

Updates to the CARES Act, Loan Programs, Employer Tax Credits, and Individual Stimulus Payments

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Today's Discussion

Updates to Paycheck Protection Program

Updates to SBA Economic Injury Disaster Loans (EIDL)

Main Street Lending

Employer Tax Credits and Benefits

Individual Stimulus Payments

Paycheck Protection Program

Paycheck Protection Program

Program Overview

- Part of the CARES Act signed into law March 27, 2020
- Allows qualified businesses to apply for a loan with an approved institution, with the potential for a portion, up to 100%, of that loan to be forgiven
- Visit home.treasury.gov for information and application
- Application process has not been easy
 - You likely submitted payroll data and backup reports to justify a loan amount of 2.5x average monthly payroll costs + refinanced EIDL (capped at \$10 million).

Paycheck Protection Program

Program Status

- Many banks stopped application process as early as April 15, 2020 due to fund limitations
- SBA stopped applications April 16
- SBA noting that they cannot maintain queue of applicants after funds are depleted
- Congress is debating more funding for the programs
 - We do not know what applicants who were not approved will need to do if more funding is approved.

Paycheck Protection Program – Section 1102

Payroll Costs Include

- Salary, wages, commission and similar compensation including cash tips (capped at \$100k annual per individual)
- Payments for vacation leave
- Payments for parental, family, medical or sick leave
- Payments for dismissal or separation
- Payment of any retirement benefits
- Group health care benefits, including insurance premiums
- State and local payroll taxes assessed on the compensation of employees
- The sum of income of a sole-proprietor or independent contractor that is in an amount not more than \$100k in 1 year, prorated for the covered period

Paycheck Protection Program – Section 1102

Payroll Costs Clarifications (cont'd)

- Payroll Costs **DO NOT** Include:
 - Compensation of an individual employee in excess of an annual salary of \$100,000, prorated for the covered period
 - Compensation of employees whose principal residence is outside of the United States

Paycheck Protection Program – Section 1102

Payroll Costs Clarifications (cont'd)

- Payroll Costs **DO NOT** Include:
 - Taxed imposed or withheld under chapters 21, 22 or 24 of IRC (i.e. federal payroll taxes) during the covered period (2/15/20 – 6/30/20)
 - Addressed by SBA FAQ:
 - **Question:** How should a borrower account for federal taxes when determining its payroll costs for purposes of the maximum loan amount, allowable uses of a PPP loan, and the amount of a loan that may be forgiven?
 - **Answer:** Under the Act, payroll costs are calculated on a gross basis without regard to (i.e., not including subtractions or additions based on) federal taxes imposed or withheld, such as the employee's and employer's share of Federal Insurance Contributions Act (FICA) and income taxes required to be withheld from employees. As a result, payroll costs are not reduced by taxes imposed on an employee and required to be withheld by the employer, but payroll costs do not include the employer's share of payroll tax.

Paycheck Protection Program – Section 1102

Payroll Costs Clarifications (cont'd)

- **Footnote:**...the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower's maximum loan amount will largely or entirely precede the period from 2/15/20-6/30/20 and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.
- Does this mean forgiveness can be based on net pay?

Paycheck Protection Program – Section 1102

Payroll Costs Clarifications (cont'd)

- Payroll Costs **DO NOT** Include:
 - Any qualified sick or family leave wages for which a credit is allowed under 7001 or 7003 of FFCRA (payroll credit for paid sick or family leave)
 - Use both programs
 - Do **NOT** include **SAME** wages in **BOTH** programs!

Paycheck Protection Program – Section 1102

Independent Contractors & Self-Employed

- Schedule C self-employed are eligible if in operation as of 2/15/2020, have self-employment income, and have a principal place of residence in the U.S.
- Partners in partnerships may not submit a separate PPP application as self-employed individuals; instead self-employment income of general active partners may be submitted by the partnership.

Paycheck Protection Program – Section 1102

Independent Contractors & Self-Employed

- Calculation:
 - 1040 Schedule C line 31 net profit (> 0 , capped at \$100K)
 - Divide by 12 and multiply by 2.5 to reach average monthly net profit
 - Add EIDL made between 1/31/2020 and 4/3/2020 to be refinanced, minus any advance

Paycheck Protection Program – Section 1102

Independent Contractors & Self-Employed

- If employees:
 - 1040 Schedule C line 31 net profit:
 - Capped at \$100K & if negative, set to 0
 - 2019 gross wages and tips paid to employees whose principal place of residence is in the US using Form 941 Taxable Medicare wages & tips, plus pre-tax employee contributions for health insurance or other benefits excluded, minus amounts over \$100,000 annualized
 - 2019 employer health insurance contributions, retirement contributions, and state and local taxes
 - Divide by 12 and multiply by 2.5 to reach average monthly net profit
 - Add EIDL made between 1/31/2020 and 4/3/2020 to be refinanced, minus any advance

Paycheck Protection Program – Section 1102

Allowable Use of Funds

- Payroll costs
- Owner compensation replacement (for self-employed)
- Continuation of group health care benefits under family, medical or sick leave, including premiums
- Employee salaries, commissions, or similar compensations
- Interest on mortgage (which does not include prepayments) incurred prior to covered period
- Rent (including rent under a lease agreement)
 - Does rent to a related party apply? Does this include rent for equipment?
- Interest on other debt obligations incurred prior to covered period
- Utilities: electricity, gas, water, transportation, telephone, internet
- 75% of Loan Proceeds must be used for Payroll Costs?

Paycheck Protection Program – Section 1106

What Loans Can be Forgiven?

- Forgiveness cannot exceed principal
- Eligible for forgiveness in an amount equal to “costs incurred and payments made” within the covered period (8-week period following first distribution) for:
 - **Payroll costs** (using same definition as in Section 1102)
 - **Interest** payment on any mortgage incurred prior to 2/15/2020
 - **Rent** on any lease in force prior to 2/15/2020
 - Payments on any **Utility** (electricity, gas, water, transportation, telephone, or internet) for which service began prior to 2/15/2020
- Not more than 25 percent of the loan forgiveness amount may be attributable to nonpayroll costs

Paycheck Protection Program – Section 1106

Potential Reductions to Forgiveness #1

- Multiply eligible forgiveness by:
average monthly FTE's during covered period
average number of FTE's from 2/15/19-6/30/19
OR 1/1/2020-2/29/2020 (applicant's choice)
 - Seasonal employers use 2/15/2019-6/30/2019
- Note: Cannot increase forgiveness
- What is an FTE? This is unknown.

Paycheck Protection Program – Section 1106

Potential Reductions to Forgiveness #2

- Reduce loan forgiveness by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
 - **Exception:** Employees earning an annualized wage/salary more than \$100,000 during any single pay period during 2019 are excluded from this calculation
- How do we calculate?
- Covered period vs. most recent full quarter?

Paycheck Protection Program – Section 1106

Potential Reductions to Forgiveness #3

- If you are awarded an emergency advance from an Economic Injury Disaster Loan (EIDL), the amount awarded shall be deducted from the forgiveness

Paycheck Protection Program – Section 1106

Rehiring is Permitted

- Reductions in employment or wages/salaries occurring between February 15, 2020 and ending 30 days after the enactment of the CARES Act (April 26, 2020) shall not reduce the amount of loan forgiveness if the borrower eliminates the reduction by June 30, 2020
- How do we calculate?

Paycheck Protection Program – Section 1106

Loan Forgiveness – Important Notes

- The Lender will approve the Forgiveness
 - Process is unknown:
 - You will need backup information such as verification of employee counts and rates, payroll reports, payroll tax filings, cancelled checks / payment receipts for interest, lease, and utility payments, etc.
- Forgiveness is not taxable to the borrower for Federal income tax purposes.
- Are forgiven expenses deductible?

Paycheck Protection Program – Section 1106

Loan Forgiveness – Application Process

- Process is unknown:
 - It will be handled through your lender or similar institution.
- You will need backup information such as verification of employee counts and rates, payroll reports, payroll tax filings, cancelled checks / payment receipts for interest, lease, and utility payments, etc.

Paycheck Protection Program – Section 1106

Loan after Forgiveness

- 2 years amortization
- 1% Interest rate
- Payments will be deferred 6 months

Economic Injury Disaster Loans (EIDL)

Economic Injury Disaster Loans (EIDL)

SBA EIDL Provisions - Update

- Program Overview:
 - \$2 million maximum working capital term loan
 - 3.75% interest rate for small businesses, 2.75% for non-profits
 - Apply directly through sba.gov/disaster
- Update:
 - sba.gov/disaster indicates no further applications will be accepted due to available funding. Applications submitted will be processed, first come-first served.
 - Will more funding be approved?
 - Emergency Advance up to \$10,000 being determined by pre-disaster employee headcount. Capped at \$1,000 per employee up to a maximum of \$10,000

Main Street Lending

Main Street Lending

New & Expanded Loan Facilities

- Federal Reserve program to offer low interest loans to qualified small and mid sized businesses
 - Less than 10,000 employees
 - Businesses organized and domiciled in U.S.
- Two Programs:
 - New Loan Facility – no existing term loan
 - Expanded Loan Facility – increases existing term loans
- Issued by banks
- No forgiveness provision
- Like with all programs, this is subject to change
- Program not yet opened

Main Street Lending

Preliminary Term Sheet Details

- 4 year amortization
- \$1 million minimum
- Maximum Loan:
 - New: lesser of \$25 million and an amount that, when added to the borrower's existing outstanding and committed, but undrawn debt, does not exceed 4 times 2019 EBITDA
 - Expanded: lesser of \$150 million, 30% of borrower's existing outstanding and committed, but undrawn bank debt, and an amount that when added to the borrower's existing outstanding and committed, but undrawn debt, does not exceed 6 times 2019 EBITDA

Main Street Lending

Certifications

- Uncertainty of economic conditions makes necessary the loan request to support ongoing operations
- Retain workforce, compensation, and benefits
- Domiciled, created, and organized in US, with significant operations and employees located in US
- Limitations on executive compensation
- Limitations on dividend payment, repurchase of equity securities
- Neutral in union organizing, must not abrogate existing CBA

Employer Credits

COVID Legislation Payroll Credits/Benefits

FFCRA and CARES Acts

- **Families First Corona Response Act (FFCRA)**
 - Paid Sick Leave
 - Either full or 2/3 pays for up to 80 hours
 - Limited to \$511/ day if full pay, \$200 if 2/3
 - Expanded FMLA
 - 2/3 pay for additional 10 weeks
 - Limited to \$200 per day
- **Coronavirus Aid, Relief, and Economic Security Act (CARES)**
 - Employee Retention Credit
 - 50% credit for qualified wages up to \$10,000 per employee
 - Employer Payroll Tax Deferral

Who is Eligible to Claim the Credit/Benefit?

Eligibility

- **FFCRA Credits:**

- Any business paying employees under the sick leave or expanded FMLA coverage provided by the FFCRA. Generally, all employers with under 500 employees are covered by the FFCRA.
- See the following Department of Labor FAQ for specific questions on eligibility and benefits: [DOL FFCRA FAQ](#)

- **Employee Retention Credit:**

- Those that carry on a trade or business during calendar year 2020, including a tax-exempt organization, that either:
 - Fully or partially suspends operation during any calendar quarter in 2020 due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious, or other purposes) due to COVID-19; or
 - Experiences a significant decline in gross receipts during the calendar quarter.

- **Employer Payroll Tax Deferral:**

- Every business not receiving loan forgiveness under Sections 1106 and 1109 of the CARES Act.

Can I Take the PPP Loan and This Credit?

Eligibility

- **FFCRA Credits**
 - **YES**, However, the benefits paid under the FFCRA are not included in payroll costs for the calculation of the loan amount or amount forgiven.
- **Employee Retention Credit**
 - **NO**, Employers receiving a PPP loan are ineligible for the credit.
- **Employer Payroll Tax Deferral**
 - **YES, until the loan is forgiven.** The law says businesses with loan amounts forgiven under Sections 1106 of 1109 of the CARES Act are ineligible. Employers can defer payment until they receive approval that their loan will be forgiven.

When Can an Employer Get the Credit/Benefit?

FFCRA

- Starting April 1, employers can claim the 100% tax credit against employment taxes for benefits.
- Employers will claim the credit when filing their quarterly Form 941.
- Employers may receive an advanced credit by taking it out of their otherwise required payroll deposits.
- If the total credit exceeds their payroll deposit, they can file new Form 7200 to claim a refund.
- Below is a link to the IRS FAQ on the FFCRA benefits and tax credits including examples regarding claiming the credit.
 - [IRS FFCRA FAQ](#)

When Can an Employer Get the Credit/Benefit?

Employee Retention Credit

- The employee retention tax credit applies to wages paid after March 12, 2020 and before January 1, 2021.
- IRS published brief guidance, stating the 1st quarter credits earned for pay between March 13 and March 31 will be claimed on a second quarter Form 941.
- The credit will not be claimed on the first quarter payroll return.
- Employers may receive an advanced credit by taking it out of their otherwise required payroll deposits.
- If the total credit exceeds their payroll deposit, they can file new Form 7200 to claim a refund.
- Below is a link to the IRS FAQ on the employee retention credit which includes examples regarding claiming the credit.
 - [IRS Employee Retention Credit FAQ](#)

When Can an Employer Get the Credit/Benefit?

Employer Payroll Tax Deferral

- The deferral period starts March 27, 2020 and ends December 31, 2020.
- I believe this means deferral applies to all payroll deposits starting March 27th.

Individual Stimulus Payments

Individual Stimulus Payments Updates

Recap and Timing

- **Recap:** \$1,200/adult (\$2,400/married couples) with an additional \$500/child, available to single filers who make \$75,000 or less and married couples who make \$150,000 or less. The amount phases out after these thresholds are met.
- **Timing:** Taxpayers with direct deposit information on either their 2018 or 2019 tax returns have already started receiving their stimulus payments. Individuals who receive Social Security, Supplemental Security Income (SSI), Railroad Retirement benefits (RRB), and VA benefits are expected to start receiving their payments soon. Direct deposit information can be provided to the IRS at <https://www.irs.gov/coronavirus/economic-impact-payments>. Anyone who does not have direct deposit information on file will receive a check, which will begin to be mailed out on April 24th.
- **Dependent Information Deadline:** Individuals who do not file but receive Social Security, SSI, RRB, or VA benefits will need to provide their dependent information at the link above by the following deadlines:
 - Social Security or Railroad Retirement – **Wednesday, April 22nd by 12:00pm Eastern**
 - Supplemental Security Income – by **Early May** (no date announced)
 - VA benefits – schedule still being determined

Individual Stimulus Payments Updates

Common Issues

- Incorrect address on file – correct by filing a 2019 return, if it has not yet been filed, or by filing Form 8822
- New dependent children in 2020 – filers need to wait until they file their 2020 returns
- Incorrect amount received – amount can be corrected on the 2020 return; there is no requirement that overpayments made based on 2019 or 2018 information will need to be paid back, however we do not have guidance on overpayments as a result of errors made by the IRS
- Closed bank accounts – individuals should update their direct deposit information either by filing a 2019 return or using the IRS tool; if direct deposits are returned then the IRS will mail out a check later
- Errors with IRS check payment tool – the IRS is updating the tool on a regular basis, and encourages individuals to keep checking back

Filing Deadlines

Updates

- **New IRS Notice 2020-23:** expands relief provided by prior notices, and extends the deadline for filings, payments, and other government actions that have a deadline between April 1, 2020 and July 14, 2020. The extended deadline for all items is now July 15, 2020.
- Some additional deadlines that have been automatically extended:
 - Form 5227 (split-interest trusts)
 - Form 990 series (nonprofit returns)
 - Estate and gift tax returns (Forms 706 and 709)
 - First and Second quarter estimated tax payments
 - Schedules and forms that are required to be attached to income tax returns, including Schedule H (household employees), Form 3520 (foreign trusts), Form 5471 (foreign corporations), Form 8621 (passive foreign investment company), Form 8938 (specified foreign financial assets), etc

Key Resources



HBK Website:

www.hbkcpa.com/covid

Paycheck Protection Program

home.treasury.gov

Department of Labor Resources:

<https://www.dol.gov/agencies/whd/pandemic/ffra-questions>

IRS FAQs:

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Direct Deposit Information:

<https://www.irs.gov/coronavirus/economic-impact-payments>





Questions

Thank You for Participating

Stay Well!



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