

FACT SHEET

HR 6886, the Paycheck Protection Program Flexibility Act

The Paycheck Protection Program (PPP) is providing essential capital to millions of small businesses across the country. Unfortunately for many of these business owners, particularly local restaurants, hotels, and those in the hospitality industry, the terms are too inflexible to provide the help they need to weather the economic storm. The SBA Inspector General warned that these terms “could result in an unintended burden to the borrowers” and prevent them from obtaining loan forgiveness. Led by Rep. Dean Phillips and Rep. Chip Roy, The Paycheck Protection Program Flexibility Act lifts these arbitrary restrictions to provide critical flexibility to small businesses that are simply trying to survive:

- 1. Allowing forgiveness for expenses beyond the 8-week covered period.**
 - a. The 8-week timeline does not work for local businesses that are prohibited from opening their doors or will only be allowed to open with restrictions. Businesses should have the flexibility to spread the PPP loan proceeds over the full course of the crisis until demand returns. Otherwise, employees will simply be furloughed at the expiration of the 8 weeks, defeating a major goal of the program.
- 2. Eliminating restrictions limiting non-payroll expenses to 25% of loan proceeds**
 - a. In order to survive, businesses must pay fixed costs. For many businesses, payroll simply does not represent 75% of their monthly expenses and 25% does not leave enough to cover mortgage, rent, and utilities. Retaining employees is not possible if a business cannot retain their physical location
- 3. Eliminating restrictions that limits loan terms to 2 years**
 - a. According to the American Hotel and Lodging Association, full recovery for that industry following both the September 11, 2001 terrorist attacks and the 2008 recession took more than two full years. This is the same for many other industries: it will take many businesses more than two years to achieve sufficient revenue to pay back the loan.
- 4. Ensuring full access to payroll tax deferment for businesses that take PPP loans.**
 - a. The purpose of PPP and the payroll tax deferment was to provide businesses with capital to weather the crisis. Receiving both should not be considered double-dipping. Businesses need access to both sources of cash flow to survive.
- 5. Providing a rehiring safe harbor for businesses unable to rehire employees due to the effects of enhanced Unemployment Insurance**
 - a. To receive loan forgiveness under PPP, a business must rehire employees by a deadline of June 30, 2020. However, the enhanced Unemployment Insurance created through the CARES Act is higher than the median wage in 44 states. Many businesses have reported an inability to rehire employees because they are making more on Unemployment than they made working. To mitigate this unintended consequence, businesses that make a good faith attempt to rehire employees, but are unable to, should still be able to receive loan forgiveness.

[DISCUSSION DRAFT]116TH CONGRESS
2^D SESSION**H. R.** _____

To amend the Small Business Act and the CARES Act to modify certain provisions related to the forgiveness of loans under the paycheck protection program, to allow recipients of loan forgiveness under the paycheck protection program to defer payroll taxes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. ROY introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend the Small Business Act and the CARES Act to modify certain provisions related to the forgiveness of loans under the paycheck protection program, to allow recipients of loan forgiveness under the paycheck protection program to defer payroll taxes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Paycheck Protection
5 Program Flexibility Act of 2020”.

1 **SEC. 2. MATURITY FOR LOANS WITH REMAINING BALANCE**
2 **AFTER APPLICATION OF FORGIVENESS.**

3 Section 7(a)(36)(K)(ii) of the Small Business Act (15
4 U.S.C. 636(a)(36)) is amended by inserting “minimum
5 maturity of 5 years and a” before “maximum maturity”.

6 **SEC. 3. AMENDMENTS TO PAYCHECK PROTECTION PRO-**
7 **GRAM LOAN FORGIVENESS.**

8 Section 1106 of the CARES Act (Public Law 116–
9 136) is amended—

10 (1) in subsection (a), by striking paragraph (3)
11 and inserting the following:

12 “(3) the term ‘covered period’ means the period
13 beginning on the date of the origination of a covered
14 loan and ending on the earlier of—

15 “(A) the date that is 24 weeks after such
16 date of origination; or

17 “(B) December 31, 2020;” and

18 (2) in subsection (d)—

19 (A) in paragraph (5)(B), by striking “June
20 30, 2020” each place it appears and inserting
21 “December 31, 2020”; and

22 (B) by adding at the end the following new
23 paragraphs:

24 “(7) EXEMPTION BASED ON EMPLOYEE AVAIL-
25 ABILITY.—During the period beginning on February
26 15, 2020, and ending on December 31, 2020, the

1 amount of loan forgiveness under this section shall
2 be determined without regard to a reduction in the
3 number of full-time equivalent employees if an eligi-
4 ble recipient—

5 “(A) is unable to rehire an individual who
6 was an employee of the eligible recipient on or
7 before February 15, 2020; or

8 “(B) is able to demonstrate an inability to
9 hire similarly qualified employees on or before
10 December 31, 2020.

11 “(8) NO LIMITATIONS.—In carrying out this
12 section, the Administrator may not limit the non-
13 payroll portion of a forgivable covered loan
14 amount.”.

15 **SEC. 4. DELAY OF PAYMENT OF EMPLOYER PAYROLL**
16 **TAXES.**

17 Section 2302(a) of the CARES Act (Public Law 116–
18 136) is amended by striking paragraph (3).

19 **SEC. 5. EFFECTIVE DATE; APPLICABILITY.**

20 The amendments made by this Act shall be effective
21 as if included in the CARES Act (Public Law 116–136)
22 and shall apply to any loan made pursuant to section
23 7(a)(36) of the Small Business Act (15 U.S.C.
24 636(a)(36)) or section 1109 of the CARES Act.