

# PPP Flexibility Act: Congress Passes Relief for PPP Loan Recipients

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June 4, 2020 | by Matthew Rheingold

On June 3, 2020, the Senate approved the House-passed [Paycheck Protection Program Flexibility Act](#) (the “Act”) and the bill now heads to President Trump for enactment. The Act brings much needed relief to recipients of Paycheck Protection Program (“PPP”) loans.

## Extension of PPP

- The Act extends the PPP program from June 30, 2020 to December 31, 2020.

## Forgiveness Time Period

- The Act increases the cover period from 8 weeks to 24 weeks beginning on the date of the origination of the loan (the employer has the option to maintain the 8-week covered period). This means that employers now have 24 weeks to spend their PPP money and have such expenses qualify for forgiveness; provided, however, that any such expenses paid after December 31, 2020 will not qualify for forgiveness even if the 24 weeks has not yet expired. This is a welcome extension as many employers borrowed the maximum amount possible without considering that they would be unable to spend the entire amount in the 8 weeks following the origination of the loan.

## Re-Hiring of Employees and Wage Correction

- Employers now have until December 31, 2020 to rehire an employee who was terminated during the period of February 15, 2020 and April 26, 2020 (or to find a replacement for that employee) in order to prevent the staff reduction from reducing the amount of loan forgiveness. However, the following exceptions apply:

- The amount of loan forgiveness will not be affected if the employer was unable to rehire a fired employee (e.g., the employee refuses to come back to work) or find a qualified replacement for such fired employee.
  - The amount of loan forgiveness will not be affected if the employer was unable to rehire a fired employee due to compliance with [COVID-19](#) safety standards issued by HSS, the CDC or OSHA between March 1, 2020 and December 31, 2020.
- Employers now have until December 31, 2020 to increase the wages of an employee who received a pay cut during the period of February 15, 2020 and April 26, 2020 in order to prevent the wage reduction from reducing the amount of loan forgiveness.

## Limitation on Non-Payroll Expenses Qualifying for Forgiveness

- Under the existing PPP program, an employer's loan forgiveness for expenses paid on non-payroll costs (rent, utilities, etc.) was limited to no more than 25% of the total forgiveness amount. The Act increases that number to 40%. Another way of looking at this is that at least 60% of the total amount of loan forgiveness must be attributed to payroll costs. For example, if the employer spends \$60,000 on payroll costs and \$40,000 on non-payroll costs, the employer may be eligible for up to the entire \$100,000 of forgiveness. However, if the employer spends \$50,000 on payroll costs and \$50,000 on non-payroll costs, the employer may only be eligible for up to \$83,333.33 of forgiveness (i.e.,  $\$83,333.33 \times 60\% = \$50,000$ ).

## Repayment

- The beginning date for repayment of unforgiven loan proceeds has been changed from 6 months after the origination of the loan, to 10 months after the 24-week (or 8-week at the election of the employer) covered period ends.
- The term of the loan has been extended from 2 years (as set by the regulations) to a minimum of 5 years.

## Deadline for Forgiveness Application

- The employer has 10 months after the 24-week (or 8-week at the election of the employer) covered period ends by which to apply for forgiveness; otherwise, the loan will not be forgiven and will need to be repaid.

## Delay of Payroll Taxes

- PPP loan recipients are now eligible to delay payment of payroll taxes under the CARES Act.