This article presents general guidelines for Georgia nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

**New Paycheck Protection Program ("PPP") Flexibility Act –
Changes PPP Requirements**

On June 3, 2020, Congress passed The PPP Flexibility Act and the President is expected to sign it. The PPP Flexibility Act gives more time and flexibility to businesses, including nonprofits, that receive forgivable loans through the PPP. The changes are identified below. While these changes will likely become law, the SBA and Treasury may still issue guidance and instructions regarding the law and its changes and will revise the PPP Loan Forgiveness Application released on May 15, 2020.

- **Length of Covered Period Extended:** The Covered Period or Alternative Payroll Covered Period for all new loans will now be 24 weeks from approval of the loan or until December 31, 2020 (whichever comes first). Borrowers with existing loans can choose to extend their Covered Periods to 24 weeks. Nonprofits will have as much as 24 weeks (or until the end of 2020) to spend the money, tripling the current covered period of 8 weeks, and still have that money eligible for forgiveness. For more information on the covered periods, see How to Get Loans Under the CARES Act: The Paycheck Protection Program.

- **Amount Required to be Spent on Payroll Costs Reduced:** The requirement that at least 75% of the loan must be spent on payroll costs in order for that portion of the loan to be forgiven is reduced to 60%. Up to 40% may now be used on "other costs," specifically paying mortgage interest, rent, utilities and interest on other debt obligations.

- **Deadline for Rehires & Restoring Wages Extended:** In order to maximize loan forgiveness, a borrower must have at least the same number of full-time equivalent employee(s) ("FTEE") as it had previously, using a specific calculation to determine FTEEs. There are several safe harbors related to this requirement. One is that laid off employees must be rehired by June 30, 2020. That date has been extended to December 31, 2020. Another safe harbor involved restoring wages that had been decreased by more than 25% to their prior levels by no later than June 30, 2020. That date has also been extended to December 31,

2020. More details on these requirements can be found in our [How to Get Loans Under the CARES Act: The Paycheck Protection Program article].

- **New Safe Harbor for Loan Forgiveness for FTEE Reductions:** A new safe harbor establishes that loan forgiveness will not be reduced due to reductions in FTEEs if:
    1. A borrower in good faith documents that:
        - Borrower was unable to rehire employees who worked for borrower on February 15, 2020 but were laid off **and**
        - Borrower was unable to hire similarly qualified employees for unfilled positions on or before December 31, 2020; **or**

    2. A borrower in good faith documents its inability to return to the same level of activity it operated at before February 15, 2020 due the need to comply with requirements/guidance from HHS, CDC or OSHA between March 1 and December 31, 2020 related to maintaining sanitation standards, social distancing, or any other worker or customer safety requirement related to COVID–19. (For instance, an afterschool program that can only accommodate half the children it had before March 1, 2020 due to social distancing requirements will not lose loan forgiveness due to not having the same number of FTEEs as it had on February 15, 2020.)

- **Longer Maturity:** For all new loans entered into after the date of this law, instead of having to repay any loan amounts within two years, borrowers will now have five years to repay. Also, lenders and borrowers may mutually agree to extend existing PPP loans to five years.

- **Change to Deferral of Loan Repayments:** The six-month deferral of any payments of principal and accrued interest has been changed so that payments of any principal, interest, and fees will not be due until the date the SBA remits forgiveness monies to the lender. This provides more clarity because upon such payment, the lender and borrower will have a better understanding of any loan amounts actually due from the PPP loan. In addition, the PPP Flexibility Act clarifies that if a borrower does not apply for loan forgiveness within ten months after the last day of its Covered Period, then the borrower will owe the full amount of the principal, interest and fees, and deferral for such payments will immediately cease.

- **Payroll Tax Deferral.** Nonprofits that receive PPP monies may also benefit from a special payroll tax deferment included in the CARES Act. However, nonprofits should be aware that this is ONLY a deferral and such payments will ultimately still be due. Further, failure to pay them when due can result in personal liability for board members and executives who knowingly fail to pay them.

For additional information about PPP, see our articles:

- How to Get Loans Under the CARES Act: The Paycheck Protection Program
- Paycheck Protection Program Loan Applications Open Today – How to Calculate Payroll Costs
- Loan Forgiveness under Paycheck Protection Program
- SBA Releases PPP Loan Forgiveness Application – Major Changes in Loan Forgiveness!