In Brief. The Paycheck Protection Program Flexibility Act (P.L. 116-142), which was signed into law on June 5, 2020, provides much needed flexibility for borrowers under the U.S. Small Business Administration (SBA) Paycheck Protection Program.

Child Care Context. Particularly for child care programs, these changes could help support the use of the Paycheck Protection Program to more effectively support the business model for child care in a way that proved challenging under the rules of the program under the original Coronavirus, Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) enacted in March.

Key Take-Aways.
- More time to spend loan funds and still obtain forgiveness (24 weeks instead of 8 weeks)
- More flexibility to support payroll and fixed costs
- More flexibility in employee retention rules related to worker circumstances and market/public health factors

Paycheck Protection Program Flexibility Act Highlights

Loan Application Deadline. While the Paycheck Protection Program (PPP) Flexibility Act contains numerous provisions to support borrowers interested in using the program to support their businesses to retain employees, no change was made in the deadline to apply for such loans. This means that the new changes apply to those borrowers who obtained PPP funding prior to enactment (June 5, 2020), but also before June 30, 2020 when loans can no longer be submitted.

It may be that future legislation by Congress could extend the date for the submission of applications, but the new PPP flexibility law did not change the deadline for applications.

Extension of Time to Use PPP Funding. Under the CARES Act, PPP borrowers were required to spend funds (in compliance with specific criteria) during an 8-week period in order to qualify for loan forgiveness. Under the new law,
- Borrowers will have up to 24 weeks (but not beyond December 31, 2020) to spend their loans and still qualify for loan forgiveness.
- Current PPP borrowers can choose to extend the eight-week period to 24 weeks or keep their original eight-week period.

Payroll/Fixed Cost Flexibility. Under the CARES Act rules, loan forgiveness required 75 percent of expenses to be related to payroll costs. Under the new law, more flexibility is provided to ensure that businesses are able to support fixed costs (such as mortgage interest, rent, or utility payments).
- The new requirement reduces the expense requirement for loan forgiveness related to payroll costs to 60 percent from 75 percent and, therefore, allows 40 percent of forgivable funds to be used to support fixed costs.

Employee Retention and Restoration Timeline. Under the CARES Act, employers were required to restore or retain their employees by June 30, 2020 in order to qualify for loan forgiveness.
Under the new law, there is more flexibility for employee restoration.

- The new terms require employers to restore their number of employees (i.e., the “head count”) by December 31, 2020.

Employee Retention and Restoration Flexibility.

Under the CARES Act, employers were exempt from the “head count” restoration under certain circumstances: an employee was fired for cause; was terminated and subsequently refused a good faith offer of rehire; or voluntarily resigned or requested a reduced workload. Under the new law, employers can obtain full forgiveness even if they do not fully restore their number of employees under two new conditions:

- Employers can reduce workforce retention requirements based on the inability to find qualified employees by December 31, 2020, or
- Employers can reduce workforce retention requirements if they are unable to restore operations to February 15, 2020 levels “due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020 and ending December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety required related to COVID-19.”

Many governors have issued guidance that restricts the number of children in child care center classrooms to better support public health purposes to promote the safety of staff, the families of staff, and the children in their care as well as their families.

With restrictions on the number of children in care, many child care programs closed or laid off staff due to the much lower revenue available to support their business model. This flexibility, if it applies to governor and state agency guidance designed to support federal agency health recommendations could make the PPP funding work more effectively for child care programs.

PPP Outstanding Loan Payment Deferral.

Under the CARES Act rules, the portion of PPP loans that are not forgiven had to be paid back within two years. The new law allows for loans to be repaid over a five year minimum (or up to 10 years). The original interest rate of 1 percent is retained.

- Borrowers must apply for loan forgiveness within 10 months of their covered loan in order for forgiveness to be considered.

Deferment of Employment Taxes. Under the CARES Act, PPP borrowers were not allowed to defer the payment of employment taxes if they wanted their PPP loan to be forgiven. Under the new law, this requirement is eliminated for current and future PPP loans, which means that employers can defer the payment of employment taxes and still be considered for loan forgiveness.

- All employers with a PPP loan will be able to defer payment of employment taxes (i.e., old age, survivors, and disability insurance, OASDI) for wages paid after March 27, 2020 and before January 1, 2021 – with half of the deferred balance due on December 31, 2021 and the remaining half on December 31, 2022.

Next Step Considerations. The changes in the PPP forgivable loans offer an opportunity for child care programs to assess whether the additional flexibility in PPP terms and conditions may better help individual programs survive through the current public health emergency. Understanding every option available is important to ensure that the business of child care supports the ability of families to access child care as parents return to work.