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## **CONGRESS APPROVES PPP FLEXIBILITY ACT**

On June 4, the Senate passed the Paycheck Protection Program Flexibility Act (the “Flexibility Act”). The Act passed the House of Representatives last week. The Flexibility Act gives borrowers additional flexibility in the use of PPP loan proceeds and expands forgivable expenditures. President Trump is expected to sign the bill.

### **Key Provisions of the Flexibility Act:**

- Current borrowers can choose to extend the covered period from eight weeks to twenty-four weeks. This provision is intended to make it easier for borrowers to reach full forgiveness.
- The Flexibility Act reduces that amount of forgivable expenditures that must be spent on payroll from 75% to 60%. However, it is now a cliff rather than a cap. If borrowers do not spend at least 60% of the loan on payroll, none of the loan can be forgiven. Sponsors of the legislation have indicated that they intended to keep the sliding scale, and have discussed technical corrections.
- Borrowers can use the 24-week period to restore workforce levels to pre-pandemic levels to obtain full forgiveness. This must occur by December 31, 2020. The previous deadline was June 30.
- New borrowers have five years to repay the loan instead of two. Existing PPP loans can be extended to five years if the lender and borrower agree.
- The bill allows businesses that took PPP loans to delay the payment of payroll taxes, which was prohibited by the CARES Act.
- The legislation includes two new exceptions to achieve full forgiveness even if the workforce is not fully restored. SBA guidance allowed borrowers to exclude from calculations employees who turned down good faith offers to be rehired. The new legislation allows borrowers to adjust the calculations if:
  - borrowers could not rehire previously laid off workers or were unable to hire similarly qualified workers as replacements; or
  - borrowers were unable to return to the February 15 level of business operations due to COVID-19 related restrictions or safety requirements.

If the Flexibility Act is signed by the president, the SBA will likely issue revised guidance in the coming weeks. The full text of the legislation is available [here](#). For more information on this program, and other COVID-19 related topics, please review our COVID-19 Resources page here: <https://www.gill-law.com/covid-19-resources/#>