

# Understanding the CARES Act

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## Paycheck Protection Program/CARES Act Agenda

How the bill is intended to help small businesses

How the loan program works for different size firms

How to apply

The risks and rewards

What's forgivable and what's not

Insurance considerations related to CARES Act

Questions



## Paycheck Protection Program/CARES Act

### **What is it? What should borrowers know?**

- Paycheck Protection Program is a Small Business Interruption Loan (“Loan”) created under the CARES Act to provide a direct incentive for small businesses to keep their workers on payroll
- Administered by the SBA and through your local lender
- Apply early– first come, first served
- Limited amount of funds available (\$349B allocated)
- To the extent loan proceeds are used for qualified expenses, the loan is forgiven
- Track expenditures to allow for forgiveness
- Failure to have proper documentation may result in limitation on forgiveness



## Paycheck Protection Program/CARES Act

### **Who is Eligible:**

- Employers with 500 or fewer employees or more if they meet SBA employee-based or revenue-based size standards corresponding to primary industry or both tests of SBA's alternative size standard
- 501(c)(3) entities with fewer than 500 employees
- Independent contractors
- Sole proprietors
- Self-employed
- Tribal businesses meeting SBA size standards
- 501(c)(19) Veterans organizations meeting size standards



## Paycheck Protection Program/CARES Act

### Eligibility (cont.)

- SBA affiliation rules still apply for employers unless employer's industry is classified as one that begins with 72 under the NAICS (food service and accommodations), in which case 500 employee limitation is per location
- Also waived for franchise operators
- Full-time, part-time and other status employees all count as employees for purposes of the Paycheck Protection Program
- Faith-based organizations
- **Resource links--**
- Department of Treasury: <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- SBA: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>



## Paycheck Protection Program/CARES Act

### Loan Terms:

- Term – 2 years
- Payments deferred for six (6) months

Interest – 1.0% per annum

Principal – maximum \$10 million per borrower

Principal forgiven if proceeds are used for “qualifying expenses”

- Qualifying Expenses: Payroll costs, rent, mortgage interest and utilities
- Payroll costs include all payroll costs including insurance premiums, wages, vacation days, sick pay (qualified leave wages and qualified sick leave wages paid under the Families First Coronavirus Response Act are not payroll costs)





## Paycheck Protection Program/CARES Act

### **Loan Amount:**

- 2.5x the borrower's average aggregate monthly payroll costs, using data from previous 12 months or from calendar year 2019
- Seasonal businesses may use period between February 15, 2019 (or March 1, 2019) and June 30, 2019
- If not in business from February 15, 2019 to June 30, 2019, may use period from January 1, 2020 and February 29, 2020
- Payroll costs are limited to the first \$100,000 in cash compensation earned by any employee, not to non-cash benefits
- Non-cash benefits include employer contributions to defined-benefit or defined-contribution retirement plans, payment for employee benefits consisting of group health care coverage (including premiums) and payment of state and local taxes assessed on compensation
- Qualified sick leave wages and qualified leave wages are not included in calculating payroll costs for purposes of the eligible loan amount (and not eligible as payroll costs for purposes of receiving loan forgiveness).



## Paycheck Protection Program/CARES Act

### **Forgiveness Terms:**

- Must use loan proceeds for the following expenses during the 8-week period commencing on the origination date of the loan:
  - Payroll costs
  - Rent
  - Mortgage interest and
  - Utilities
- SBA advising that not more than 25% of the loan proceeds can be used for non-payroll costs



## Paycheck Protection Program/CARES Act

### **Forgiveness amount may be reduced:**

- If employee headcount is reduced:
  - $(\text{Payroll costs} \times \text{avg. number of FTE per month during 8 week period}) / (\text{Avg. number of FTE per month from 2/15/19-6/30/19})$
  - If salaries are reduced:
  - Payroll costs – the amount of reduction in wages for employees making \$100K or less that is greater than 25% compared to most recent quarter
- Employees making > \$100K may have wages reduced by any amount
- If headcount reduction that occurs between 2/15/20 and 4/26/20 or payroll reduction is eliminated by 6/30/2020, full forgiveness is available



## Paycheck Protection Program/CARES Act

### **Treatment of Forgiveness**

- Any amount of debt forgiven which would otherwise be included in gross income as cancellation of indebtedness income (“COD”) is excluded from gross income under the Program.
- Still have to pay interest
- No prepayment penalty
- If a borrower gets the EIDL and advance w/forgiveness and then the PPP, they must refinance the EIDL into the PPP, then the PPP forgiveness is reduced by the amount of the EIDL forgiveness (which is up to \$10,000)



## Paycheck Protection Program/CARES Act

### **Interaction with SBA Loans-**

- If borrower obtained Economic Injury Disaster Loan (EIDL) between 2/15/2020 and 6/30/2020, may refinance and include it in payroll sum
- SBA is paying the principal interest and fees on 7(a), 504 and microloans for current loans for 6 months.
- SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.



## Paycheck Protection Program/CARES Act

### What should lenders know?

- Loans are fully guaranteed by SBA
- No guaranty fees
- Need to verify borrower's operations and monthly payroll costs
- Loans may be sold on secondary market
- Processing fees available based on loan balance at time of final disbursement
- Agent fees available paid out of lender fees
- Not required to make independent determination regarding applicability of affiliation rules
- May accept signatures on application from a single individual authorized to sign on behalf of borrower
- May use their own online portals and an electronic form they establish to collect application information and certifications (using same SBA language)
- If borrower is existing customer and necessary information previously provided, don't have to re-verify for FinCEN rule customer due diligence purposes
- May rely on the laws, rules and guidance available at time of application and if submitted and not processed may revise application based on new guidance



## Paycheck Protection Program/CARES Act

**Employee Retention Credit under CARES ACT** - May an Eligible Employer receive both the Employee Retention Credit (maximum credit of \$5,000 per employee (\$10,000 in qualified wages) for period 3/12/20 to 1/1/21) and a Small Business Interruption Loan under the Paycheck Protection Program?

- No. An Eligible Employer may not receive the Employee Retention Credit if the Eligible Employer receives a Small Business Interruption Loan under the Paycheck Protection Program.



## Paycheck Protection Program/CARES Act

### **Interaction with Refundable Tax Credits under the Families First Coronavirus Response Act (“FFCRA”)**

- Under FFCRA, employers are eligible for a refundable tax credit for qualified sick leave wages and qualified leave wages. Hence, if an employer receives tax credits for qualified leave wages and qualified sick leave wages, those wages are not eligible as payroll costs for purposes of receiving loan forgiveness under the CARES Act.
- IRS issued guidance on 4/1/20 for how to apply for refundable tax credits – Form 7200.





## Paycheck Protection Program/CARES Act

### **Health Care & Employee Benefit Cost Implications**

- All medical carriers are waiving member cost share (e.g., copays and out-of-pocket expenses) for COVID-19 related testing, and some for COVID treatments.
- Self-funded employers, TPAs/Carriers are likely asking how you'd like to handle this – have these discussions immediately.
- Telehealth and HSA's – relaxed guidance
- Over the Counter (OTC) Medications and Drugs are now eligible for reimbursement from FSA's, HSA's, and HRA's, without a prescription.



## Paycheck Protection Program/CARES Act

### **Health Care & Employee Benefit Cost Implications (cont.)**

- Employers asking about their employees' insurance eligibility, particularly in a layoff/furlough/reduced hour scenario
- The Answer – most insurance carriers are 'relaxing' their eligibility requirements, at least through April or May
- Self-Funded plans: take extra caution to make certain your TPAs and Stop Loss Vendors are in alignment; you don't want to have gaps or misunderstandings in your intentions for coverage



## Paycheck Protection Program/CARES Act

### Property Casualty/Business Insurance

- Risk Management Decisions
- Business Interruption Insurance
  - Direct physical loss
  - Virus exclusion
- Payment Grace Periods (cancellation moratorium)
- Endorse/Adjust Exposures
- Workers Compensation premium considerations (unique details present)
  - WCRB (Wisconsin) – Code 0012 @ \$0.00 Rate – if NOT working from home
  - NCCI (Most Other States) – Code 8871 @ \$0.11 Rate – if working from home



## Paycheck Protection Program/CARES Act

### Property Casualty/Business Insurance (cont.)

- Increased Cyber Risk
- Employment Practices Liability resources
- Credit Insurance
- Impact on Market & Finding Competitive Alternatives
  - Carrier uncertainty
  - Virtual loss control inspections



## Paycheck Protection Program/CARES Act

### Closing Medical Insurance Remarks

- How will COVID-19 impact your next Insurance Renewal?
  - Estimates are that the COVID-19 pandemic could raise premiums from 3%-40%
  - Many factors to consider
- What will be the impact of the 'elective' procedures currently being put on hold for the foreseeable future?



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# Questions?



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