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Senate Approves Expansive Reforms to PPP

On June 3, 2020, the Senate unanimously passed the Paycheck Protection Program Flexibility Act of 2020 (the “PPP Flexibility Act”), and the bill now heads to the President’s desk for signature. In a nearly unanimous vote, the House approved the bill on May 28 with only one representative casting a dissenting vote. The bi-partisan legislation makes extensive changes to the Small Business Administration’s [Paycheck Protection Program](#) (PPP) by providing employers with more flexibility and time to use PPP funds and still qualify for loan forgiveness. The PPP Flexibility Act will help small businesses impacted by the COVID-19 pandemic to benefit from the PPP and make the program’s

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lending terms more favorable to restaurants, retailers and other businesses who have been forced to either delay their reopening or resume their operations at reduced levels.

The [Paycheck Protection Program Flexibility Act](#) was announced May 11, 2020, to make urgently needed changes to the PPP, and had the backing of several large business organizations, including the [American Hotel and Lodging Association](#) and the [National Restaurant Association](#). The legislation provides greater flexibility to the PPP loan forgiveness process that is expected to help many small business owners survive the COVID-19 crisis. Borrowers will have a longer period to use the funds and be able to spend more of the loan proceeds on nonpayroll costs.

The following provisions of the PPP Flexibility Act should significantly increase the percentage of a borrower's PPP loan that will be forgiven:

- **Extension of the Covered Period:** The PPP Flexibility Act triples the Covered Period from eight weeks to twenty-four weeks, which will now end the earlier of twenty-four weeks after the loan disbursement date, or December, 31, 2020, therefore giving employers significantly more time to use their loan proceeds on eligible costs qualifying for loan forgiveness.
- **75/25 Rule:** The SBA issued guidance on April 2, 2020 requiring that at least 75 percent of loan proceeds be spent on payroll costs to be forgivable. The PPP Flexibility Act lowers this threshold for loan money to be spent on payroll from 75 percent to 60 percent, thereby allowing more of the loan proceeds to be spent on covered nonpayroll costs. *However, note that the language in the bill appears to create a cliff effect, whereby an employer spending only 59 percent of the proceeds on payroll costs would not qualify for any amount of loan forgiveness.*
- **More Time to Rehire Workers and Restore Salaries/Wages:** Under the CARES Act, the loan forgiveness amount will be reduced if there is a reduction in the number of full-time equivalent employees (FTEs) or a significant reduction in the compensation of certain employees during the Covered Period, and if these reductions are not restored by June



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30, 2020. The PPP Flexibility Act gives businesses more time to restore FTEs and wage/salary levels by extending the deadline to December 31, 2020.

- **New Exemption from the Reduction in Loan Forgiveness:** Relief is provided for businesses that remain partially or fully closed through the end of the year. The PPP Flexibility Act provides that an employer's loan forgiveness amount will not be reduced by a reduction in FTEs if the employer (1) is unable to rehire an individual who was an employee on or before February 15, 2020; (2) demonstrates an inability to hire similarly qualified employees on or before December 31, 2020, or (3) demonstrates an inability to return to the same level of business activity that existed prior to February 15, 2020. This provision protects businesses, such as restaurants, that might be required to operate at lowered capacity due to government orders from being penalized on their loan forgiveness if they are not operating at full capacity as of December 31st.
- **Deferral of Employer Payroll Taxes:** The CARES Act allows employers to defer payment of the employer portion of the 6.2 percent Social Security tax incurred from March 27, 2020 through December 31, 2020, with the first half of the deferred amount due on December 31, 2021 and the second half due on December 31, 2022. Under current guidance employers are no longer eligible to defer payment once they receive notification of loan forgiveness. However, the PPP Flexibility Act removes this restriction, and businesses who take out PPP loans and receive loan forgiveness will remain eligible to defer payment of these payroll taxes through the end of the year.
- **Longer Loan Period:** Any portion of the loan that is not eligible for forgiveness remains a loan with a 1 percent interest rate, and the PPP Flexibility Act extends the two-year maturity date to five years. The longer repayment period technically applies only to PPP loans made after the bill becomes law, but borrowers and lenders should be able to renegotiate the terms of existing PPP loans.
- **Covered Period Flexibility:** Any business that obtained a PPP loan prior to the date the bill is signed into law will have the option to still use the

eight-week period beginning on the date loan funds were disbursed. Therefore, businesses who spend their proceeds during the eight weeks and qualify for full forgiveness will not need to wait until the end of the year to apply for loan forgiveness.

- **Deductibility of Expenses Not Addressed:** One important issue not addressed in the PPP Flexibility Act concerns the deductibility of business expenses paid from PPP loan proceeds that are forgiven. Under the CARES Act, PPP loans are forgiven on a tax-free basis, but on May 1, 2020 the IRS released Notice 2020-32 to explain that taxpayers cannot deduct business expenses normally deductible, including eligible payroll and nonpayroll costs, to the extent the expenses are reimbursed by a PPP loan that is forgiven. The Chairmen of the House Ways and Means Committee and the Senate Finance Committee have both stated that Notice 2020-32 was contrary to Congressional intent. Bills have been introduced in Congress to reverse the IRS ruling by statute, but this legislative fix did not get included in the PPP Flexibility Act, and therefore we are still waiting for resolution regarding this issue.

The Paycheck Protection Program Flexibility Act provides much needed relief for borrowers as they seek forgiveness of their loan amounts, and the relative speed in which the bi-partisan legislation took shape and was approved reflected the urgent need to change the PPP's rules to assist struggling small businesses. The next coronavirus relief package being negotiated in Congress may include still further changes to program. Senate Majority Leader Mitch McConnell said on the Senate floor that lawmakers from both parties had identified "further technical fixes" that he expects will be addressed by Congress in the future.

Contact Us

For further questions or guidance regarding The Paycheck Protection Program Flexibility Act, please contact your BT advisor by calling [770.396.2200](tel:770.396.2200).



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