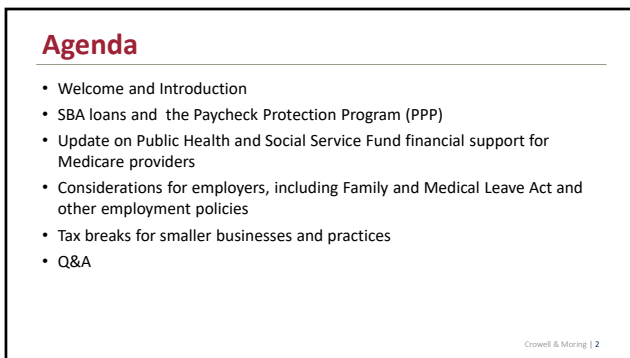
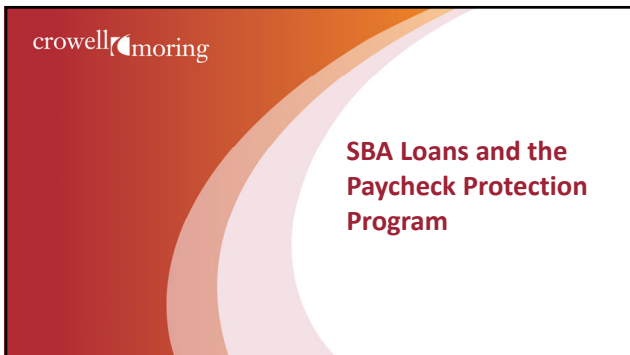


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A New Form Of Small Business Loan

Paycheck Protection Program (PPP) Loans

- **\$659 billion** forgivable loan program for small business businesses and nonprofit organizations with under 500 employees.
- Original **\$349 billion** approved in the CARES Act exhausted in just over one week with approximately **1.66 million loans**.
- Additional **\$310 billion** approved last week. SBA resumed loan processing on 4/27.
- Banks reportedly held 700,000 applications when first round was exhausted.

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4

Paycheck Protection Program Loans

Is my business eligible?

- Generally, any small business (independent contractor, eligible self-employed individual, or sole proprietor), including 501(c)(3) nonprofit organizations, 501(c)(19) veterans organizations, and Tribal businesses
- Up to 500 employees or applicable size standard for its NAIC code
- Affiliation rules apply, though, so consult with your lender
 - PE, VC, or Investment Company ownership complicates eligibility
- Small businesses that meet SBA's "alternative size standard" also eligible:
 - Maximum tangible net worth of the business is not more than \$15 million; and
 - The average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million

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5

Paycheck Protection Program Loans

Loan Amount and Eligible Uses

- 2.5X average total monthly payroll costs, up to a maximum of \$10 million
- Calculation period is either the most recent twelve months or calendar year 2019
- Can be used as working capital to pay payroll costs, rent, utilities and other specified costs
- Can also refinance SBA Economic Injury Disaster Loan (EIDL) if obtained after January 31, 2020

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6

Payroll Costs

Determines Amount That Can Be Borrowed And Forgiven For PPP Loans

- Companies use employee payroll costs, not including payments to independent contractors
- Capped at \$100,000 in compensation to any U.S. employee, excluding FICA taxes or income tax collected at the source. Compensation includes:
 - salary, wage, commission, or similar compensation; payment of cash tip or equivalent;
 - payment for vacation, parental, family, medical, or sick leave;
 - allowance for dismissal or separation;
 - payment required for the provisions of group health care benefits, including insurance premiums;
 - payment of any retirement benefit; or
 - payment of State or local tax assessed on the compensation of employees
- Payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation

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7

Permitted Uses For PPP Loans

While Permitted, Some Expenditures Are Not Eligible To Be Forgiven

- Permitted Uses for PPP Loans include:
 - payroll costs;
 - costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
 - employee salaries, commissions, or similar compensations; payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
 - rent (including rent under a lease agreement);
 - utilities;
 - interest on any other debt obligations that were incurred before the covered period; and
 - uses otherwise for loans made under Section 7(a) of the Small Business Act, which includes equipment and fixtures; working capital, inventory, seasonal line of credit or refinancing debt, including an EIDL loan.

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8

PPP Loans Are Forgivable

Unforgiven Amounts Continue With Favorable Terms

- PPP Loans are subject to forgiveness, in whole or in part, for certain "covered expenses" incurred during the 8 week period following the date of the PPP Loan
 - Covered expenses are payroll costs, interest on covered mortgage obligations, rent obligations and utilities; of which payroll costs must be 75%
 - The amount of principal that is forgiven is not included in gross income for tax purposes
 - PPP Loan forgiveness is subject to formulaic reduction compared to specified prior periods and additional reduction for workforce (FTEs) or salary reductions after February 15, 2020 which can be mitigated if the company increases its workforce or the salary/wages it pays its employees by June 30, 2020
- Any balance of a PPP Loan which is not forgiven must be repaid, with a loan maturity of 2 years after forgiveness and a 1% interest rate
 - Deferral of loan payments for a period of 6 months
 - No personal guarantees required

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9

Applying for a PPP Loan

- Working with existing banking relationships will expedite the process
 - The CARES Act expands the number of lenders that can make PPP Loans
 - Lenders have been prioritizing current customers as they ramp up
- Documentation that will be needed includes 2019 payroll records
 - The CARES Act mandates that SBA delegate lending authority to lender
 - A lender is to consider whether a borrower
 - Was in operation on February 15, 2020; and
 - Had employees for whom the borrower paid salaries and payroll taxes; and/or paid independent contractors, as reported on a Form 1099-MISC
- Application at https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form_0.pdf

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10

Applying for a PPP Loan

Additional Considerations

- In the wake of Ruth's Chris, Shake Shack, and others, SBA has tightened eligibility and strengthened certification requirements
- All borrowers must assess their economic need for a PPP loan
- Certification made in good faith, taking into account their current business activity and their ability to access other sources of liquidity
- Borrowers and lenders may rely on the laws, rules, and guidance available at the time of the application

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11



Public Health and Social Services Emergency Fund

12

Public Health and Social Svcs. Emergency Fund

Statutory Text

- CARES Act and Paycheck Protection and Health Care Enhancement Act
 - Now \$175 billion that is available until expended
- “To prevent, prepare for, and respond to coronavirus,” whether through grants or other mechanisms
- Eligible health care providers
 - U.S. Public entities,
 - Medicare or Medicaid enrolled suppliers/providers, and
 - other entities at the Secretary’s discretion
 - that provide “diagnoses, testing, or care for individuals with possible or actual cases of COVID-19”

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13

Public Health and Social Svcs. Emergency Fund

Statutory Text Continued

- Secretary to review “applications” and make payments on a rolling basis
- What can the funds be used for?
 - “For necessary expenses to reimburse...
 - health care related expenses or lost revenues
 - that are attributable to coronavirus”
 - Can be a pre-payment, prospective payment, or retrospective payment
- CANNOT be used to reimburse expenses or losses that have been reimbursed from – or obligated to be reimbursed by – “other sources”

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14

Public Health and Social Svcs. Emergency Fund

Specific Examples

- Building or construction of temporary structures,
- Leasing of properties,
- Medical supplies and equipment
 - including personal protective equipment and testing supplies,
- Increased workforce and trainings,
- Emergency operation centers,
- Retrofitting facilities, and
- Surge capacity

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15

Public Health and Social Svcs. Emergency Fund

HHS Distributions Thus Far

- General Allocation
 - Initial \$30 billion to enrolled Medicare enrolled suppliers and providers that received Medicare FFS reimbursement in 2019 (began April 10, 2020)
 - Second \$20 billion will be a proportional to a provider's 2018 net patient revenue and will account for what a provider received in the initial distribution (began April 24, 2020)
 - Must sign an attestation agreeing to terms and conditions
- Targeted Allocations, e.g.,
 - COVID-19 High Impact Areas (\$10 billion)
 - Treatment of the Uninsured
 - Rural Providers (\$10 billion)

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16

Public Health and Social Svcs. Emergency Fund

General Allocation Key Terms and Conditions

- **Out-of-Pocket Payment Restrictions:** entities must agree not to seek out-of-pocket payments from COVID-19 patients greater than in-network rates.
- **Reporting Requirements:** In addition to further potential reporting obligations that will be set forth at a later date, entities receiving more than \$150,000 of funds under any of the three coronavirus-related acts or future acts must provide quarterly reports containing a detailed list of all project or activities for which the funds were expended or obligated, among other requirements.
- **Recording Requirements:** Entities must maintain appropriate records and cost documentation to substantiate the reimbursement of costs under this award and demonstrate compliance with the terms and conditions

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17

Increased Oversight and Enforcement Risks

- Congressional Oversight
- Pandemic Response Accountability Committee
- HHS Office of Inspector General
- FCA Enforcement Risk
 - Department of Justice
 - Relator Bar

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18

Increased Oversight and Enforcement Risks

“All recipients will be required to submit documents sufficient to ensure that these funds were used for healthcare-related expenses or lost revenue attributable to coronavirus. **There will be significant anti-fraud and auditing work done by HHS, including the work of the Office of the Inspector General.**”

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19

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Employer Considerations

20

Families First Legislation

- Effective 4/1/2020
- Requires paid leave to be provided by employers with <500 employees
 - Up to 80 hours of paid sick leave to be used in several COVID-19 related circumstances
 - Up to 12 weeks of (partially paid) job-protected FMLA leave for employees in one circumstance
- Payroll tax credit reimbursement
- Exceptions for first responders and certain health care providers
- Exceptions for employers with < 25 employees.

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Paid Leave Entitlements

21

CARES Legislation

- Federal funding for state law programs
- Broader eligibility for benefits, e.g., independent contractors
- Enhanced benefits, e.g., \$600 weekly supplement
- Extended benefits, e.g., > 26 weeks
- Elimination of state law waiting periods
- "Short-time" program funding

Enhanced unemployment benefits

22

Employer Responses to COVID Infections

- Guidance issued by CDC, EEOC and OSHA
- Guidelines reflect public health focus
 - Send the person home
 - Require self-quarantine
 - Notify employees in "close contact" with infected employee
 - Consider site-wide employee communication
 - Robust facility cleaning
 - Engineering and administrative controls
 - Social distancing protocols

What to do if employees test positive?

23

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Tax Breaks for Small Businesses

24

CARES Act Tax Relief

Payroll Tax Credit

Qualified employers can receive a refundable tax credit equal to 50% of qualified wages up to \$10,000 per employee.

- Qualified employers are those who were operating a business in 2020
 - that was fully or partially shut down as a result of government order restricting commerce, travel, or group meetings as a result of Covid-19
- OR
- whose gross receipts in a quarter were less than 50% of gross receipts from that same quarter 2019.

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25

CARES Act Tax Relief

Payroll Tax Credit

- “Qualified wages”
 - For employers with 2019 full-time employee average of 100 or over:
 - Wages paid to employees who were **not providing services** because operations were fully or partially suspended due to government order or during quarter with less than half 2019 gross receipts.
 - For employers with a 2019 full-time employee average of fewer than 100
 - Wages paid to **all employees** during quarter in which operations were fully or partially suspended due to government order or during a quarter with less than half 2019 gross receipts.
- Can include amounts paid by employers for qualified health plan expenses.
- IRS to issue guidance to allow advance payment of credit.
- Contains exclusions, such as wages under Families First Act, and employers receiving SBA payroll loans.

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26

CARES Act Tax Relief

Payroll Tax Payment Deferral

- What is deferred? Beginning March 27, 2020, payments of the employer portion of FICA (6.2%) are deferred without penalty.
- When are they due? Payment of 50% of the liability will be due 12/31/2021 and the remainder will be due 12/31/2022.
- Exclusions- Employers who receive loan forgiveness for an SBA loan are not eligible for this deferral.

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27

Tax: Business Provisions

- Modifications for Net Operating Losses
- Modifications of Limitation on Losses for Taxpayers Other Than Corporations
- Modification of Credit for Prior Year Minimum Tax Liability of Corporations
- Modification of Credit for Prior Year Minimum Tax Liability of Corporations
- Qualified Improvement Property
- Business Interest Deduction

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28

FFCRA Payroll Tax Relief

Sick and Family Leave Payroll Tax Credits

- The Families First Coronavirus Response Act (“FFCRA”) requires small and medium sized businesses to provide paid sick leave and family leave to workers who are unable to work or telework due to circumstances related to COVID-19
- Cost of providing **required** leave is offset with refundable tax credits against employment tax
 - Eligible employers include businesses and tax-exempt organizations that have fewer than 500 employees and are required to provide qualified sick leave wages and qualified family leave wages under FFCRA
 - Eligible employers will be able to claim these credits based on qualifying leave wages they paid for the period between April 1, 2020, and December 31, 2020

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29

FFCRA Payroll Tax Relief

Sick and Family Leave Payroll Tax Credits (cont.)

- Credits are dollar-for-dollar of the amount of qualified leave wages up to certain limitations, depending on the reason leave is taken
 - If available credits exceed the quarterly employment tax deposits that are otherwise required, the employer may receive the remaining credit in advance by using IRS Form 7200
 - Advanced credits and reduced employment tax deposits will be reconciled on the employment tax return for 2020
- Eligible employers may also qualify for credits for the qualified health plan expenses allocated to the qualified leave wages and for the employer’s share of Medicare taxes on qualified leave wages
- Similar credits are available to certain self-employed persons in similar circumstances

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30

Questions?

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31



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32