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Physician Practice Financial Relief Guide

The federal government has established various options to help physician practices offset the financial impact of COVID-19. Many of these programs were enacted into law after significant AMA COVID-19 advocacy with the U.S. Congress and Administration as part of the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* and the Families First Coronavirus Response Act and are now being implemented by the federal agencies. This guide covers:

- HHS Emergency Funding
- Small Business Administration (SBA) Loans
- Medicare Advanced Payments
- Main Street Business Lending Program
- Payroll Tax-Related Benefits

Some relief mechanisms lend themselves to certain types of practices (for example, practices with above or below 500 employees). At this time, federal stimulus funds are not differentiated by physician location, but this could change as the funding programs are more clearly defined by implementing agencies. The following chart illustrates which programs will generally be most appropriate according to physician practice profile, as well as key program terms (timeline and loan forgiveness available):

	Physician Practice w/ 500 Employees or Fewer	Physician Practice w/ More Than 500 Employees	Maximum Amount Available	Loan Forgiveness Available
HHS Emergency Funding	Pending	Pending	Pending	Pending
SBA Loans	√		$10M	√
Medicare Advance Payments	√	√	100% of Medicare payment btwn Oct – Dec 2019	
Main Street Business Lending Program			Pending	
Payroll Tax-Related Benefits	√	√	Credit up to $5,000 per employee per year	N/A

*Note that borrowers who participate in the SBA "Paycheck Protection Program" and obtain forgiveness may not receive the payroll-tax related benefits outlined in this guide.

This information is current as of April 6, 2020, and is subject to change as the federal agencies that oversee these programs continue to issue clarifying guidance. While physician practices should review all the options available in this guide, decisions about which option to pursue will depend on your individual practice situation. You may wish to consult with your financial advisor or attorney about each of the options outlined here.

In addition to the relief mechanisms outlined here, there may be state or municipal financial relief programs, as well as funds established by private entities. See the AMA's COVID-19 resource center for physicians for additional information related to physician practice operations and response, as well as updated AMA information regarding federal loan programs.

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20-443250:4/20

Department of Health and Human Services Public Health & Social Services Emergency Fund

Updated: 04/08/20

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Overview

The CARES Act provides $100 billion in funding for the U.S. Department of Health & Human Services (HHS) to provide grants to healthcare providers enrolled in Medicare and Medicaid, including physician practices. These funds are meant to cover unreimbursed healthcare related expenses or lost revenues attributable to the COVID-19 public health emergency (PHE), although the Secretary of HHS has wide discretion for grant allocation and awards. Information regarding the application process and grant allocation is not yet available, but is expected in the coming days.

Timeframe

- Unknown at this time, but presumably for the duration of the PHE or when the grant funds are exhausted.

Eligibility

- Medicare and Medicaid enrolled providers and suppliers and other entities, as specified by HHS, as well as providers who have experienced a severe impact due to the COVID-19 emergency (e.g. due to not being able to perform elective procedures, stay at home orders, etc.)

Amount of funds available

- $100 billion in grant funds will be available for distribution.
- To date, HHS has not offered a breakdown of how the funds will be made available or in what amounts.

Loan forgiveness / repayment terms

- HHS is expected to issue further guidance, but it is anticipated that because these are styled as "grant" funds, repayment of the funds should not be required.

Use of grant funds

- HHS is expected to make these funds widely available, at least initially. Funds made available under this grant program can be used for medical supplies and equipment (including personal protective equipment (PPE) and testing supplies), increased workforce and training, emergency operation centers, retrofitting facilities, building or construction of temporary structures, leasing of properties, and surge capacity.
- Funds cannot be used to reimburse expenses or losses reimbursed from other sources or obligated for payment from other sources. In light of this restriction on the use of funds, it is possible that HHS may establish a reconciliation process which could require repayment of funds if other sources provide reimbursement for the same expenditures.

Certification

- Until HHS issues further guidance, it is unknown whether certification statements will be required. The application may require a statement justifying the need for the payment and an indication that the use of the funds conforms to the provisions of the CARES Act.

Application

- HHS has not yet announced the application process.

Availability of funds

- The Secretary will determine the most efficient payment system for providing payments to approved applications, including on a rolling basis and/or in the form of pre-payments, prospective payments, or retrospective payments.

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20-443250:4/20

Small Business Administration (SBA) Loans

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Overview

The SBA has two loan programs to address COVID-19-related economic stress. The first program is the 7(a) Paycheck Protection Program (PPP) and the second is the Economic Injury Disaster Loan (EIDL) program. The PPP allows an eligible business to obtain up to $10 million in loans for payroll, rent, and utilities. The PPP loan is eligible for forgiveness up to 100% of the principal of the loan, but such forgiveness will be reduced by any layoffs or reductions in salaries in excess of 25% of an employee's salary. The EIDL program allows an eligible business to obtain up to $2 million in loans for working capital. The EIDL program allows for a $10,000 forgivable advance upon application, but is otherwise not forgivable.

TIP: You can obtain both a PPP loan and an EIDL, however you cannot seek recovery under the EIDL for the same costs that are covered by a PPP loan. Both loans are low interest loans with favorable terms; however, only the PPP has the forgiveness element.

Paycheck protection program

Eligibility timeframe

- Businesses operating for eight weeks during the period of February 15, 2020 – June 30, 2020

Eligibility

- Businesses that employ 500 employees or fewer.
- In determining whether you have less than 500 employees, you must aggregate with any affiliates.
- Affiliation is a fact-specific question, but generally the SBA will find affiliation in the following circumstances. Detailed information regarding affiliation is available here.
  - A business is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity.
  - Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns.
  - Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

TIP: Borrowers who participate in the SBA 7(a) or SBA "Paycheck Protection Program" may not receive the payroll-tax related benefits outlined later in this guide.

Amount of funds available

- The maximum amount of the loan is the lesser of:
  - $10 million and
  - The sum of:
    - the product obtained by multiplying the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made (with separate determination for seasonal employer), by *2.5; and*
    - the outstanding amount of a loan under the SBA Disaster Loan Assistance Program made from January 31 – April 3, 2020.
- Payroll costs are defined as:
  - Including:
    - Salary, wage, commission, or similar compensation;
    - Payment of cash tip or equivalent;

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        - 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; and
        - Payment of State or local tax assessed on the compensation of employees.
    - Excluding:
        - The compensation of an individual employee in excess of an annual salary of $100,000 as prorated for the covered period; note that this only applies to cash compensation (non-cash benefits, including employer contributions to defined benefit and defined contribution retirement plans, payment for the provision of group health care benefits and insurance premiums, and payment of state and local taxes assessed on employee compensation, are not counted in calculating the cap and, therefore, those non-cash benefits may be included as a payroll cost, even for employees who have cash compensation in excess of $100,000 on an annualized basis);
        - Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code for the covered period;
        - Any compensation of an employee whose principal place of residence is outside of the U.S.;
        - Qualified sick leave for which credit is allowed under Section 7001 of the Families First Coronavirus Response Act; or
        - Qualified family leave for which credit is allowed under Section 7003 of the Families First Coronavirus Response Act.

Repayment terms

- Two year maturity beginning on origination with 1% interest.

Loan forgiveness

- Recipients are eligible for forgiveness of a portion of the loan in an amount equal to the sum of payroll costs, interest payments on mortgage obligations, payments on covered rent obligations, and any covered utility payments, but not to exceed the principal amount. The amount of loan forgiveness will be reduced in accordance with any reduction in the number of employees or employee salaries during the covered period.
- Please note that Treasury has said that it will only forgive up to 25% of a PPP loan used for non-payroll costs incurred in the 8 weeks following loan origination.

TIP: To be eligible for full forgiveness under the PPP, at least 75% of the loan must be spent on payroll costs.

Payment deferment

- At least six month deferment, which may be extended to up to one year. Interest will accrue during deferment.

Use of loan funds

- Payroll costs
- Mortgage interest payments, for mortgages incurred prior to February 15, 2020
- Utilities, for contracts dated prior to February 15, 2020
- Rent, for leases dated prior to February 15, 2020

APPLICATION

Applications for PPP are processed through qualified 7(a) lenders. You must complete SBA Form 2483, provide payroll documentation, and provide any other information required by the lender.

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PPP applicants must respond to the following questions:

- Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?
- Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?
- Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.
- Has the Applicant received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.
- Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?
- Within the last 5 years, for any felony, has the Applicant (if an individual) or any owner of the Applicant 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?
- Is the United States the principal place of residence for all employees of the Applicant included in the Applicant's payroll calculation above?

Certification

- The Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
- The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments.
- The Applicant will provide to the Lender documentation verifying the number of full-time equivalent employees on the Applicant's payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following the loan.
- The Applicant must state that he or she understands that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs.
- During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
- The information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects

Additional information

The AMA has more discussion of the SBA loans available here.

Economic Injury Disaster Loan (EIDL)

Eligibility timeframe

- Businesses in operation during the period of January 31, 2020 – December 31, 2020

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Eligibility

- Businesses that employ 500 employees or fewer.
- In determining whether you have less than 500 employees, you must aggregate with any affiliates.
- Affiliation is a fact-specific question, but generally the SBA will find affiliation in the following circumstances. Detailed information regarding affiliation is available here.
  - A business is an affiliate of an individual, concern, or entity that owns or has the power to control more than 50 percent of the concern's voting equity.
  - Affiliation arises where the CEO or President of the applicant concern (or other officers, managing members, or partners who control the management of the concern) also controls the management of one or more other concerns.
  - Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

Amount of funds available

- The maximum amount of the loan is $2 million.

Repayment terms

- 30 year maturity beginning on origination with 3.75% interest.

Loan forgiveness

- Applicants may request a $10,000 advance, upon application, that is forgivable.

Payment deferment

- At least six month deferment, which may be extended to up to one year. Interest will accrue during deferment.

Use of loan funds

- Working capital.

Application

Apply online here. Applicants must respond to the following questions:

- In the past year, has the business or a listed owner been convicted of a criminal offense committed during and in connection with a riot or civil disorder or other declared disaster, or ever been engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction?
- Is the applicant or any listed owner currently suspended or debarred from contracting with the Federal government or receiving Federal grants or loans?
- Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction?
- Have you been arrested in the past six months for any criminal offense?
- For any criminal offense - other than a minor vehicle violation - have you ever been convicted, plead guilty, plead nolo contendere, been placed on pretrial diversion, or been placed on any form of parole or probation (including probation before judgment)?

Certification

- The information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects.

Additional information

The AMA has more information about the CARES Act and the SBA Loan programs available here.

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Medicare Advance Payments

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Overview

As part of the CARES Act, providers and suppliers (including physician practices) are able to request up to 100% of the Medicare payment amount they have historically received over a prior 90-day period. Any advance payments received are in essence loans in the form of cash advances and are subject to automatic recoupment by CMS or repayment by the provider or supplier.

Successful applicants should anticipate receiving advance payments within seven (7) calendar days of applying to their Medicare Administrative Contractor (MAC). However, CMS indicated in an open letter issued on April 7, 2019 that the MACs will prioritize release of advanced funds to those providers and suppliers located in states that are experiencing the highest demand and surge first (currently reported to include New York, California and Washington), which could delay payment, especially in those MAC jurisdictions that cover these and other states.

Timeframe

The program began on March 30, 2020 and runs for the duration of the Public Health Emergency declaration.

Eligibility

All Medicare enrolled physician clinics (and other "suppliers") are eligible to apply for an advance payment from CMS via their local MAC. Applications are submitted at the level of the individual enrolled physician, i.e. at the individual PTAN/NPI level. Grouping of multiple physicians under one TIN is **not** permitted. However, some MACs have indicated they may allow the submission of a spreadsheet listing all the applicant PTANs/NPIs in connection with one supplier on one form rather than completing multiple forms for the same legal entity.

TIP: The AMA has published an FAQ on the Medicare Advance Payments program which address key eligibility questions such as what constitutes an active medical review or program integrity investigation.

To be eligible, physician practices must:

- Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider's/supplier's request form;
- Not be in bankruptcy;
- Not be under active medical review or program integrity investigation; and
- Not have any outstanding delinquent Medicare overpayments.

Amount of funds available

- Physician clinics can request up to 100% of the Medicare payment amount they have historically received over a 90-day period.
- As recently indicated on various MAC websites and updated application forms (as of 04/03/2020), physician clinics applying for advanced payments **DO NOT** have to determine a dollar amount. Instead, physician clinics can simply indicate on the MAC application form the maximum amount payable as determined by CMS is requested, which we understand CMS (or the MAC) will calculate for the time period between October 1, 2019 and December 31, 2019.
- If the physician clinic prefers a lesser amount, then it can indicate that requested amount on the application form.
- In the event an applicant physician clinic requests less than the full amount payable over the 90-day period, it is permissible for the clinic to later request the balance of the maximum funds available.

TIP: If your MAC is utilizing an outdated form that existed prior to the COVID-19 emergency declaration, the AMA has learned from CMS that there is no need to answer the financial questions indicated on those outdated forms (including, for example, questions about anticipated receipts, expenditures or cash position).

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Repayment terms

- CMS will recover the advance payments through an automatic recoupment against all newly submitted and outstanding claims for payment. However, if desired, a physician clinic receiving advanced payments can elect to repay those advance funds directly, in whole or in part, rather than undergo recoupment. In such event, a physician clinic should indicate "COVID-19 Accelerated/Advance Payment Repayment" on the check in the memo field or in documentation submitted with the check.
- The automatic recoupment of funds will begin 120 days after disbursement. This recoupment will continue for a 90-day period through day 210 post payment.
- Physician clinics receiving advance payments can continue to bill and collect for services in the ordinary course. However, after 120 days any claims to be paid will instead be used to offset the advance payment, unless the physician clinic requests that something less than 100% of the claims be recouped.
- Should the advance funds be recovered sooner, or should the physician clinic elect to directly repay any advance funds, the recoupment will automatically end.
- Should the advance funds not be fully recovered in the allotted time frame, CMS will issue a demand for payment of the outstanding funds.
- Should the repayment timeframe constitute a hardship on a physician clinic receiving advance funds, the physician clinic can request an extended timeframe for repayment. Any funds not recouped or repaid after 210 days will be charged interest at a rate of 10.25% – beginning 30 days *after* a written payment demand letter is issued.
- Should CMS charge interest on any unpaid advanced payments, such interest would only be applied to any payment amounts remaining after the recoupment period has elapsed.

Loan forgiveness

Not available at this time.

Payment deferment

If repayment of the accelerated or advance payment funds will constitute a hardship on the physician clinic, the clinic can request an amount less than 100% be recouped and can further request an extended repayment plan that goes beyond 210 days. In the event an extended repayment plan exceeds 210 days, an interest rate of 10.25% will be charged on the outstanding funds until repaid. See the AMA's FAQs on this program for more information.

Use of funds

The use of funds is unrestricted, but is presumed to be for operations.

Certification

Not required under the CARES Act, but note the eligibility requirements above that will be validated by the MAC. Further, because individual MAC application forms may vary, they could include varying degrees of certification statements.

Application instructions

- Any physician clinic interested in receiving advance payments must complete the form(s) supplied by their MAC. Forms may vary slightly from MAC to MAC, but generally should be largely consistent after updates were made to those forms on or around 04/03/2020. Typically, the application will constitute only one page.
- In order to begin the process, first contact your local MAC by phone or by visiting their website for further information.
- At a minimum each MAC's form will require provision of the following information:
  - Legal Business Name/Legal Name of the physician clinic;
  - Correspondence Address for the physician clinic;
  - National Provider Identifier (NPI) for the physician clinic;
  - Other information as required by the MAC;
  - Amount requested based on need; and
  - Reason for the request.

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TIP: Recently updated forms should include a box requesting payment due to COVID-19. However, if you discover a MAC that continues to use older forms CMS indicates that applicants should check box 2 ("Delay in provider/supplier billing process of an isolated temporary nature beyond the provider's/supplier's normal billing cycle and not attributable to other third party payers or private patients."); and state that the request is for an accelerated/advance payment due to the COVID-19 pandemic. CMS also indicates there is no need to provide information like anticipated receipts, expenditures or cash position.

- Applications must be signed by an authorized representative of the physician clinic and can be submitted electronically or by mail. An authorized representative can include the CEO, CFO, administrator, office manager, or similar role, but should be someone with decision making authority to bind the provider or supplier.

MAC Contact Information and Resources for Advance Payments	
MAC/Jurisdiction	**Resources**
CGS Administrators (Jurisdiction 15) Toll Free Hotline: 1-855-769-9920	Advance Payments (Information) Advance Payments (Form)
First Coast Service Options, Inc. (Jurisdiction N) Toll Free Hotline: 1-855-247-8428	Advance Payments (Information) Advance Payments (Form)
National Government Services (Jurisdiction 6 and Jurisdiction K) Toll Free Hotline: 1-888-802-3898	Advance Payments (Information) Advance Payments (Form) COVID-19 News Page
Novitas Solutions (Jurisdiction H and Jurisdiction L) Toll Free Hotline: 1-855-247-8428	Advance Payments (Information) Advance Payments (Request Portal) (Provider must enter preliminary data to obtain request form)
Noridian Healthcare Solutions (Jurisdiction E and Jurisdiction F,) Toll Free Hotline: 1-866-575-4067	Advance Payments (Information) Advance Payments (Form)
Palmetto GBA (Jurisdiction J and Jurisdiction M) Toll Free Hotline: 1-833-820-6138	Advance Payments (Information) Advance Payments (Form) COVID-19 Accelerated/Advance Payment Requests
Wisconsin Physician Services (Jurisdiction 5 and Jurisdiction 8) Toll Free Hotline: 1-844-209-2567	Advance Payments (Information) Advance Payments (Form)

* Note the MACs continue to update their guidance and forms and, as a result, the links above may be inactive. If the link for your MAC does not work, go to your MAC's webpage and navigate for "COVID Advance Payment."

Availability of funds

The MAC will notify the physician clinic via email or mail (as requested) if the clinic is successful in its application for assistance. If so, the accelerated or advanced payments will be disbursed within 7 days of submission of the application.

Additional resources

The AMA has published additional information on this program on its CARES Act: Medicare advance payments for COVID-19 emergency website and FAQs. Importantly, this website includes guidance that the AMA received directly from CMS, including answers to key questions regarding how much information physician practices must fill out in application forms, and whether the payments must be requested at the National Provider Identifier (NPI) or Taxpayer Identification Number (TIN) level.

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Main Street Business Lending Program

Overview

On March 23, 2020, the Federal Reserve announced the creation of a Main Street Business Lending Program (the "MSBLP") to support small and medium-sized businesses, but has yet to publish additional specific details about the program. We expect this program to be a Federal Reserve-run credit facility that provides financing for banks and other lenders to make low interest loans to eligible businesses with between 500 and 10,000 employees. The Federal Reserve has indicated that additional details should be forthcoming in mid-to-late April, though they have not provided an expectation as to when lending under this program may actually commence.

Timeframe

No timeframe is currently specified—additional details about the program are expected by mid-to-late April.

Eligibility

The CARES Act contains several provisions defining what entities would be eligible for MSBLP loans. Note that additional forthcoming guidance from the Federal Reserve or U.S. Treasury may further define eligibility.

The CARES Act provides that loans under this program would be available to businesses between 500 and 10,000 employees. Eligible businesses must be (1) organized under U.S. law and (2) have significant operation in the U.S. and a majority of employees based in the U.S.

A provision of the CARES Act explicitly incorporates restrictions on Federal Reserve assistance in Section 13(3) of the Federal Reserve Act. Those restrictions operate to limit potential taxpayer losses from Federal Reserve assistance by requiring adequate security for any credit advanced. That may imply ultimately some credit underwriting, including potentially requirements for pledging of collateral and/or providing loan guarantees, in the process of making loans to underlying borrowers. Therefore, it is possible that some otherwise eligible borrowers may not be able to access financing under this program if they are deemed less creditworthy or do not have ready access to collateral that can be pledged.

Amount of funds available

The definitive amount available is not specified at this time. This program is authorized under Section 4003(b)(4) of the CARES Act, which provides for a total amount of $454 billion to be appropriated to the U.S. Treasury across multiple credit facilities and other assistance programs. Of that total, some market sources have predicted a U.S. Treasury investment of $85 billion in the MSBLP program, which when combined with Federal Reserve leverage would imply a total amount of financing available of approximately $1 trillion.

Repayment terms

No details as to repayment terms are available at this time, beyond the prohibition on forgiveness and the requirement for payment deferment, each as discussed below. The CARES Act caps the interest rate on loans under this program at 2%.

Loan forgiveness

Debt obligations created pursuant to assistance programs offered under Section 4003(b) of the CARES Act are specifically prohibited from being reduced by forgiveness.

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Payment deferment

The CARES Act requires that for at least the first six months after making of the loan, or such longer period as determined by the U.S. Treasury, no principal or interest shall be due and payable on the loans. This language seems to imply that interest would not accrue during this period, rather than simply being deferred.

Use of funds

The certifications of borrowers required under the CARES Act, as discussed further below, include a certification that the funds will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, until at least September 30, 2020. While not stated as a "use of funds" requirement per se, the CARES Act provisions also contain restrictions on recipient businesses engaging in buybacks of listed equity securities or issuance of dividends to common equity while the loan is outstanding.

Recipient practices would also be subject to restrictions on compensation for certain highly compensated employees or officers for the period of the loan plus one year:

- For employees or officers with total compensation over $425,000 in 2019, those individuals would be capped at their 2019 total compensation for any consecutive 12-month period and could not receive any severance or termination payment greater than two times their 2019 total compensation; and
- For employees or officers with total compensation over $3,000,000 in 2019, those individuals would effectively have their total compensation reduced by 50% of their 2019 compensation excess over $3,000,000, for any consecutive 12-month period.

Certification

Eligible borrowers are required to make several certifications in order to borrow funds under the program, including compliance with the eligibility requirements and:

- that economic uncertainty at the date of application makes the loan necessary to support ongoing operations;
- the funds will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, until at least September 30, 2020;
- the recipient intends to restore not less than 90% of workforce that existed as of February 1, 2020, and to restore full compensation and benefits to those employees not later than four months after termination of the public health emergency by the Department of Health and Human Services;
- recipient is not a debtor in a bankruptcy proceeding
- recipient will not buyback listed equity securities or issue dividends to common stock, of recipient or a parent company, for the term of the loan;
- the recipient will not "outsource" or offshore jobs for the term of the loan plus two years; and
- the recipient will not abrogate any existing collective bargaining agreement for the term of the loan plus two years and will remain neutral in any union organizing effort for the term of the loan.

Application instructions

Since the underlying loans will be offered via banks and other lenders, it is anticipated that each such lender will produce its own application forms for potential borrowers. It's not clear whether the U.S. Treasury or Federal Reserve will produce any mandated application template or forms for participating lenders to use with their borrowers.

Availability of funds

The relevant funds were appropriated to the U.S. Treasury as part of the CARES Act, but public statements of U.S. Treasury and Federal Reserve officials indicate that the details of the program are still being worked out. It is not clear how quickly participating lenders will be able to begin disbursing funds under eligible loans once the agencies release their guidance with the final details of the program.

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Payroll Tax-Related Benefits

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Overview

The CARES Act provides an employer retention tax credit and also allows delayed payment of employer payroll taxes.

Employer Retention Credit

The CARES Act provides for a tax credit against employment taxes for certain businesses. An employer is eligible for this credit if the operation of the trade or business is fully or partially suspended during the calendar quarter fully or partially suspended due to orders of a governmental authority that limited commerce, travel or group meetings. An employer is also eligible for this credit in the first calendar quarter in which the employer has a reduction of gross receipts of more than 50% in a calendar quarter as compared to the same calendar quarter in the prior year, and eligibility for the credit continues in each calendar quarter as long as the employer has a reduction of gross receipts of more than 80% reduction of gross receipts from the calendar quarter in the prior year.

The amount of the tax credit is 50% of the qualifying wages of the employer paid after March 12, 2020 and before January 1, 2021. In general terms, qualifying wages for each employee are limited to $10,000 for all quarters and wages paid to certain employees.

For employers with an average of more than 100 employees, the credit only applies to employees that are still on the payroll, but not providing services to the employer as a result of COVID-19. For employers with an average of less than 100 employees, wages paid by the employer qualify regardless of whether the employee is still performing services for the employer.

In addition, the credit is not available if the employer is a borrower under the SBA 7(a) program.

Delay of Payment of Employer Payroll Taxes

The CARES Act allows employers to delay paying their portion of the social security payroll tax (6.2%) for wages paid starting March 27, 2020 through December 31, 2020. Fifty percent (50%) of the deferred amount of payroll taxes are due December 31, 2021, with the remaining amount due December 31, 2022.

It is important to note that employers who receive SBA 7(a) loans that are forgiven are not eligible for this payroll tax deferral.

This chart summarizes each credit:

	Employer Retention Credit	Delayed Payroll
Amount of Credit	Credit up to $5,000 per employee per year	Employers can delay the 6.2% employer portion of payroll taxes, 50% due by Dec. 31, 2021 and remainder due by Dec. 31, 2022
Timeframe	March 13, 2020 – Dec. 31, 2020	March 27, 2020 – Dec. 31, 2020
Employer Size	Rules vary for fewer than 100 employees	No size limitation
Relation to Payroll Protection Program	An employer may not receive the Retention Credit if the employer receives a Small Business Interruption Loan under the SBA Paycheck Protection Program	Employers may not have loan forgiveness under the SBA Paycheck Protection Program.

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