


**MEMORANDUM**

TO: OUR CLIENTS AND PROFESSIONAL COLLEAGUES

FROM: EUGENE GORRIN, ESQ. 

RE: PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT

DATE: JUNE 8, 2020

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I have some good news regarding the Paycheck Protection Program (“PPP”) initially passed by Congress in March as part of the CARES Act and subsequently infused with additional funding in April.

As you may know, the initial rollout of the program was rocky and some provisions of the program were criticized by businesses as not doing enough to help. In an effort to address these issues and increase the program's impact, Congress has passed, and the President signed into law on June 5, 2020, the Paycheck Protection Program Flexibility Act (“PPP Flexibility Act”).

The changes will make it easier for many borrowers to obtain forgiveness of PPP loans. Two of the biggest improvements are the extension of the time for using loan proceeds, and an increase in the percentage of loan proceeds that can be used for expenses other than payroll.

### **Loan Forgiveness**

**Extension of Covered Period.** The PPP Flexibility Act extends the timeframe (i.e., the covered period) in which PPP funds must be used to have the loan forgiven. The covered period, which was originally 8 weeks, has been expanded to 24 weeks (but ending no later than December 31, 2020).

**Use of Proceeds.** The PPP Flexibility Act also allows borrowers to spend up to 40% of loan proceeds on nonpayroll costs, such as rent, utilities, and interest on mortgages, rather than the 25% that was initially specified. The improvement, however, comes with a catch:

***borrowers who use more than 40% of the loan proceeds for nonpayroll costs are now ineligible for loan forgiveness altogether.***

### **Extension of Maturity Date**

Another favorable change was made to the time in which borrowers have to begin repaying a loan that doesn't qualify for forgiveness. That time period is now 5 years rather than 2 years.

THE LAW OFFICE OF  
**EUGENE GORRIN, LLC**

**New Exemption for Businesses Unable to Rehire Employees (or Hire Replacements) or to Return to Same Level of Business Activity**

With respect to the reduction in the amount of a loan that may be forgiven where an employer reduces employee headcounts or wages, a new exemption has been created for businesses that are unable to rehire employees (or hire replacements) or to return to their same level of business activity as before the COVID-19 pandemic as a result of compliance with federal health and safety guidelines.

Specifically, during the period beginning on February 15, 2020 and ending on December 31, 2020, the amount of loan forgiveness is determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible borrower in good faith is able to document either:

(1) an inability to rehire individuals who were employees of the eligible borrower on February 15, 2020, and an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

(2) an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with requirements established or guidance provided by the Department of Health and Human Services, the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration during the period beginning on March 1, 2020 and ending December 31, 2020, related to the maintenance of standards of sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

The PPP Flexibility Act does not define the terms “inability to rehire,” “inability to hire,” and “inability to return to the same level of business activity,” presumably leaving it to the Small Business Administration to provide guidance on their meaning.

### **PPP Loan Deferral Period**

The PPP Flexibility Act extends the PPP loan payment deferral period from 6 months to the date on which the forgiveness amount determined is sent to the lender. If a borrower fails to apply for forgiveness within 10 months after the last day of the covered period, payments of principal, interest and fees on such loans begin on the date that is 10 months after the last day of the covered period.

### **Payroll Tax Deferral**

The PPP Flexibility Act eliminated a provision that made a borrower who had a PPP loan forgiven ineligible to defer payroll tax payments. Accordingly, borrowers who have their PPP loan forgiven are also now allowed to defer paying 50% of their payroll taxes due until December 31, 2021, and defer paying the remaining 50% of their payroll taxes due until December 31, 2022.

If you have received a PPP loan and would like more information on these changes, please contact me.

Stay well and be safe!