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New Financing and Tax Relief for Businesses Dealing with the COVID-19 Crisis

The President recently signed legislation that includes important provisions to help you keep your employees on the payroll during the COVID-19 crisis. These benefits are potentially available to all employers and, in some cases, the federal government will cover many of the costs of continuing to pay your employees for a period of time.

However, these new programs are complicated and there are important choices to make in deciding how to best utilize them. There are three new ways that you can now get assistance with payroll expenses during this crisis:

- **Small Business Administration (SBA) Paycheck Protection Program (PPP)**
- **50% Employee Retention Tax Credit**
- **Social Security Tax Deferral**

You Can't Choose All of these!

Each of these new alternatives provides very generous tax subsidies to assist employers. But, you'll still need to make choices.

- If you obtain one of the new SBA loans, you are not eligible for the 50% employee retention tax credit.
- If you have a new SBA loan forgiven, you cannot take advantage of the Social Security tax deferral.
- If you claim the 50% employee retention credit, you will no longer be eligible for an SBA loan.
- If you take advantage of the Social Security tax deferral, you will no longer be eligible to have your SBA loan forgiven.

It is critical that you carefully evaluate your eligibility for and the benefits of each of these options, since the amount of assistance provided by the federal government could vary greatly depending on which path you choose. Right now, we don't have all the details and are awaiting further guidance from the SBA and IRS.

Paycheck Protection Program loans and SBA Economic Injury Disaster loans are outlined in more detail on the following pages.

NEWS SPECIFIC TO PEO CLIENTS

Contracting for services with a Professional Employer Organization will not interfere with your business's ability to qualify for a CARES Act loan, including under the Paycheck Protection Program.

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LOANS AVAILABLE UNDER THE PAYCHECK PROTECTION PROGRAM

Through the Coronavirus Aid, Relief and Economic Security (CARES) Act, the federal government has allocated $349 billion under the Paycheck Protection Program (PPP) to help small businesses keep their employees during the COVID-19 pandemic. These funds are available to small businesses through 100% federally guaranteed loans, which may be forgiven for borrowers that maintain their payrolls during the crisis or restore their payrolls afterward.

More details and a list of lenders offering loans under the PPP is expected to be released soon.

STEP 1: Am I Eligible?

PPP loans are available if you are:

- A small business with fewer than 500 employees
- A small business that otherwise meets the SBA's size standard
- A 501(c)(3) with fewer than 500 employees
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on any trade or business
- A Tribal business concern that meets the SBA size standard

Note that for determining the number of your employees, count all employees: full-time, part-time and any other status, including independent contractors

UNLESS

Step 2: Special Rules that may make you eligible?

- If you are in the accommodation and food services sector, specifically having an NAICS code of 72, the 500-employee rule is applied at each physical location
- If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company, the normal affiliation rules do not apply

Lenders will NOT look for:

- That the borrower sought and was unable to obtain credit elsewhere
- A personal guarantee (not required)
- Collateral (not required)

STEP 3: What factors will lenders be considering?

Was the borrower operational before February 15, 2020 and had employees (including independent contractors) for whom salaries and payroll taxes were paid?

If yes, then

The business will have to provide a good faith certification that:

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease and utility payments
3. The borrower does not have an application pending for another loan for the same purpose and amounts
4. From 2/15/2020 to 12/31/2020, the borrower has not received a loan for the same purpose and amounts (with the potential to fold an existing emergency loan into a new loan)

LOANS AVAILABLE UNDER THE PAYCHECK PROTECTION PROGRAM

How much can I borrow?	Loans can be up to 2.5 x average monthly **payroll costs**, not to exceed $10 million.

What qualifies as a "payroll cost?"

Included Payroll Cost for employers is the sum of payments of any compensation with respect to employees that is:

- 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
- Payment of state or local tax assessed on the compensation of the employee

Note: For sole proprietors, independent contractors and self-employed individuals, the definition of payroll costs is different.

What IS NOT a "payroll cost?"

1. Compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the period February 15 to June 30, 2020

2. Payroll taxes, railroad retirement taxes, and income taxes

3. Any compensation of an employee whose principal place of residence is outside of the United States

4. Qualified paid leave wages for which a credit is allowed under the FFCRA

PAYROLL COSTS

Sum of INCLUDED payroll costs − **Sum of EXCLUDED payroll costs** = **PAYROLL COSTS**

Non-Seasonal Employers

MAXIMUM LOAN =

2.5 x average total monthly payroll costs incurred during the year prior to the loan date

Seasonal Employers

MAXIMUM LOAN =

2.5 x average total monthly payroll costs for the 12-week period beginning February 15, 2019 ***or*** March 1, 2019 (decided by the borrower) and ending June 30, 2019

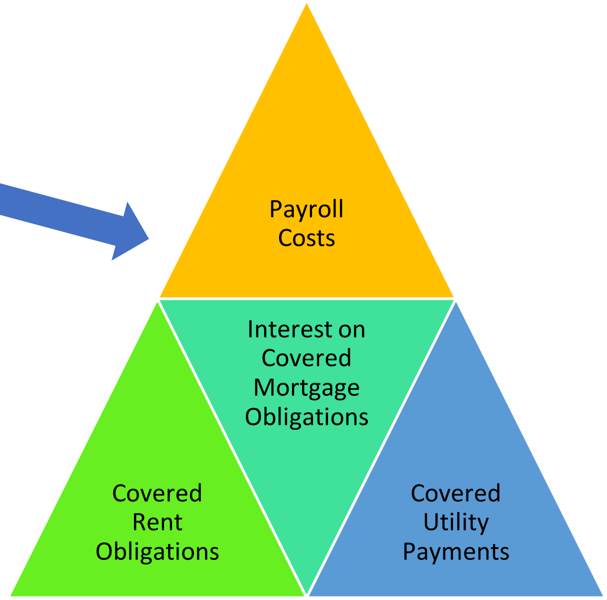
LOANS AVAILABLE UNDER THE PAYCHECK PROTECTION PROGRAM

PPP LOAN FORGIVENESS

Borrowers are eligible to have all or a portion of their PPP loans forgiven without having to claim income for debt cancellation.

HOW MUCH? A Borrower is eligible for loan forgiveness equal to the amount the borrower spent on the items shown in the pyramid during the 8-week period beginning on the date the loan is originated

Forgiveness cannot exceed the principal.



- "Payroll Costs" a used in determining loan eligibility
- "Covered Mortgage Obligation" – generally debt incurred on real or personal property before February 15, 2020
- "Covered Utility Payments" = generally payment for utilities for services which began before February 15, 2020
- "Covered Rent Obligations" – rent obligated under a lease in effect before February 15, 2020

HOW CAN FORGIVENESS BE REDUCED?

The amount of loan forgiveness calculated above is reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees, as shown:

Reduction based on reduction of number of employees

PAYROLL COST ✖ **Average number of Full-time Equivalent Employees (FTEs) per month for the 8 weeks beginning at loan** ÷

- **Option 1:** Average number of FTEs per month from 2/15/19 to 6/30/19
- **Option 2:** Average number of FTEs per month from 1/1/2020 to 2/29/2020
- **For Seasonal Employers:** Average number of FTEs per month from 2/15/19 to 6/30/19

Reduction based on reduction in salaries

PAYROLL COST − **For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than $100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.**

What if I bring back employees or restore wages? Reductions in employment or wages that occur during the period beginning 2/15/2020 and ending 30 days after the enactment of the CARES Act shall not reduce the amount of loan forgiveness **IF** by 6/30/2020 the borrower eliminates the reduction in employees or reduction in wages.

SBA ECONOMIC INJURY DISASTER LOANS (EIDLs) UNDER THE CARES ACT

How are EIDLs different from PPP Loans?	EIDLs are low interest loans the actual amount of which is based on a business's economic injury and financial needs

Economic Injury Disaster Loans are not forgivable and must be repaid.

Allowed purposes

To pay fixed debts, payroll, accounts payable, and other bills a business cannot pay as a result of COVID-19, for example:

- vehicle purchases and refinance
- equipment purchases
- inventory
- other general business needs

NOT Allowed purposes

- Refinancing long-term debt
- Working capital needed before the pandemic declaration
- To replace lost sales or profits

ELIGIBILITY

- Economic injury disaster loans (EIDLs) are available to small businesses that have suffered substantial economic injury as a result of the covid-19 pandemic and are located in a declared disaster area.
- "substantial economic injury" = the business cannot meet its obligations and pay its ordinary, necessary operating expenses due to the impact of covid-19.
- Note: all 50 states are now declared disaster areas.
- Businesses able to obtain credit elsewhere would generally not be eligible for EIDLs

HOW THE CARES ACT CHANGES EIDLS

- During the covered period from January 31, 2020 to December 31, 2020, some requirements will be waived or eased:
- A business will not be required to demonstrate it is unable to obtain credit elsewhere
- Entities will not be required to have existed for at least one year prior to the date of the disaster event
- Loans less than $200,000 will not require a personal guarantee
- The SBA may approve loans based solely on an applicant's credit score, without requiring a tax return
- Applicants can request an advance of up to $10,000 within 3 days of the application to maintain payroll, provide sick leave, and satisfy other business costs. The advance does not have to be repaid if the loan application is denied.