



# CCM COVID-19 ALERT

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Clingen Callow & McLean, LLC

## House Passes Bill Amending Key PPP Loan Provisions

On May 28, 2020, the U.S. House of Representatives passed the Paycheck Protection Program Flexibility Act of 2020 (the “Bill”), found [here](#). The Bill amends certain Paycheck Protection Program (“PPP”) provisions of the CARES Act. The Bill is designed to provide more flexibility to the PPP, extend the maturity date of any part of PPP loans that are not forgiven, and provide additional payroll tax relief to PPP borrowers with PPP loans that have been forgiven.

The Bill addresses some of the concerns that have plagued PPP loan borrowers as they seek to use PPP loan funds in a manner that maximizes the amount of the PPP loan that can be forgiven.

### ***Expansion of Covered Period; Use of Original Covered Period***

The Bill would increase the “covered period” – for purposes of determining payroll costs and eligible nonpayroll costs – from the current eight weeks to the earlier of 24 weeks after the date of the origination of the PPP loan, or December 31, 2020. The present eight-week covered period has left many PPP borrowers scrambling to determine how to maximize “payroll costs” and otherwise use the PPP loan funds in a way that maximizes the loan forgiveness rather than requiring repayment of the PPP loan.

For borrowers that may have premised a number of decisions about the use of PPP loan funds upon an eight-

week covered period, particularly for payroll costs, the Bill permits any borrower that received PPP loan funds before enactment of the Bill to use the eight-week covered period from the CARES Act prior to any amendment.

### ***Extension of Rehiring Safe Harbor to December 31, 2020***

The Bill would also amend Section 1106 of the CARES Act, which provides that in order to avoid cutback of the PPP loan forgiveness, employees must be rehired, or compensation must be reinstated by June 30, 2020. The Bill would change this date to December 31, 2020. In addition, the Bill would provide that for the measuring period of February 15, 2020 through December 31, 2020, loan forgiveness would not be reduced:

(A) if the number of full-time equivalent employees is reduced because the affected PPP loan borrower is (i) unable to rehire an individual who was an employee on February 15, 2020, and (ii) unable to hire similarly qualified employees for unfilled positions before December 31, 2020; or

(B) if the borrower is able to document that it is unable to return to the same level of business activity that the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued by the U.S. HHS, CDC, or OSHA for the period beginning March 1, 2020 and ending on December 31, 2020, related to maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

### ***Payroll Costs Requirement Reduced to 60%***

The Bill reduces the amount of PPP loan that must be used for payroll costs from 75% to 60%. The original version of the Bill would have eliminated any minimum payroll cost requirement; however, the reduced payroll cost requirement should help PPP loan borrowers such as restaurants that have been unable to increase the payroll cost element of PPP covered costs because they have been unable to fully reopen.

### ***Extended Maturity Date for Remaining PPP Loan Balances***

The Bill would increase the minimum maturity date for any PPP loan balance that is not forgiven from two years to five years. However, the increased maturity date would **only** apply for PPP loans that originated after the enactment of the Bill. For existing PPP Loans, the Bill provides that nothing shall be construed to prohibit PPP lenders and borrowers from mutually agreeing to modify the maturity terms of a PPP loan to conform with the longer maturity term provided in the Bill.

### ***Extension of PPP Loan Payment Deferral Period***

The Bill extends the period of time for which any payments of principal and interest on PPP loans are due from six months following the date of the loan origination to the date on which the amount of any forgiveness is remitted from the SBA to the lender.

If a borrower does not apply for PPP loan forgiveness, then the payments of principal and interest on a PPP loan cannot begin until 10 months after the expiration of the covered period as revised by the Bill (the earlier of 24 weeks or December 31, 2020).

This change significantly extends the deferral period and appears designed to further postpone the debt service obligations of PPP loan borrowers with PPP loan balances remaining after any PPP loan forgiveness.

### ***Payroll Tax Relief***

The Bill would permit borrowers that have PPP loans forgiven to nonetheless defer payment of FICA taxes, otherwise payable for the period from March 27, 2020 to December 31, 2020, to December 31, 2021 (50%) and December 31, 2022 (50%). At present, the CARES Act requires payment of FICA taxes that had been otherwise deferred to be repaid by a borrower if its PPP loan is forgiven.

### **Extension of Covered Period for Obtaining PPP Loan**

The Bill extends from June 30 to December 31, 2020 – the “covered period” during which applicants can obtain a PPP loan.

These changes are a welcome relief to those PPP loan borrowers who were successful in obtaining PPP loans, only to discover significant obstacles to PPP loan forgiveness. The Bill now moves to the Senate, where it also has bipartisan support. Passage is possible early next week. Time is of the essence for many borrowers that are approaching the end of the original eight-week “covered period” provided under the CARES Act.

If you have any questions about the Bill, the PPP loan program including PPP loan forgiveness, please contact CCM.

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