

Senate Passes Sweeping Paycheck Protection Program Reform

CHANGES WILL GIVE RESTAURANTS 'A FIGHTING CHANCE' AT REOPENING, THE INDEPENDENT RESTAURANT COALITION SAYS.

JUNE 2020 [DANNY KLEIN](#)

On Wednesday, the U.S. Senate passed the Paycheck Protection Program Flexibility Act by unanimous consent, providing a much-needed lifeline for restaurants nationwide. The bill is now headed to the desk of President Donald Trump.

There are several key changes operators have clamored for since the PPP came into play. The National Restaurant Association pointed to five in particular:

- · Extending the expense forgiveness period from eight weeks to 24 weeks
- · Reducing the payroll ratio requirement to 60 percent
- · Increasing the loan repayment period from two to five years on new loans
- · Allowing payroll tax deferment for PPP recipients
- · Extending the June 30 rehiring deadline

The first shift was one of the biggest pain points for restaurants out of the gate—a 75/25 requirement that forced owners to spend 75 percent of the loan on payroll in order to get it forgiven. But many lamented 25 percent wasn't nearly enough to cover other expenses. Namely, rent and utilities, especially in high-dollar markets like New York City.

Additionally, it was proving unrealistic for restaurants to spend 75 percent of the loan on pared-down staffing levels, which aligns with the extended rehiring deadline as well. Restaurants reopening today are doing so under limited capacity mandates. So there just aren't as many positions to go around. Restaurants need time to gradually increase staffing levels as dine-in business expands.

Asking for that to happen in full by June 30 was a lofty request.

First Watch, for instance, is reopening with about 10 employees per unit in the early going.

Association EVP of Public Affairs, Sean Kennedy, released the following statement on the passage of the bill:

“Today’s action in the Senate is a win for restaurants and small businesses across the country. Exactly 68 days ago, the Paycheck Protection Program was created. It has helped countless businesses, but the restaurant industry has a unique business model and a particularly uncertain path to recovery—and these PPP improvements will help restaurants effectively utilize this vital tool,” he said. “The National Restaurant Association was one of the first to call for improvements to PPP to preserve our imperiled industry. In an era where political discord is the norm and agreement is fleeting, the voice of the restaurant industry has been a unifying theme. This bill passed because Congress heard from us loudly and clearly.”

“We appreciate the work of Majority Leader Mitch McConnell, Democratic Leader Chuck Schumer and so many others who secured support for making these vital changes,” Kennedy added. “The PPP has been improved for many, but our industry faces ongoing challenges and must stay engaged in Washington. We look forward to continuing to work with Congress and the Administration to create the support the nation’s second largest private-sector employer will need to recover.”

The Independent Restaurant Coalition, one of the PPP’s most consistent critics throughout the process, said Congress “is giving independent restaurants a fighting chance at reopening,” by making PPP funds more flexible.

“Even with these changes, many restaurants will still have a hard time surviving the crisis we’re in. Social distancing measures are forcing restaurants and bars to operate with dramatically reduced revenues for the foreseeable future, which will be unsustainable in the long-run. The pandemic is a long-term problem and these PPP fixes are only the beginning of a solution. We need an independent restaurant stabilization fund like the one proposed by Rep. Earl Blumenauer to ensure 500,000 independent restaurants can reopen, stay open, and re-employ 11 million Americans,” the Coalition said.

Here’s a breakdown of some changes. ([This article goes through them, too](#)).

In the original CARES Act, borrowers had eight weeks to spend their PPP loan. Now, they have 24.

To achieve full forgiveness, restaurants were required to bring staffing levels to pre-COVID-19 levels or higher by June 30. It's been extended to December 31.

Also significant, there's relief in the event the restaurant is unable to get people back. This has surfaced throughout the pandemic for operators wondering if employees will return to jobs where they're making less money than they were on unemployment with the \$600 per week add. Or, if they'll be required to essentially "force" employees back under the threat of stopping their expanded benefits.

There also remains a question, as noted before, whether restaurants will simply need the same staffing numbers. Perhaps ever. Under the previous PPP loan forgiveness guidance, many operators were going to try to hire to those numbers whether they needed to or not, just for the sake of getting the loan turned into a grant.

What the new language says:

" (7) EXEMPTION BASED ON EMPLOYEE AVAILABILITY.—During the period beginning on February 15, 2020, and ending on December 31, 2020, the amount of loan forgiveness under this section shall be determined without regard to a proportional reduction in the number of full-time equivalent employees if an eligible recipient, in good faith—

"(A) is able to document—

"(i) an inability to rehire individuals who were employees of the eligible recipient on February 15, 2020; and

"(ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or

"(B) is able to document 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 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 beginning on March 1, 2020, and ending 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."

Some other notes

Restaurants, if they choose, can still elect to have the eight-week period apply. Those who received forgiveness had been excluded from a provision of the CAREs Act that allowed deferral of the payment of payroll taxes. That exclusion of PPP forgiven borrowers from the deferral benefit was repealed.

If a restaurant does not meet the requirements for forgiveness, the minimum maturity of the payback will now be five years.

Previously, any payment was deferred six months. It's been moved to the time that the forgiveness amount is remitted to the lender. If the restaurant did not ask for forgiveness, the deferral period is 10 months.