



In this issue:

House to vote on Paycheck Protection Program enhancements 1

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The House of Representatives will vote the week of May 25 on a bipartisan proposal that would expand the loan forgiveness rules and make other enhancements to the Paycheck Protection Program (PPP), which was enacted in March as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

House Speaker Nancy Pelosi, D-Calif., confirmed plans for the floor vote during her weekly press conference on May 20.

Paycheck Protection Flexibility Act: Key provisions

The Paycheck Protection Program Flexibility Act of 2020 (H.R. 6886), was introduced on May 15 by Democratic Rep. Dean Phillips of Minnesota and Republican Rep. Chip Roy of Texas. Key provisions of the bill would:

URL: <https://www.congress.gov/bill/116th-congress/house-bill/6886/text?q=%7B%22search%22%3A%5B%22h.r.+6886%22%5D%7D&r=1&s=1>

- **Extend the “covered period” under the PPP’s loan forgiveness rules to include expenses incurred through the earlier of December 31, 2020, or 24 weeks after the loan origination date.** Under the CARES Act as enacted, the covered period applies to expenses incurred within eight weeks after the loan origination date. In a news release announcing their bill, Phillips and Roy commented that the “[eight]-week timeline does not work for local businesses that are prohibited from opening their doors, or those that will only be allowed to open with restrictions.”

- Eliminate restrictions on the amount of loan proceeds that an employer can use to cover nonpayroll expenses.** Regulations from the Treasury Department and the Small Business Administration (SBA) implementing the Paycheck Protection Program provide that an employer may spend no more than 25 percent of PPP loan proceeds on nonpayroll expenses in order to remain eligible for loan forgiveness. But lawmakers in both parties – along with a number of business groups – have cited that limitation as a source of concern. A bipartisan group of Senate members – including several taxwriters – recently urged Treasury and the SBA to modify the cap, calling it “problematic for several business sectors, especially those whose mortgage, rent, or utility payments constitute a large portion of fixed monthly expenses.” (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.) H.R. 6886 would specifically provide that Treasury and the SBA “may not limit the nonpayroll portion of a forgivable covered loan amount.”

[URL: https://www.menendez.senate.gov/imo/media/doc/PPP%20forgiveness%20letter_final_.pdf](https://www.menendez.senate.gov/imo/media/doc/PPP%20forgiveness%20letter_final_.pdf)
[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html)
- Allow employers participating in the PPP program to also take advantage of the CARES Act’s payroll tax deferral provisions.** Under the CARES Act, employers (and self-employed individuals) are allowed to defer payment of the 6.2 percent employer-side Social Security payroll tax for wages paid between the date of that bill’s enactment and December 31, 2020 (with remittance due in equal installments by December 31, 2021, and December 31, 2022). Though recipients of forgiven PPP loans were generally precluded from also utilizing the payroll tax deferral provision, the IRS clarified on an FAQ published last month (Question 4) that PPP loan recipients can, in fact, defer payment on wages paid up until the point of loan forgiveness, but not beyond that date. H.R. 6886 provides that even recipients of forgiven PPP loans would be allowed to continue to defer payment of payroll taxes on wages paid through the end of 2020. An identical provision is also included in The Heroes Act (H.R. 6800), the \$3 trillion coronavirus economic recovery package that was approved in the House on May 15. (The Heroes Act is not expected to be taken up in the Senate and has drawn a veto threat from President Trump. For additional details on that legislation, see *Tax News & Views*, Vol. 21, No. 27, May 15, 2020.)

[URL: https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020](https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020)
[URL: https://www.congress.gov/bill/116th-congress/house-bill/6800/text?q=%7B%22search%22%3A%5B%22h.r.+6800%22%5D%7D&r=1&s=2](https://www.congress.gov/bill/116th-congress/house-bill/6800/text?q=%7B%22search%22%3A%5B%22h.r.+6800%22%5D%7D&r=1&s=2)
[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200515_1.html)
- Extend the deadline for PPP participants to rehire employees.** As enacted, the CARES Act requires an employer participating in the PPP to rehire employees by June 30, 2020, to be eligible for loan forgiveness. H.R. 6886 would extend that deadline to December 31, 2020. Phillips and Roy noted in their news release that extending this deadline would align it with the expiration of the CARES Act’s enhanced unemployment insurance benefits.
- Allow longer terms for PPP loans.** The measure also would eliminate restrictions in the CARES Act that limit the term of PPP loans to two years.

These provisions would take effect as if they had been enacted in the CARES Act.

Treatment of ‘otherwise deductible expenses’ not addressed

H.R. 6886 as introduced does *not* include a proposal to clarify that otherwise deductible expenses funded with PPP loan proceeds would remain deductible even if the loan is forgiven.

The IRS recently held in Notice 2020-32 that these expenses are not deductible. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 24, May 1, 2020). But some prominent congressional taxwriters, including Senate Finance Committee Chairman Charles Grassley, R-Iowa, and ranking member Ron Wyden, D-Ore., along with House Ways and Means Committee Chairman Richard Neal, D-Mass., subsequently challenged that position in a letter to Treasury Secretary Steven Mnuchin, arguing that it was contrary to congressional intent and urging the Service to reconsider. Grassley, Wyden, and several other Finance Committee members also introduced legislation that would clarify the treatment of these expenses. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 25, May 8, 2020.)

[URL: https://www.irs.gov/pub/irs-drop/n-20-32.pdf](https://www.irs.gov/pub/irs-drop/n-20-32.pdf)

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200501_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200501_1.html)

[URL: https://www.finance.senate.gov/imo/media/doc/2020-05-05%20CEG,%20RW,%20RN%20to%20Treasury%20\(PPP%20Business%20Deductions\).pdf](https://www.finance.senate.gov/imo/media/doc/2020-05-05%20CEG,%20RW,%20RN%20to%20Treasury%20(PPP%20Business%20Deductions).pdf)

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200508_1.html)

The House-passed Heroes Act also would clarify the deductibility of these expenses and would expand the list of expenses that can give rise to PPP loan forgiveness to include certain interest on debts incurred prior to the covered period of PPP and costs related to providing personal protective equipment to employees.

Senate prospects: PPP changes possible in June, no rush for larger recovery bill

There is no companion legislation to H.R. 6886 in the Senate, although Small Business Committee Chairman Marco Rubio, R-Fla., and ranking member Ben Cardin, D-Md., late this week introduced a similar PPP proposal that reportedly would extend loan forgiveness to expenses incurred over 16 weeks, compared to 24 weeks under H.R. 6886 and 8 weeks under current law, and make other tweaks to the program. (Text of the proposal was not available at press time.)

Rubio told the American Enterprise Institute on May 19 that “[b]usinesses are starting to reopen their doors, and if they had a few more weeks” to take advantage of the PPP “they could rehire everybody.”

Senate Republican Whip John Thune, R-S.D., told reporters this week that any floor votes on legislation modifying the Paycheck Protection Program will take place in June, after lawmakers return to Capitol Hill following their Memorial Day recess.

Senate action on a larger economic recovery package, however, appears to be on hold for the time being. Majority Leader Mitch McConnell, R-Ky., reiterating comments he has made in recent weeks, told reporters May 19 he intends to gauge the effects of the recovery bills that have been enacted to date before taking up substantial new legislation.

“We need to assess what we’ve already done [and] take a look at what worked and what didn’t work,” McConnell said. Discussions about a possible path forward will begin “in the next couple of weeks,” he added.

Axios also reported that McConnell told President Trump during a meeting on May 21 that the next round of economic recovery legislation should be narrowly focused and cost less than \$1 trillion.

Two items that won’t be in a Senate bill, according to Finance Committee Chairman Charles Grassley, are provisions in the just-passed House recovery legislation that would retroactively limit or reverse the taxpayer-favorable changes to the net operating loss rules and the limitation on excess business losses of noncorporate taxpayers enacted in the CARES Act. Speaking on the Senate floor May 21, Grassley contended that “[i]mposing a quarter of a trillion dollar retroactive tax increase on businesses in need of cash to restart their operations as states begin to lift shut-down orders is a recipe for disaster.”

For his part, Treasury Secretary Steven Mnuchin said at an event sponsored by *The Hill* newspaper May 21 that “there is a strong likelihood we will need another bill”; but he noted that the administration intends to “step back for a few weeks and think very clearly how we need to spend more money.”

PPP loan forgiveness application and other coronavirus resources

On the regulatory front, the Treasury Department and SBA this week released the Paycheck Protection Program Loan Forgiveness Application form along with detailed instructions for completing the application.

URL: <https://home.treasury.gov/system/files/136/3245-0407-SBA-Form-3508-PPP-Forgiveness-Application.pdf>

According to a joint Treasury-SBA news release, the SBA will also soon issue “regulations and guidance to further assist borrowers as they complete their applications, and to provide lenders with guidance on their responsibilities.”

Treatment of entities with foreign affiliates: Treasury and the SBA this week also released an interim final rule that provides that the SBA will not challenge PPP loan applications made before May 5, 2020, “based on the borrower’s exclusion of non-US employees from the borrower’s calculation of its employee headcount if the borrower (together with its affiliates) had no more than 500 employees whose principal place of residence is in the United States.”

URL: <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Treatment-of-Entities-with-Foreign-Affiliates.pdf>

The PPP is available to employers with 500 or fewer employees. In a recent update to their FAQ on the Paycheck Protection Program (Question 44, published on May 5), Treasury and the SBA clarified that an applicant “must count all of its employees and the employees of its US and foreign affiliates, absent a waiver of or an exception to the

affiliation rules,” in determining whether it meets the headcount threshold. Under the interim final rule, a borrower that applied for a PPP loan without applying the affiliation rule (and who exceeds the headcount threshold when the affiliation rule is taken into account) generally will be able to keep its loan proceeds and remain eligible for loan forgiveness as long as the loan application was completed before May 5.

URL: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

State tax considerations: In other developments, Deloitte Tax LLP’s Multistate Tax Group this week released an alert providing an updated summary of tax filing due date relief related to the coronavirus and the state-level filing relief programs that have been announced to date.

URL: <https://www2.deloitte.com/us/en/pages/tax/articles/updated-covid-19-updated-state-and-local-tax-due-date-relief-developments.html?id=us:2em:3na:stm:awa:tax:051520&sfid=7011O000001xmJAQAY>

Find out more: A running list of guidance and other resources that address significant tax issues stemming from the pandemic is available from Deloitte Tax LLP.

URL: <https://newsletters.usdbriefs.com/2020/Tax/TNV/Stimulus-Resource-Table.pdf>

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