiday took effect on March 28, 2020, and is scheduled to sunset after December 31, 2020.
URL: https://www.irs.gov/newsroom/faqs-aviation-excise-tax-holiday-under-the-cares-act

Pandemic-related travel disruptions and the medical conditions exception

An FAQ page published by the IRS on May 27 discusses how certain alien individuals who intended to leave the United States but were unable to do so because of the coronavirus or other medical problem may be eligible to claim the medical condition exception to exclude certain days of US presence from the substantial presence test in section 7701(b)(3) for calendar year 2020. The FAQ page also explains the procedures for claiming the exception on Part V of Form 8843 with respect to a single period of up to 30 consecutive calendar days of presence in the US in calendar year 2020.
URL: https://www.irs.gov/newsroom/faqs-for-individuals-claiming-the-medical-condition-exception-in-2020

Find out more

A running list of guidance and other resources that address significant tax issues stemming from the pandemic is available from Deloitte Tax LLP.
URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/Stimulus-Resource-Table.pdf

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OIRA receives GILTI-FDII final regs for review

In an update published on its web site this week, the Office of Information and Regulatory Affairs (OIRA) indicated that final regulations under section 250, pertaining to deductions for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI) have been submitted for review by the Treasury Department.
URL: https://www.reginfo.gov/public/do/eoDetails?rrid=130587

The FDII and GILTI provisions were enacted in the 2017 tax code overhaul known informally as the Tax Cuts and Jobs Act (P.L. 115-97).

Treasury and the IRS released proposed regulations on FDII and GILTI in March of 2019. (For a summary of the proposed regulations, see *Tax News & Views*, Vol. 20, No. 9, Mar. 8, 2019.)
URL: http://newsletters.usdbriefs.com/2019/Tax/TNV/190308_1.html

OIRA is part of the White House Office of Management and Budget. Its review of a regulatory project is one of the final actions taken before the guidance is released to the public.

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Carbon sequestration, donor disclosure regs released

In other developments, the Treasury Department on May 28 released proposed regulations that provide guidance regarding the expanded credits under section 45Q for carbon oxide captured using equipment originally placed in service on or after February 9, 2018.
URL: https://www.irs.gov/pub/irs-drop/reg-112339-19.pdf

Treasury also released final regulations on May 26 that provide that tax-exempt organizations – other than those organized under section 501(c)(3) or section 527 – are no longer required to disclose to the IRS the names and addresses of donors who contribute $5,000 or more.
URL: https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-11465.pdf

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JCT updates Heroes Act revenue estimate

Tax provisions in The Heroes Act (H.R. 6800), the massive economic assistance package that was approved in the House earlier this month, would reduce federal receipts by $922.5 billion over 10 years, according to an updated revenue estimate from the Joint Committee on Taxation (JCT) staff.
URL: https://www.jct.gov/publications.html?func=startdown&id=5261

The revised revenue score represents a $39 billion increase over the estimate the JCT published on May 15 when The Heroes Act was brought to the House floor. The higher estimated revenue loss is the result of a slight increase in the estimate for the provisions related to private insurance (Division C) and the inclusion of the bill's retirement provisions (Division D and Division N), which weren't scored in the original release because JCT staff lacked sufficient information to develop an estimate.

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