



COVID-19 Business Briefing Series:

CARES ACT – PAYCHECK PROTECTION PROGRAM

Presented by

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IMPORTANT NOTE

- **The information in this presentation reflects the situation as we know it now. Due to the rapidly changing regulatory environment, these details could change at any time.**
- **This information does not constitute specific legal advice. Check with your attorney to ensure that you have the most up-to-date information before taking any action.**

"Coronavirus Aid, Relief And Economic Security Act" Or The "Cares Act"

- Addresses adverse economic consequences on small businesses
- Title I of Division A of the statute, entitled "KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT, sections 1101-1114
- Consider other provisions, such as Title II – “Assistance for American Workers, Families and Businesses”
- "Paycheck Protection Program" (“PPP”)

The Paycheck Protection Program

- \$349 Billion available to small businesses
- Purpose is to avoid layoffs
- Administered through the Small Business Administration ("SBA") section 7(a) loan program

Frenetic Activity

- In one week:
 - **March 27:** CARES Act signed
 - **March 31:** Initial guidance from Treasury
 - **March 31:** Application form published:
<https://home.treasury.gov/system/files/136/PPP-IFRN%20FINAL.pdf>
 - **April 1:** Notice that applications accepted starting **April 3**
 - **April 2:** Interim final rules published
 - **April 3:** Applications accepted

Frenetic Activity

- Inconsistencies among the statute, rules, application and guidance
- Chaos on April 3...
- “First come, first served”
 - \$340 billion attracts a crowd
- Multiple interpretations and the need for consistency

Eligibility: Doesn't Take Much

- Small businesses having fewer than 500 employees and in business on February 15, 2020
- Sole proprietors, independent contractors and the self-employed
- Good faith, written certification of eligibility, intention to use the money for permissible uses and to provide supporting documentation is enough to qualify
- Problem is risk to the banks

Four Key Elements Of The PPA

- Definition of “Payroll Costs”
- Computation of maximum amount of loan
- Allowable uses of the Covered Loan
- Forgiveness

“Payroll Costs”

- Key determinant is the term “Payroll Costs” which is defined to include the following:
 - The sum of payments of any compensation paid to employees including salary or commission; tips; vacation, parental, family, medical or sick leave; severance; group healthcare benefits; retirement benefits; state and local tax withholding; BUT
 - Not including those that exceed \$100,000 a year
 - Compensation of those making more than \$100,000 may be included up to \$100,000
 - No federal withholdings during the “Covered Period”
- Questions abound

Computation of Maximum Amount of Loan

- The lesser of employer's average monthly "payroll cost" for the 12 month period before the date of the loan X 2.5 or \$10 million
- Rolling Computation or 2019 costs?

Allowable Uses of the Covered Loans

1. "Payroll Costs"
2. Interest on mortgages
3. Rent
4. Utilities
5. Interest on other debt obligations.

Most Important: Loan Forgiveness

- The 8 week period (the “Covered Period”) beginning on the date of the origination of a "covered loan"
- The amount forgiven is the sum of the payments for "payroll costs," mortgage interest, rent and utilities made during the 8 week “covered period” but reduced for:
 - a reduction of the monthly average of employees during the “covered period” as compared to the monthly average of employees in February 15-June 30, 2019 or, at the employer's election, the period from January 1-February 29, 2020; plus
 - a reduction of more than 25% in the wages of employees making less than \$100,000; BUT
 - such reductions in workforce and wages are disregarded if the employees are hired back by June 30, 2020

Loan Forgiveness

- No more than 25% used for non-payroll
- Forgiveness and the 30-day comment period
- “Loan Forgiveness” is not income
- Any unforgiven amounts may be deferred for 6-12 months and thereafter converted to a loan for a term not to exceed 2 years at 1% interest

Other Important Provisions

- No collateral or personal guarantees
- No application fees

When Will The Money Be Received?

- Resolution of ambiguities and effect on forgiveness
- Who knows?
- In the absence of speed the purpose of the Statute will be frustrated
- Lots of other questions

Lots of Questions

- MSO arrangements for employees
- Effect of cancellation of elective procedures

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