

## Coronavirus: Emerging Challenges

# Financial Challenges During COVID-19

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# Agenda

Coronavirus: Emerging Challenges

- Small Business Assistance
- Title IV Economic Stabilization Assistance
- Employer Issues Under Recent Federal COVID-19 Legislation
  - Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
  - Families First Coronavirus Response Act

# Small Business Assistance



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# Paycheck Protection Program: Eligibility

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- Eligible entities
  - Small business concerns eligible for 7(a) loans (see SBA size standards)
  - Business concern, nonprofit (501(c)(3)), veterans organization (501(c)(19)), or tribal business concern that employs not more than the greater of:
    - 500 employees
    - Size standard established by SBA (in terms of employees)
    - If the business has more than one physical location and is assigned an NAICS code beginning with 72 (i.e., accommodation and food services industry), then 500 employees per physical location
  - Sole proprietors, independent contractors and self-employed individuals

# Paycheck Protection Program: Affiliation

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- In determining eligibility, SBA looks at the applicant together with its affiliates
- Affiliation exists when
  - One controls or has the power to control the other (subsidiaries and parents), or
  - When entities are commonly controlled by another entity (sister companies)
- Control can be established by ownership of voting stock and/ contract
- CARES Act waives affiliation rules for
  - Businesses with no more than 500 employees *and* a NAICS code beginning with 72
  - Franchises that have been assigned a franchise identifier code by the SBA
  - Businesses that receive financial assistance from an SBIC



# Paycheck Protection Program: Terms

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- Loans available through June 30, 2020
- Max amount: \$10 million
  - 2.5 x average month payroll costs (trailing 12 months)
- Max interest rate: 4% per annum
- Loans backed by 100% federal guarantee
- Loan maturity of 10 years on amounts not forgiven under the CARES Act
- Loan may be used for:
  - Payroll costs
  - Mortgage interest payments (prepayment or payment of principal not allowed)
  - Rent
  - Utilities
  - Interest on debt incurred prior to February 15, 2020
- Payments deferred for six months to one year

# Paycheck Protection Program: Borrower Certifications

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- To obtain a Paycheck Protection Program loan, a borrower must certify in good faith that
  - The loan request is necessary to support the concern's ongoing operations due to the uncertain economic conditions
  - The funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments
  - The concern does not have an application pending for another SBA loan for the same purpose; and
  - Between February 15 and December 31, 2020, the concern has not already received an SBA loan for the same purpose
- Borrower does not need to
  - Demonstrate that it can obtain credit elsewhere
  - Put up collateral; or
  - Make a personal guarantee
- An eligible recipient who applies for a Paycheck Protection Program loan presumed to be an impacted borrower

# Paycheck Protection Program: Forgiveness

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- SBA will forgive up to the total amount a borrower spent toward payroll costs, mortgage interest, rent, and utility payments during eight-week period following origination of loan
  - Max: loan principal
- Reduction in loan forgiveness if
  - Reduction in borrower's number of employees, or
  - Reduction in employees' compensation by more than 25%
  - Exception for re-hiring employees or eliminating salary reduction before June 30, 2020
- If PPP loan is forgiven, it is not included in gross income for tax purposes



# Paycheck Protection Program: Lenders

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- PPP loans will be issued and administered by financial institutions
- Current 7(a) lenders may opt in to be a PPP lender
- Streamlined process for delegating authority to lenders to make and approve PPP loans
- Treasury Department, in consultation with other financial regulatory agencies, will establish criteria for allowing other lenders to participate in PPP

# Emergency EIDL Grants

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- EIDL: economic injury disaster loan
  - Eligibility: similar, but not identical, to PPP loans
  - Up to \$2 million working capital loan to carry on business until effects of disaster have passed
  - Interest rate
    - Business: 3.75%
    - Nonprofit: 2.75%
  - Certain requirements, including personal guarantee and “credit elsewhere,” are waived
  - Federally declared emergency qualifies as new trigger for EIDL
- Refinancing EIDL
  - Outstanding amount of an EIDL made after January 31, 2020 and before PPP loans are available (April 3, 2020) may be refinanced into PPP loan
- CARES Act provides \$10 billion for **emergency EIDL grants**
  - Advance up to \$10,000 for an EIDL applicant that was in operation since January 31, 2020
  - Distributed within three days of SBA receiving application
  - Advance subtracted from calculation of loan forgiveness amount for PPP loan

# Title IV Economic Stabilization Assistance

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# Title IV Economic Stabilization Assistance Overview

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- Under Title IV of the CARES Act, the Treasury Department can make loans, loan guarantees and other investments in the aggregate amount of \$500 billion in support of “eligible businesses,” states and municipalities
- The funds are allocated into four enumerated buckets
  - Up to \$25 billion will be made available for air carriers and related businesses
  - Up to \$4 billion will be made available for cargo air carriers
  - Up to \$17 billion will be made available for businesses critical to maintaining national security; and
  - \$454 billion (and any other funds remaining from the first three buckets) will be used to make loans, loan guarantees and other investments in lending programs or facilities established by the Federal Reserve under its section 13(3) emergency lending authority
- The first three buckets are essentially limited to businesses in the airline and national security industry, and the fourth and largest bucket is open to all “eligible businesses.” The following slides will focus on the fourth bucket. Additional information can be provided on the terms associated with the first three buckets for those interested.

# Title IV Economic Stabilization Assistance Restrictions on Borrowers

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- Section 4003(b)(4) of the CARES Act includes certain restrictions and conditions for “eligible businesses” that are borrowers from the fourth bucket (\$454 billion out of the \$500 billion)
  - To be considered an “eligible business,” the business must be created or organized in the United States, or under the laws of the United States, and have significant operations in and a majority of its employees based in the United States
  - No stock buybacks, unless contractually obligated, and no dividends on common stock until one year after the outstanding loan is paid off. (Treasury may waive either of these conditions if “necessary to protect the interest of the Federal Government”)
  - Businesses must agree to comply with the restrictions on employee compensation under Section 4004 of the CARES Act, which includes restrictions on executive compensation
  - No loan forgiveness; and
  - No conflicts of interest (the president, vice president, the head of an executive department, or a member of Congress, or their immediate family members) cannot own more than 20% of the equity of the business)
- Borrowers must also comply with the requirements under the Federal Reserve’s 13(3) Emergency Lending Authority, including loan collateralization requirement (all credit extended must be “indorsed or otherwise secured to the satisfaction of the lending Federal Reserve Bank”) and solvency requirement



# Title IV Proposed Lending Program for Mid-Sized Businesses



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- Within the \$454 billion allocated to Treasury to be made available through the Federal Reserve's liquidity and lending programs established under its 13(3) authority, the Treasury "shall endeavor to seek the implementation" of a lending program for mid-sized businesses (and nonprofits to the extent practicable)
- "Mid-sized business" refers to a business with between 500 and 10,000 employees
- Loans offered under this program would have an annualized interest rate of no higher than 2% per annum, and no loan repayment obligations for the first six months (or longer at the discretion of Treasury)
- Applicants would also have to meet certain requirements and conditions in addition to those described in the previous slide

# Title IV Restrictions Under Proposed Lending Program for Mid-Sized Businesses

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- Applicants would also have to make a good-faith certification that
  - The loan is necessary to support its ongoing operations
  - The funds will be used to retain at least 90 percent of the company's workforce at full pay and benefits until September 30, 2020
  - The applicant "intends" to restore not less than 90 percent of the company's workforce that existed as of February 1, 2020, and restore all compensation and benefits to the workers within 4 months after termination of the national emergency declaration for COVID-19
  - The applicant is not a debtor in a bankruptcy proceeding
  - The applicant will not outsource or offshore jobs until 2 years after the loan is paid off
  - The applicant will not abrogate collective bargaining agreements until 2 years after the loan is paid off and
  - The applicant will remain neutral in any union organizing efforts for the term of the loan

# Other Lending Programs

- Prior to, and independent of, the enactment of the CARES Act, the Federal Reserve announced plans to establish a Main Street Business Lending Program to support lending to eligible small- and medium-sized businesses and complement efforts of the Small Business Administration.
- In the same announcement, the Federal Reserve provided a term sheet for a new program to be established — the Primary Market Corporate Credit Facility
  - The PMCCF will allow companies access to credit so that they are better able to maintain business operations and capacity during the period of dislocations related to the pandemic
  - The PMCCF will serve as a funding backstop for corporate debt issued by eligible issuers
  - This facility is open to investment grade companies (at least BBB-/Baa3) and will provide bridge financing of up to four years
  - Borrowers may elect to defer interest and principal payments during the first six months of the loan, extendable at the Federal Reserve's discretion
    - However, a borrower that makes this election may not pay dividends or make stock buybacks during the period it is not paying interest
  - The Federal Reserve will cease purchasing bonds on September 30, 2020, unless otherwise extended

# Employer Issues Under Recent Federal COVID-19 Legislation

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# Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

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# Employer Retention Credit for Employers

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- Establishes a credit against eligible employers' employment taxes equal to 50% of Qualified Wages paid to employees (credit is also available for health care premiums)
- To be an "Eligible Employer," an employer must have done business in 2020 and either:
  - Experienced a business suspension due to a COVID-19 order limiting commerce, travel or gatherings; OR
  - Experience a reduction in gross receipts during a quarter by more than 50% as compared to the same quarter in 2019
- Definition of "Qualified Wages" differs depending on size of employer
  - Employers with **more than 100** employees receive a credit for wages paid to employees who are not working
  - Employers with **100 or fewer** employees receive a credit on wages paid to all employees, whether they worked or not
- The amount of Qualified Wages is capped at \$10,000 per employee, meaning the credit to employers is no more than \$5,000 per employee
- Employers who receive a small business loan under the SBA are not eligible for credit

# Delay of Payment of Employer Payroll Taxes (Section 2302)

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- Establishes a payroll tax of the employer share of social security taxes to be deferred from enactment until December 31, 2020
- All employers, including self-employed individuals, are eligible to participate during the deferral period, **except** small businesses whose Paycheck Protection Program loans are forgiven—they are not eligible. There is no requirement to show any specific COVID-19-related impact
- The first 50% of deferred amount must be paid before December 31, 2021
- The second 50% of deferred amount must be paid before December 31, 2022

# Unemployment Insurance Expansions/Enhancements

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The CARES Act authorizes \$260 billion for the creation of three new, federally funded Unemployment Insurance (UI) programs:

- Pandemic Unemployment Compensation Program
- Pandemic Unemployment Assistance Program
- Pandemic Emergency Unemployment Compensation Program

# Pandemic Unemployment Compensation Program

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- Allows any state to enter into an agreement with the Secretary of Labor to make state unemployment benefit payments as if state law had been modified to increase individuals' weekly benefit amounts by \$600
  - This is in addition to state law benefits
  - This is a flat amount, irrespective of what the employee was earning in the prior job
- Benefits available from date of agreement until July 31, 2020

# Pandemic Unemployment Assistance Program

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- Provides unemployment relief to workers affected by the COVID-19 emergency
  - Do not have a long-enough work history to qualify for state UI benefits
  - Otherwise would not be eligible for unemployment, including independent contractors, self-employed individuals, and gig-economy workers
  - Not eligible for state or federal unemployment
- Applies to individuals who:
  - Have been, or have a household member diagnosed with COVID-19 or experiencing symptoms
  - Are providing care for a family or household member diagnosed with COVID-19
  - Have primary caregiving responsibility for a child unable to attend school or childcare as a result of the COVID-19 emergency and such school or childcare is required for the individual to work
  - Are unable to reach work because of a quarantine or a medically-advised self-quarantine
  - Were scheduled to commence employment and do not have a job or unable to reach the job as a result of the COVID-19 emergency
  - Have become the breadwinner or major support for a household because the head of the household has died as a result of COVID-19
  - Had to quit their job as a result of COVID-19
  - Worked in a place of employment that is closed as a result of the COVID-19 emergency, or
  - Meets other criteria established by the Secretary of Labor
- Does not apply to individuals who
  - Are able to telework with pay, or
  - Are receiving paid sick leave or other paid leave benefits



# Pandemic Unemployment Assistance Program

## Pandemic Emergency Unemployment Compensation Program

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- Allows covered individuals to receive unemployment benefits for up to 39 weeks (an extra 13 weeks)
- Amount of benefits generally equals the applicable state weekly benefit amount, plus the benefit from the Pandemic Unemployment Compensation program set forth in Section 2104 (an additional \$600 until July 31, 2020)

# Families First Coronavirus Response Act

A photograph of a laboratory setting, showing a rack of test tubes with some containing liquid, illuminated by a blue light. The image is partially obscured by a dark blue overlay.

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# Emergency Family and Medical Leave Expansion Act

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- Applies to private employers with fewer than 500 employees and public employers
  - Small businesses with fewer than 50 employees may qualify for an exemption if the leave requirements would jeopardize the viability of the business
- Covered employers must provide to employees who have been employed for at least 30 days up to 12 weeks of FMLA leave if the employee is **unable to work due to a bona fide need for leave for a child (under 18) whose school or child care provider is closed or unavailable for reasons related to COVID-19**

# Emergency Family and Medical Leave Expansion Act



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- Employers are not required to pay employees for the first 10 days of leave (but employees may use accrued paid leave and may also receive the federal sick leave).
- After, employers must pay at least 2/3 of an employee's regular rate of pay
  - Maximum compensation for such leave is \$200/day and \$10,000 in aggregate
- Employers of health care providers and emergency responders may exclude those employees from this leave
- Leave is available for employees through December 31, 2020

# Emergency Paid Sick Leave Act

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- Applies to employers with fewer than 500 employees (even those under 50 employees)
- Requires covered employers to provide paid sick leave to employees who are:
  - Subject to a governmental quarantine or isolation order
  - Advised by a health-care provider to self-quarantine
  - Experiencing symptoms of COVID-19 and seeking diagnosis
  - Caring for an individual subject to a governmental or self-quarantine
  - Caring for the employee's child because the child's school or childcare provider is closed, or
  - Experiencing a substantially similar circumstance related to COVID-19 as specified by the DHHS



# Emergency Paid Sick Leave Act (cont.)

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- Amount of Leave
  - **Full-time employees** are entitled to 2 weeks (up to 80 hours) of paid sick leave
  - **Part-time employees** are entitled to leave for the average number of hours the employee works during an average two-week period
- Employers must pay either
  - The employee's regular rate of pay for their own coronavirus-related quarantine or symptoms, or
  - 2/3 of the employee's regular rate of pay for caring for a sick family member, caring for a child or experiencing other "substantially similar" conditions
- Paid Sick Leave is capped at
  - \$511/day (and \$5,110 in aggregate) for employees who are experiencing symptoms of COVID-19 or are required or advised to self-quarantine, or
  - \$200/day (and \$2,000 in aggregate) for employees to care for the employee's child or infected person

# Questions

A photograph of a laboratory setting, featuring a rack of test tubes and several small vials with black caps. The scene is illuminated with a strong blue light, creating a clinical and scientific atmosphere. The text "Coronavirus: Emerging Challenges" is overlaid on the right side of the image.

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# Presenters

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