

116TH CONGRESS  
2D SESSION

# S. 3805

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 SENATE OF THE UNITED STATES

MAY 21, 2020

Mr. KING (for himself, Mr. DAINES, Mr. KAINE, Mr. TILLIS, Ms. STABENOW, and Mr. GARDNER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## 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)(K)(ii)) is amended by inserting “min-  
 5 imum maturity of 5 years and a” before “maximum matu-  
 6 rity”.

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

9 (a) EXTENSION OF COVERED PERIOD.—Section  
 10 7(a)(36)(A)(iii) of the Small Business Act (15 U.S.C.  
 11 636(a)(36)(A)(iii)) is amended by striking “June 30,  
 12 2020” and inserting “December 31, 2020”.

13 (b) FORGIVENESS.—Section 1106 of the CARES Act  
 14 (Public Law 116–136) is amended—

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

17 “(3) the term ‘covered period’ means, subject to  
 18 subsection (l), the period beginning on the date of  
 19 the origination of a covered loan and ending the ear-  
 20 lier of—

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

23 “(B) December 31, 2020;”;

24 (2) in subsection (d)—

1 (A) in paragraph (5)(B), by striking “June  
2 30, 2020” each place it appears and inserting  
3 “December 31, 2020”; and

4 (B) by adding at the end the following:

5 “(7) EXEMPTION BASED ON EMPLOYEE AVAIL-  
6 ABILITY.—During the period beginning on February  
7 15, 2020, and ending on December 31, 2020, the  
8 amount of loan forgiveness under this section shall  
9 be determined without regard to a reduction in the  
10 number of full-time equivalent employees if an eligi-  
11 ble recipient—

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

15 “(B) is able to demonstrate an inability to  
16 hire similarly qualified employees on or before  
17 December 31, 2020; or

18 “(C) is able to demonstrate an inability to  
19 return to the same level of business activity as  
20 the eligible recipient was operating at before  
21 February 15, 2020.

22 “(8) NO LIMITATIONS.—In carrying out this  
23 section, the Administrator may not limit the non-  
24 payroll portion of a forgivable covered loan  
25 amount;” and

1           (3) by adding at the end the following new sub-  
2           section:

3           “(1) APPLICATION TO CERTAIN ELIGIBLE RECIPI-  
4           ENTS.—An eligible recipient that received a covered loan  
5           before the date of enactment of this subsection may elect  
6           for the covered period applicable to such covered loan to  
7           end on the date that is 8 weeks after the date of the origi-  
8           nation of such covered loan.”.

9           **SEC. 4. DELAY OF PAYMENT OF EMPLOYER PAYROLL**  
10           **TAXES.**

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

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

14           The amendments made by this Act shall be effective  
15           as if included in the CARES Act (Public Law 116–136)  
16           and shall apply to any loan made pursuant to section  
17           7(a)(36) of the Small Business Act (15 U.S.C.  
18           636(a)(36)) or section 1109 of the CARES Act (Public  
19           Law 116–136).

○