

UPDATE: Payroll Protection Program Flexibility Act

06.04.20 | Linda J. Rosenthal, JD



Over the past week, the House of Representatives and Senate passed the Paycheck Protection Program Flexibility Act and the bill awaits the President's signature. The bill provides borrowers with additional flexibility and time to use PPP loan funds and *still have the loan forgiven*.

Borrowers will now have **24 weeks from the disbursement of their loan** to use the PPP funds. The bill also creates increased flexibility in reducing the amount of loan money that must be used for payroll purposes from 75% to 60%. For small businesses and nonprofit organizations who have not been able to reopen, or only recently reopened, this is a critically needed update.

The bill also amends the CARES Act to provide that any reduction in the amount of loan forgiveness is avoided if the employer rehires all employees laid off between February 15, 2020 and April 26, 2020, or increases their previously reduced wages, no later than **December 31, 2020**.

The bill creates an additional exemption to the reduction-in-loan forgiveness. The exemption states that the amount of loan forgiveness will be determined "without regard to a proportional reduction in the number of full-time equivalent employees" if the borrower, **in good faith**:

- Is able to **document** an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020 and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
- Is able to **document** an inability to return to the same level of business activity as the borrower was operating at before February 15, 2020, 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 between March 1, 2020 and December 31, 2020,

related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

FPLG is closely monitoring the evolving PPP landscape and will continue to provide resources and updates as they become available.