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PPP Update: Congress Passes PPP Bill Providing Flexibility to Borrowers

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On June 5, 2020, President Trump signed into law the Paycheck Protection Program Flexibility Act of 2020 (the Flexibility Act), which made some key changes to the Paycheck Protection Program (PPP) created by the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act). Among other things, the Flexibility Act alleviates restrictions for PPP loan recipients by reducing the threshold amount that borrowers must spend on payroll costs, as well as extends the previous eight week timeframe in which borrowers had to spend their loans to be eligible for forgiveness. The key changes that the Flexibility Act makes to the PPP are detailed below. Further details about the impact of the Flexibility Act on the ability to defer payroll taxes can be [found here](#).

- **Extended Loan Maturity.** The Small Business Administration (SBA), along with the Treasury, previously determined that PPP loans were to have a maturity date of two years for all amounts that were not forgiven. The Flexibility Act extends this and creates a minimum five year and maximum ten year maturity date for PPP loan amounts that are not forgiven. It is important to note that this change only automatically applies to PPP loans that are made after the Flexibility Act's enactment date, June 5, but existing PPP borrowers and lenders may mutually agree to extend the current maturity date to conform to this new timeline.
- **PPP Loan Availability.** The CARES Act previously made new PPP loans available to applicants until June 30, 2020, and the Flexibility Act extended this deadline, making PPP loans available until December 31, 2020. The SBA has subsequently announced that it intends to confirm that June 30, 2020 will remain the last date on which a PPP loan application can be approved.
- **Flexible Loan Forgiveness Periods.** The CARES Act provided PPP borrowers an eight week "covered period" to spend the PPP funds in order to have those amounts eligible for forgiveness. The Flexibility Act extends this covered period to the earlier of a 24 week period or December 31, 2020 for new PPP borrowers. Existing PPP borrowers with eight week covered periods may opt in to this new 24 week

covered period, but may also keep their existing eight week period.

- **Extended Employee Rehire and Salary Safe Harbor Dates.** The CARES Act reduced forgiveness amounts for PPP borrowers who did not maintain average full time equivalent (FTE) employee levels during the covered period as compared to certain pre-COVID lookback periods, or keep each FTE employee's salary level during the covered period at least at 75% of the employee's salary level during the last fiscal quarter that they worked before the borrower applied for the PPP loan. The CARES Act also created a safe harbor date of June 30, 2020 that PPP borrowers could bring back FTE employee levels or salary levels in order to not have their forgiveness amounts reduced. While the Flexibility Act keeps these requirements in place, the safe harbor date of June 30 is extended to December 31, 2020.

It is important to note that it appears from the text of the Flexibility Act that an existing PPP borrower that opts in to the 24 week covered period would have to retain FTE employee levels and salary levels during the new extended 24 week period instead of the previous eight week period, while their PPP loan amount would not be increased from the current amount of 2.5x their average payroll costs. Existing PPP borrowers should take this into account when determining whether or not to opt in to the new 24 week covered period.

- **New Safe Harbor Based on Employee Availability.** In addition to the extended safe harbor date above, the Flexibility Act creates two new exemptions based on employee availability in which a reduction in FTE employees would not affect a PPP borrower's forgiveness amounts. During the period between February 15, 2020 and December 31, 2020, loan forgiveness is determined without regard to the reduction if a PPP borrower in good faith is able to document either:
 - An inability to rehire individuals who were employees of the PPP borrower on February 15, 2020 **and** an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020; or
 - An inability to return to the same level of business activity that the business was operating at before February 1, 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 March 1, 2020 and December 2020, relating to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.
- **Relaxed PPP Loan Use Restrictions.** Previously, the SBA and the Treasury determined that, in order to be eligible for forgiveness, at least 75% of the borrower's PPP funds must be spent on payroll costs. The Flexibility Act reduces this threshold requirement, and a PPP borrower now must use only 60% of the PPP funds on payroll costs, and may use the other 40% on the other allowable PPP uses (generally, rent, mortgage interest payments, and utilities).
- **Extended Deferral Period and New Forgiveness Application Timeline.** The CARES Act provided a deferral of all payments for PPP amounts that were not forgiven for the first six months. The Flexibility Act extends this deferral period to the date that the borrower's determined forgiveness amount is remitted to the lender, unless the borrower does not apply for forgiveness within ten months after the

last day of the covered period.

The PPP has been quickly and frequently evolving since the date the CARES Act was enacted. PPP borrowers should regularly review the current SBA guidance to stay informed of all changes. If you have any questions about the PPP or this latest guidance, please call Drew Parobek, Marty Gates, Cauley Simmons, or your Vorys attorney today.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).