CARES Act

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CARES ACT | PAYCHECK PROTECTION PROGRAM AND HEALTH CARE ENHANCEMENT ACT
Coronavirus Aid, Relief, and Economic Security Act “CARES Act”

- Enacted into law on March 27, 2020
- Goal: to provide financial assistance and loan programs to all industries
- Follows:
  - HR 6074 (appropriated over $8.3 billion in emergency funding for small business disaster assistance loans)
  - HR 6201 (established paid leave for certain workers and tax credits to help employers fund the mandated leaves)
- Exceeds $2 trillion in spending and tax breaks
Paycheck Protection Program And Health Care Enhancement Act

• Paycheck Protection Program
  – Hit funding maximum April 16\textsuperscript{th}
  – Needed infusion of additional funds

• PPP and Health Care Enhancement Act signed into law April 24
  – Fourth coronavirus relief bill to be passed – total funds allocated approximately $2.8 trillion
  – Replenishes PPP with another $310 billion
  – Allocates another $60 billion to EIDL Program ($10 billion of this to emergency grants)
  – No new parameters on loan eligibility under Act
  – $60 billion set aside for community lenders and credit unions
    • $30 billion allocated to financial institutions with less than $10 billion in assets
    • $30 billion allocated to financial institutions with between $10 and $50 billion in assets
  – Intent: to enable smaller financial institutions to lend to small businesses in community
Key Financial Takeaways of the CARES Act for the Construction Industry

• Paycheck Protection Program/SBA Loan
• Debt Relief/Forbearance for SBA Loans
• Expansion of SBA Disaster Loan Program
• SBA Emergency Grants
• Additional Loan Program – Main Street Lending Program
• Employee Retention Payroll Tax Credit
• Employer Payroll Tax Deposit Deferral
• Accounting Provisions Providing Relief
• Retirement Plan Relief Provisions

The above are in addition to the Payroll Tax Credit under the Families First Coronavirus Response Act
Paycheck Protection Program/SBA Loan

• Small Business Administration ("SBA") to provide forgivable loans to small businesses and certain other organizations

• Purpose: To keep businesses operational and fund retention of employees

• Lenders:
  – Any SBA lender
  – Federally insured banks or credit unions

• Eligibility Period: February 15, 2020 – June 30, 2020
Paycheck Protection Program/SBA Loan

• **Key Terms:**
  – Interest rate 1% fixed
  – No collateral or personal guarantee required
  – No personal liability or prepayment penalty
  – All loan terms the same for everyone
  – Loan due in 2 years (if not forgiven)
  – No fees charged to borrower (either by government or lender)
  – Complete payment deferment for 6 months (Interest accrues during deferment period)
  – Fully forgivable (if conditions met)
Paycheck Protection Program/SBA Loan

**Eligibility:**
- Businesses with 500 or fewer employees
- Exceptions to 500 limit:
  - If more than 500 permissible under SBA industry size standards
  - Certain other exceptions (restaurants and hotels, franchises)
- Operational on February 15, 2020 (with paid employees or independent contractors)
- Nonprofit 501(c)(3) organizations, veterans organizations, tribal businesses
- Self-employed or Independent Contractor

**Ineligibility Factors:**
- Engaged in illegal activities under federal, state, or local law
- Owner of 20% or more of equity is incarcerated, on probation, parole, subject to an indictment, or convicted of a felony within past 5 years
- Have an SBA loan that is delinquent*
- Defaulted on a SBA loan in last 7 years*

*The business, any business owned or controlled by the business or any of its owners
Paycheck Protection Program/SBA Loan

• **New Guidance:**
  – FAQ 31 added on April 23rd

  “Do businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan?”
  – Imposes new requirement that borrowers take into account ability to access other sources of liquidity “in a manner that is not significantly detrimental to the business”
  – CARES Act: Suspended the ordinary requirement that borrowers must be unable to obtain credit elsewhere
  – In imposing new requirement, IRS keys in on certification required of borrowers:

  “Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”
  – Example given by IRS: Public company with substantial market value and access to capital markets
  – FAQ 37 – Clarifies that FAQ standard applies to both publicly held and private companies
  – Safe Harbor: If applied before April 23 and repay by May 7, 2020, deemed to have made certification in good faith
  – Expect SBA audits
Paycheck Protection Program/SBA Loan

• How Do I Count to 500?
  – Include all employees – both full and part-time and “other” basis (temporary employees)
  – What about related companies?
    • Ownership: Generally, if someone or an entity has the power to control more than 50% of voting equity
      – BUT, in some cases less than 50%, if there is the power to block board or shareholder action
    • Stock options, convertible stock, agreements to merge: Looks at power to control. Treats all options, etc., as if the right granted had already been exercised

• Management: Does the CEO, other officers, or a board member also control management of another entity? Is there a management agreement?

• Identity of Interest: Do close relatives have a substantially identical business in same industry?
Paycheck Protection Program/SBA Loan

- **Loan Maximum:**
  - Generally 2.5 times average total 2019 monthly payroll, plus outstanding amount of a loan made under SBA Disaster Loan Program between January 31, 2020 and the date that loan is refinanced as part of this new program
  - $10 million maximum
  - SBA published guidance on April 24th re how to calculate loan amounts by business type
    - Government will not challenge actions conforming to this guidance
  - For corporations:
    - **Step 1:** Compute 2019 payroll costs by adding:
      - 2019 gross wages and tips (for employees with principal place of residence in U.S.) (not to exceed $100,000 per employee)
      - 2019 employer health insurance contributions
      - 2019 employer retirement contributions, and
      - 2019 employer state and local taxes assessed on employee compensation
    - **Step 2:** Divide Step 1 total by 12 to calculate average monthly payroll costs
    - **Step 3:** Multiply Step 2 by 2.5
    - **Step 4:** Add in any EIDL loan being refinanced, less an EIDL grant
  - Guidance gives easy calculation method referring to Form 941 and 1120 line entries
How Much Can I REALLY Get?

- **Payroll Costs Include:**
  - Salary, wages, tips, and commissions (capped at $100,000 per employee) (if paid to U.S. residents)
  - Vacation, sick, parental, or family leave
  - Severance payments
  - Group health care benefits (including insurance premiums)
  - Payment of any retirement benefit
  - State and local taxes on compensation paid to employees

- **Not Included:**
  - Compensation in excess of $100,000
    - Annualize wages
    - Include up to $100,000 but not more (benefits not included in $100,000 cap)
  - Compensation paid to an employee whose principal residence is outside U.S.
  - Social Security and Medicare taxes
  - Income tax withholding
  - Wages paid for qualified sick or family leave under Families First Coronavirus Response Act for which a tax credit was claimed
  - Compensation paid to Independent Contractors
Paycheck Protection Program Loan

• Eligible Uses:
  – Payroll expenses (at least 75% of loan, equivalent of 8 weeks of payroll)
  – Health care benefits
  – Retirement benefits
  – Mortgage interest obligations (if mortgage incurred before 2/15/20)
  – Rent (lease in force before 2/15/20)
  – Utility payments (service began before 2/15/20)

• Risks in Misuse of funds:
  – Personal liability to owners, repayment of funds, fraud
Loan Forgiveness

• **Forgiveness:**
  – Loan can be fully forgiven
  – Maximum forgiveness amount
    • Amount used for costs incurred during covered period on payroll, mortgage interest, rent, utilities
    • At least 75% required to be used on payroll costs
    • Measuring period = 8 week period beginning on loan origination date (date of first distribution of funds)
  – Forgiveness not included in gross income (but no deduction for business expenses paid with loan proceeds)
  – BUT, maximum forgiveness may be reduced if there is:
    • Reduction in number of full time equivalent employees
    • Reduction in compensation paid to employees under $100K by more than 25%
    • Reduction between February 15 and April 26, rehire by June 30, 2020 and no penalty in forgiveness
    • Reduction April 27th and going forward, no safe harbor for rehires
  – Must request forgiveness through lender
Expansion of SBA Disaster Loan Program

• Expands emergency loan program for small businesses under SBA Economic Injury Disaster Loan Program ("EIDL") for covered period (January 31, 2020 to December 31, 2020)

• Changes include, for loans made in response to COVID-19:
  • Waiver of personal guarantees on loans of $200,000 or less
  • Waiver of 1 year in business rule (must be operational on 1/31/20)
  • Waiver of requirement of inability to find credit elsewhere
  • Allows approval based solely on credit scores (no tax return required)

• Eligible businesses now include:
  – 500 or fewer employees
  – Sole proprietorships with or without employees
  – Other specified businesses
SBA Emergency Grants

• Businesses that apply under the Disaster Loan Program in response to COVID-19 may request emergency advance
• Grants up to $10,000
• Eligibility verified by accepting “self-certification”
• Generally awarded within 3 days of application
• Eligible uses include:
  – Providing sick leave directly related to inability to work due to COVID-19
  – Maintaining payroll during business slow-down
  – Meeting increased supply chain costs
  – Rent/mortgage payments
  – Repaying debts if inability to pay is due to lost revenue
• No repayment obligation generally, BUT
• Coordination between grant and SBA Loan Forgiveness Program – no double dipping
Main Street Lending Program: Small/Mid-Sized Businesses

• Main Street Lending Program:
  – Authorized establishment of program by Federal Reserve April 8th
  – Main Street Lending Program
  – Purpose: to promote lending to small and mid-sized businesses
  – Treasury commits to a $75 billion investment in a special purpose vehicle (SPV) which will purchase 95% participation in loans made under MSNLF and MSELF

• Three Facilities under Main Street Lending Program:
  – *Main Street New Loan Facility (“MSNLF”)*
    • For new Loans after April 8th
  – *Main Street Expanded Loan Facility (“MSELF”)*
    • Applies to existing loans existing on April 24th being increased
  – *Main Street Priority Loan Facility (“MSPLF”)*
    • Applies to loans used to refinance debt owed to another lender
Main Street Lending Program

• Eligible Borrowers (for all three loans):
  – Have either:
    • Up to 15,000 employees, or
    • $5 billion in 2019 annual revenue; AND
  – Be organized in United States with significant operations and majority of employees based in U.S.

• Eligible Lenders:
  – U.S. federally insured banks/depository institutions,
  – U.S. Bank and savings and loan holding companies

• Eligible lenders may originate loans under Main Street Lending Program or use funds to increase size of existing loans to businesses under the program
Main Street Lending Program

• Borrower Commitment Requirements:
  – Reasonable efforts to maintain payroll and retain workers
  – Attest that it requires financing due to COVID-19 pandemic
  – Meets certain EBITDA conditions specified in loan maximum size calculations
  – Follow specified compensation, stock repurchase, and capital distribution restrictions during loan term and for one year after repayment:
    • No stock buybacks (unless already contractually obligated)
    • No dividends paid
    • For employees with compensation exceeding $425,000 in 2019:
      – No increase in compensation
      – No severance/termination benefits exceeding twice 2019 compensation
    • For employees with compensation exceeding $3 million in 2019:
      – Limit compensation to $3 million plus 50% of amount of 2019 compensation exceeding $3 million
  – Must not seek to cancel/reduce any outstanding line of credit with any lender
  – Loan proceeds cannot be used to repay/refinance pre-existing loans/LOC (other than mandatory principal payments)
Main Street Lending Program

• General Loan Terms:
  – Minimum loan size of $500,000 for New and Priority loans ($10 million for Expanded loans)
  – Maximum loan size:
    • **MSNLF Loans**: lesser of:
      – $25 million, or
      – Amount, when added to existing debt, that does not exceed four times 2019 EBITDA
    • **MSELF Loans**: lesser of:
      – $200 million, or
      – 35% of existing outstanding and committed but undrawn bank debt, or
      – Amount, when added to existing debt, that does not exceed six times 2019 EBITDA
    • **MSPLF Loans**: lesser of:
      – $25 million, or
      – Amount, when added to existing debt, that does not exceed six times 2019 EBITDA
Main Street Lending Program

• General Loan Terms (continued):

  – 4 year maturity
  – Amortization of principal and interest deferred for one year
  – Adjustable rate of LIBOR plus 3%
  – Lender cannot cancel or reduce any existing line of credit outstanding to borrower
  – Loan origination fee payable to lender of 100 basis points of the principal amount of the loan (for MSNLF, lender may also pass through facility fee to borrower)
  – Term sheets for Main Street loans available at www.federalreserve.gov/funding-credit-liquidity-and-loan-facilities.htm
  – Programs run until September 30, 2020, unless extended
Employee Retention Payroll Tax Credit

• Refundable tax credit against Social Security taxes

• Eligible Employer:
  – Operational during 2020 AND:
    • Operations were fully or partially suspended during a calendar quarter due to orders from a governmental entity limiting commerce, travel, or group meetings due to COVID-19, OR
    • Significant decline in gross receipts for the quarter (at least 50% based on same quarter for 2019)

• Credit Amount: 50 percent of first $10,000 in qualified wages paid to each employee
  – So, maximum $5,000 per employee for all quarters
Employee Retention Payroll Tax Credit

• Eligible Employer:
  – Self-employed individuals not eligible for credit for own self-employment earnings
    • However, may be able to claim it for their employees
  – In determining eligibility, must include all members of aggregated group (treated as a single employer)
    • Use single employer rules for purposes of tax credits under IRC Section 51 and the related entity rules for retirement plans
    • SO, must take into account all members of aggregated group to determine eligibility:
      – whether operations were fully or partially suspended during a calendar quarter due to orders from a governmental entity limiting commerce, travel, or group meetings due to COVID-19, OR
      – Significant decline in gross receipts for the quarter (at least 50% based on same quarter for 2019)
Employee Retention Payroll Tax Credit

• When are operations partially suspended:
  – Result of orders from the Federal government or any State or local government
  – Must also affect the employer’s operation of its trade or businesses
  – Employers operating an essential business that is not required to close or suspend operations is not considered to have a full or partial suspension of operations just because its customers are subject to a governmental order requiring them to stay at home
    • BUT, could still meet the eligibility test if there is a significant decline in gross receipts
    • AND if suppliers are unable to deliver critical goods/materials due to a governmental order, may qualify
  – If operate in multiple locations and some locations are subject to a governmental order of suspension, can qualify
Employee Retention Payroll Tax Credit

• Significant decline in gross receipts:
  – Starts first quarter that gross receipts are less than 50% of gross receipts over the same calendar quarter in 2019
  – Ends first quarter that follows the first calendar quarter in which 2020 gross receipts are greater than 80% of gross receipts for the same quarter in 2019, OR with the 1st calendar quarter of 2021

Example:

<table>
<thead>
<tr>
<th>Gross Receipts:</th>
<th>2019</th>
<th>2020</th>
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</thead>
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<tr>
<td>Quarter 1:</td>
<td>$210,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Quarter 2:</td>
<td>$230,000</td>
<td>$190,000</td>
</tr>
<tr>
<td>Quarter 3:</td>
<td>$250,000</td>
<td>$230,000</td>
</tr>
</tbody>
</table>
Employee Retention Payroll Tax Credit

• Significant decline in gross receipts:
  – No need to prove significant decline related to COVID-19
  – Keep records for relevant quarters to document significant decline
  – Record retention period – at least 4 years
  – Remember: determine based on all entities in aggregated group

• Credit equals 50 percent of qualified wages
  – Qualified wages (maximum $10,000):
    • Includes health plan expenses (If excluded from gross income)
    • Employers Averaging 100 or less FTEs in 2019: Wages paid to any employee
    • Employers Averaging more than 100 FTEs in 2019: Wages paid to an employee for time not providing services due to the governmental order or decline in gross receipts that qualified employer for tax credit
    • Paid between March 13, 2020 and December 31, 2020
Employee Retention Payroll Tax Credit

- Calculate FTEs:
  - FTE = employee with at least 30 hours per week or 130 hours in a month in 2019
  - Take total number of FTEs in each month in 2019 and divide by 12
  - Include employees of all aggregated entities

- Can’t take credit for an in increase wages paid to FTEs

- Can take credit for employees working reduced hours
  - May use any reasonable method to determine the number of hours salaried employee not providing services
  - For hourly employees not on a fixed schedule, can use any reasonable method
  - Basing calculated reduction on employee’s productivity level is not reasonable

- Deduction disallowed for wages to extent of the tax credit
Employee Retention Payroll Tax Credit

- Claiming the Credit
  - Claim credit on quarterly Form 941
  - In anticipation of credit, can withhold taxes otherwise payable
  - Can claim advance credit by using Form 7200

- Miscellaneous Guidance
  - Can’t claim credit if received PPP loan
  - Remember – any aggregated entity must not have received PPP loan
  - Can claim Family and Medical Leave Credit and Employee Retention Tax Credit, but not for same wages
 Employer Payroll Tax Deferral

- Delay in due date for depositing payroll taxes and 50% of self-employment taxes related to Social Security
- For wages paid in 2020
- Deferred amount payable over next two years
  - Half due 12/31/21
  - Remainder due 12/31/22
- Certain other limitations
CARES Act Relief Program Questions

- PPP Coordination with Deferral of Employment Tax Deposits:
  - Employers who receive PPP loan can still use Employment Tax Deposit deferral relief
  - Date of decision to forgive loan ends that relief

- Employee Retention Tax Credit:
  - Receiving PPP loan disqualifies an employer
Retirement Plan Relief

- Increase in loan amount to maximum of $100,000 (in certain cases)
- Certain distributions allowed without 10% early withdrawal penalty
- In certain cases, outstanding retirement plan loans may be delayed up to one year
- Temporary waiver of required minimum distribution rules
Thank You
For questions or comments, please contact:

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Thank you

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