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The Paycheck Protection Program (PPP) Update: Where We Are Now

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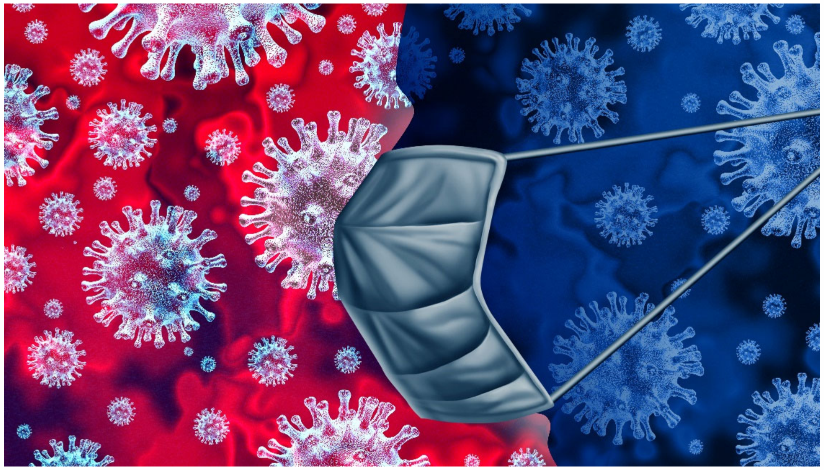
Disclaimer

This presentation is for educational purposes only. It addresses what we currently know about these recently signed laws and our understanding of how the applicable regulatory agencies will interpret these laws.



Coronavirus Aid, Relief, and Economic Security (CARES) Act
Paycheck Protection Program

- The CARES Act became law on March 27, 2020, committing over $2 trillion in economic relief to alleviate the impact of the pandemic on U.S. businesses. The CARES Act created the Paycheck Protection Program ("PPP"), which provided short term loans to companies with fewer than 500 employees and larger employers in the hospitality and restaurant industries.

- The PPP proved remarkably popular. Despite some early confusion and false starts, the initial $349 billion allocated to the loan program was exhausted in just 13 days. In response, on April 23, Congress approved another relief package providing an additional $250 billion in PPP funding.

Coronavirus Aid, Relief, and Economic Security (CARES) Act
Paycheck Protection Program

- The PPP was also as mysterious and confusing as it was popular. The CARES Act text left much to speculation and interpretation. Questions immediately arose as soon as businesses approached the application process.

- As a result, over a two-month period, the Treasury and SBA issued 48 FAQs and three interim final rules intended to provide guidance. While the FAQs and rules brought welcome clarity and guidance on some points, at times they lead to further confusion and still left many unanswered questions.

The Payroll Protection Flexibility Act

- Adding another wrinkle, on June 5, the Payroll Protection Program Flexibility Act became law. The PPP Flexibility Act amends the CARES Act in several ways, the aim of which is to make it easier for PPP loan recipients to qualify for forgiveness. Although leaving some questions, the PPP Flexibility Act is a welcome development for employer-borrowers seeking loan forgiveness.

- On June 17, the SBA and Treasury Department issued new rules and a new loan forgiveness application that fill in more gaps.

So where do we stand now?

What Do We Know Now? Back to the Basics

The Loan "Covered Period"

- **Before**: The CARES Act initially established a loan "Covered Period" of **eight weeks** beginning on the date loan proceeds are disbursed.
- **Now**: The PPP Flexibility Act extends the Covered Period for forgiveness to **24 weeks** or December 31, 2020, whichever is earlier.
  - Allows more time to spend the loan proceeds, particularly for businesses that are still closed or partially closed.
- **Note**: The PPP Flexibility Act allows borrowers the option to choose the original eight week period if the borrower received the loan prior to the amendment.
  - Why would this choice matter?

What Do We Know Now? Back to the Basics

An Alternative For Borrowers Electing an Eight Week Covered Period

- **Before:** The CARES Act initially established a loan "Covered Period" of eight weeks **beginning on the date loan proceeds are disbursed**.

- **Now:** The initial loan forgiveness application creates an "Alternative Payroll Covered Period," which allows borrowers to calculate eligible payroll costs using the eight week period that **begins on the first day of their first pay period following disbursement**.
  - The alternative period allows employer-borrowers to capture more payroll for forgiveness within an eight week period.

What Do We Know Now? Back to the Basics

An Alternative For Borrowers Electing a 24-Week Covered Period

- On June 17, 2020, the SBA issued its new loan forgiveness application, modified to reflect the amendments from the PPP Flexibility Act.

- The new loan forgiveness application **also allows borrowers opting for the 24-week period to similarly use an "Alternative Payroll Covered Period"** to synchronize the beginning of the period with the first day of their first pay period following disbursement.

What Do We Know Now? Back to the Basics

Deadline to Apply

- **Before**: The CARES Act required any employer seeking a PPP loan to apply no later than **June 30, 2020**.

- **Now**: The PPP Flexibility Act extends the deadline to **December 31, 2020**, subject to the availability of PPP loan funds, on a first-come, first-served basis.
  - According to an SBA report on PPP lending through June 6, 2020, approximately 4.5 million loans have been processed for an aggregate total of $511.3 billion. That leaves approximately $147.7 billion in PPP funds. **As of May 1, 2020, less than 1% of the loans were more than $1 million**, 2.66% were between $350,000 and $1 million, and the average loan size was $79,000.
  - Employers can only apply for a PPP loan once.

What Do We Know Now? Back to the Basics

<u>What Must the Loan be Spent On?</u>

- **<u>Before</u>:** The CARES Act initially established that at least **75%** of loan proceeds must be dedicated to "Payroll Costs."
- **<u>Now</u>:** The PPP Flexibility Act amends the CARES Act to reduce that threshold to at least **60%** of proceeds being spent on Payroll Costs.
- The remaining 40% can be used for:
  - Mortgage interest
  - Rent
  - Utilities
  - Interest on any other debt obligations that were incurred before issuance of the loan

What Do We Know Now? Back to the Basics

What Must the Loan be Spent On?

- **Before**: Many interpreted the CARES Act to mean if the employer-borrower did not devote at least 75% of loan proceeds to Payroll Costs, it **would not be eligible for any forgiveness**. Many interpreted the PPP Flexibility Act to require the same for its 60% threshold.

- **Now**: In a June 8 joint statement, the Treasury Secretary and SBA Administrator clarified that, "If a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower **will continue to be eligible for partial loan forgiveness**, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs."

What Do We Know Now? Back to the Basics

Safe Harbor Date – Salary/Wages

- **Before**: Reductions in salary or wages of one or more employees as compared to February 15, 2020 will not decrease the loan forgiveness amount if no later than **June 30, 2020**, the borrower eliminates any reduction below 75% of the salary of wages of its employees.

- **Now**: The PPP Flexibility Act extends the safe harbor period for restoring salary or wages to **December 31, 2020**.

What Do We Know Now? Back to the Basics

Safe Harbor Date – Headcount

- **Rule:** Calculate your average FTEs per month (see later slide for new calculation of FTEs) using more favorable lookback period. Then, using average FTE number, hire back employees to ensure average FTEs during loan forgiveness period meets or exceeds your comparison number.
- **Before:** Reductions in headcount will not decrease the loan forgiveness amount if there is a reduction in FTE as compared to February 15, 2020, and no later than **June 30, 2020**, the borrower fully eliminates the reduction.
- **Now:** The PPP Flexibility Act extends the safe harbor period for rehires to **December 31, 2020**. This will give businesses who are still closed or partially closed more time to bring back laid off employees.

What Do We Know Now? Back to the Basics

Employment Tax Deferral

- **Before**: The CARES Act allowed employers to defer payment of the employers' portion of payroll tax through the end of 2020, with half to be repaid by December 31, 2021 and the other half by December 31, 2022, without penalties or interest. However, PPP borrowers **could not** receive both forgiveness and tax deferral.

- **Now**: The PPP Flexibility Act retroactively eliminates this provision. PPP borrowers who have loan proceeds forgiven are **now allowed** to use the deferral.

What Do We Know Now? What is New?

Refusal of Reemployment, Resignation, Termination for Cause

- **Before**: **Unclear**, but commonly interpreted to mean refusals of reemployment, resignations, and employees terminated for cause would count against forgiveness.
- **Now**: The PPP Flexibility Act includes new safe harbors to **not count against forgiveness** if a borrower can show it was unable to rehire employees and could not fill vacancies with similarly qualified individuals. The loan forgiveness application provides a similar result for employees terminated for cause.

What Do We Know Now? What is New?

<u>What is a FTE?</u>

- **<u>Before</u>: Unclear.**
- **<u>Now</u>:** A May 22nd SBA interim final rule defines a full-time equivalent employee as an individual who works 40 hours or more each week. One employee cannot be greater than one FTE — overtime does not apply. For employees who work less than 40 hours per week, the borrower may calculate the average number of hours paid per week divided by 40, or the borrower may use an FTE equivalency of 0.5 for each employee for a simplified approach.
  - For example, 40 hour per week employee = 1.0 FTE; 10 hour per week employee = .25 FTE.

What Do We Know Now? What is New?

What if Government Restraints Limit Operations?

- **Before**: **No exception**.
- **Now**: The PPP Flexibility Act includes another new **safe harbor** for borrowers who have been unable to return to the same level of business activity as before February 15, 2020 due to compliance with requirements or guidance issued by the HHS, the CDC, or OSHA related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to Covid-19.

What Do We Know Now? What is New?

Are Bonuses Forgivable? What about Hazard Pay?

- **Before**: **Unclear**. The CARES Act included salary, wages, commissions, or "similar compensation" as "Payroll Costs."
- **Now**: The SBA's May interim final rule clarifies that **bonuses and hazard pay are Payroll Costs** and eligible for forgiveness.
  - So long as the employee's total compensation does not exceed $100,000 on an annualized basis.

What Do We Know Now? What is New?

What About The $100,000 Cap?

- **Before**: The CARES Act allows loan forgiveness for "Payroll Costs," which include an employee's salary, wages, commissions, bonuses, and tips, for up to $100,000 annualized per employee, **or $15,385** per individual over the eight-week period. The PPP Flexibility Act extended the period to 24 weeks, but did not make clear that the $100,000 threshold would reflect the longer covered period.

- **Now**: The June 17 interim final rule establishes the 24-week maximum for full loan forgiveness at **$46,154** per employee.

Loan Forgiveness Process

- The forgiveness application and supporting documentation is initially submitted by the borrower to the lender.
- On June 17, the SBA issued two new loan forgiveness applications to reflect the PPP Flexibility Act amendments.
  - The revised PPP Loan Forgiveness Application; and
  - The "EZ" PPP Loan Forgiveness Application

Guess which one you want to be able to use?

Loan Forgiveness Process

- Borrowers may use the “EZ” PPP Loan Forgiveness Application if:
  - Are self-employed and have no employees;
  - Did not reduce the salaries or wages of their employees by more than 25%, and did not reduce the number or hours of their employees; or
  - Experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25%.

Loan Forgiveness Process

- Lenders have 60 days from submission of the forgiveness application to issue its forgiveness amount decision to the SBA.
- The SBA then has 90 days after receipt of the lender's decision to review the application for forgiveness, make its determination and fund the amount forgiven (plus interest) to the lender.
- In FAQ 39, the SBA announced that it will scrutinize all PPP loans in excess of $2 million following the lender's submission of the borrower's loan forgiveness application.

What Happens to Unforgiven Amounts?

- 1% fixed interest rate unchanged from CARES Act.
- The PPP Flexibility Act extends the maturity of new loans from the original **two years** to **five years**, with no penalty for early payment. The maturity date for borrowers whose PPP loan was received prior to June 5, 2020 will not change (two years from the date of funding), but the borrower and lender can agree to extend the maturity date to five years.
- The PPP Flexibility Act extends the deferment of payment from the original **six months** following the date of the disbursement of the loan to the **date of the forgiveness determination**.
- If you end up with unspent PPP money?
  - Return the remaining amount to the lender;
  - Keep as a low interest loan.

Questions?

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