

COVID-19 Updates for businesses

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AGENDA

- **PPP Updates:** Tim Fogerty, First Bank
- **PPP and Tax Strategies:** Susan Jones, J.D., BKD
- **COVID-19 Risk Management and Insurance Issues:**
Jake Herschend, Marsh & McLennan

Disclaimer

This presentation is furnished for informational use only. It is not intended to be comprehensive, nor does it constitute legal, accounting, tax or other professional advice. We encourage you to consult with your legal, tax and/or accounting professional for specific advice. This presentation is based on information available as of the first date and time of delivery of this presentation. Due to the evolving nature of the regulations and agency guidance addressing the Paycheck Protection Program, all information in this presentation is subject to change without notice.

First Bank recommends a thorough review of the CARES Act and SBA Interim Final Rules, these documents can be found at [FirstBanks.com](https://www.firstbanks.com)

Paycheck Protection Program

- The President signed Coronavirus Aid, Relief and Economic Security (CARES) Act into law March 27, 2020
- The Act created the Paycheck Protection Program through the SBA and provided \$350 billion in funding for SBA, 100% Guaranteed loans
- SBA launched PPP on April 3, 2020 which ran until April 16th at which time funding was exhausted
- On April 24, 2020 the President signed the Paycheck Program and Health Care Enhancement Act to provide an additional \$310 billion for PPP, SBA guaranteed loans



Paycheck Protection Program

April 3 - April 16				
Round 1	Loans	Dollars	% of Count	% of Amount
Under \$150M	1,229,893	\$58,321,791,761	74.03%	17.04%
\$150-\$350M	224,061	\$50,926,354,675	13.49%	14.88%
\$350-\$1000M	140,197	\$80,628,410,796	8.44%	23.56%
\$1MM-\$2MM	41,238	\$57,187,983,464	2.48%	16.71%
\$2MM-\$5MM	21,566	\$64,315,474,825	1.30%	18.79%
Over \$5000M	4,412	\$30,897,983,582	0.27%	9.03%
Total	1,661,367	\$342,277,999,103	100%	100.00%
Average	\$ 206,022			

April 27-May 8				
Round 2	Loans	Dollars	% of Count	% of Amount
Under \$150M	2,339,889	\$ 72,214,729,023	91.00%	38.22%
\$150-\$350M	147,602	\$ 32,631,473,177	5.74%	17.27%
\$350-\$1000M	61,646	\$ 34,365,428,096	2.40%	18.19%
\$1MM-\$2MM	14,130	\$ 19,530,467,793	0.55%	10.34%
\$2MM-\$5MM	6,352	\$ 18,857,362,992	0.25%	9.98%
Over \$5000M	1,548	\$ 11,344,127,488	0.06%	6.00%
Total	2,571,167	188,943,588,569	100.00%	100.00%
Average	\$ 73,486			

PPP Total	Applications	Total Funded Amount	Avg Amount
Round One	1,661,367	\$ 342,277,999,103.00	\$206,021.91
Round Two	2,571,167	\$ 188,943,588,568	\$ 73,485.54
Total	4,232,534	\$ 531,221,587,671.00	\$125,509.11

5/11/2020 Version 1

Report from Inspector General

- On April 24, the Office of the Inspector General initiated its planned review of the SBA's implementation of the Paycheck Protection Program
- The OIG found the SBA's Interim Final Rule (IFR) for implementing the PPP and the SBA FAQs mostly aligned with Act
- The following areas did not fully align with the Acts provisions:
 - Prioritizing Underserved and Rural Markets
 - Loan Proceeds Eligible for Forgiveness
 - Guidance on Loan Deferments
 - Registration of Loans

Office of the Inspector General Findings



Prioritizing Underserved and Rural Markets

- The SBA did not require demographic data to identify PPP borrowers in underserved or rural markets including minorities and women owned businesses
- The SBA is being asked to amend the application for future applications. For loans already disbursed, include optional demographic information on forms used to request loan forgiveness

Office of the Inspector General Findings



Loan Proceeds Eligible for Forgiveness

- The IG found formal guidance in the SBA IFR did not align with allowable uses as the maximum loan amount at 2.5 times monthly payroll does not match the 8 week covered period for forgiveness
- The IG analysis indicates that the other allowable uses allowed for up to 25% not be enough for 100% loan forgiveness
- The IG has asked the SBA to evaluate the negative impact to borrowers regarding the specific percentage of loan proceeds eligible for forgiveness and update requirements as deemed necessary
- The SBA was instructed to provide formal guidance on loan forgiveness as required in the Act

Office of the Inspector General Findings



Guidance on Loan Deferments

- The SBA did not clarify the rules around loan deferment of the loan balance, if any, after the loan forgiveness amount is applied
- The SBA did provide guidance that all principal and interest should be deferred for 6 months. As such, our program was designed for payments starting after the forgiveness timeframe and the six month deferment period and then amortizing the loan over the remaining 18 months
- The SBA is asked to clarify its guidance on this issue



PPP Eligible Uses

During the covered period (8 weeks from time of loan disbursement) the recipient may use the loan proceeds for:

- Payroll costs
- Costs relating to the continuation of group healthcare benefits during the periods of paid sick, medical, or family leave, and insurance premiums
- Employee salaries, commissions, or similar compensation
- Payments of any mortgage obligation interest; does not include principal payments or pre-payments
- Rent including any rent under a lease agreement
- Utilities
- **Interest on any other debt obligation if the debt was incurred before February 15, 2020**



Fraud Awareness

- Be aware that there are various fraudulent activities being attempted on Small Businesses relating to the PPP Program
- Small Businesses across the country have been anxious for updates and information on their PPP loan applications and are accepting calls and emails from unknown people
- In some situations, callers are offering to take PPP applications and asking for private payroll information on you and your employees

Fraud Awareness:

Tips:

- The SBA will not reach out to you directly regarding an SBA application
- If you are contacted by someone promising to get an approval on an SBA loan, but requires any payment up front or offers a high interest rate bridge loan in the interim- BE AWARE- Suspect Fraud
- Look out for phishing attacks and scams utilizing the SBA logo. These may be attempts to obtain your Personal Identifiable Information (PII), to obtain banking access, or to install ransomware or malware on your computer
- Any email communication from the SBA will come from SBA.gov; check the sender's address
- The presence of an SBA logo on a webpage does not guarantee the information is accurate or endorsed by the SBA. Double check information you receive with information available at www.sba.gov
- The SBA has a list of all approved lenders on their website
- Report suspected fraud to OIG's Hotline: 1-800-767-0385 or <https://www.sba.gov/about-sba/oversight-advocacy/office-inspector-general/office-inspector-general-hotline>

Updates: Certification and Safe Harbor



- The last day to repay loan under safe harbor provision is May 14, 2020
- Borrowers are recommended to review carefully the required certification on the Borrower Application Form
- US Department of Treasury has indicated there will be a review of loans in excess of \$2 million and other loans as appropriate

Updates: Certification and Safe Harbor



Eligibility Certifications:

- To determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP loan request is necessary. Specifically, before submitting a PPP application, all borrowers should review carefully the required certification that **“current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”**
- Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification

Defining Full-Time Equivalents - AICPA

- CARES Act does not define how to calculate a full-time equivalent (FTE); AICPA recommends following the definition of Affordable Care Act (ACA) of 30 hours.
- Hours are not always collected for certain types of employees, AICPA recommends a wage-based proxy for determining FTEs
- If hours worked are not available, employees would be deemed an FTE if earning are over \$217.50 (Federal Minimum Wage * 30 hours or $\$7.25 * 30$) per week
 - Employees earning less than \$217.50 / per week would be considered a pro-rated FTE
- This approach provides a straight forward calculation that consistently measures the number of FTEs based on Federal minimum wage and standard definition of the number of hours worked to be considered an FTE

Defining Full-Time Equivalents - AICPA



- Any measure used to determine FTE will work since it is not the measure, but the comparison of measured results from the two periods that will result in reduced forgiveness
- Selecting a measure that is simple, consistent, and able to easily be applied across all employee types and all time periods is paramount
- Any decrease in compensation does not factor into this point, therefore this simple approach leads to a result that identifies any reduction in employee headcount when consistently applied to the various time periods

Resources

- US Department of Treasury <https://home.treasury.gov/>
- Small Business Association <https://www.sba.gov/>
- Office of the Inspector General <https://oig.hhs.gov/>
- American Institute of Certified Public Accounts <https://www.aicpa.org/>
- First Bank's COVID-19 web page <https://www.firstbanks.com/>



CARES Act Relief Surrounding COVID-19



CARES Act: Business Provisions

- SBA Paycheck Protection Program (“PPP”)
 - Generally only applies to employers with fewer than 500 employees and includes nonprofits, sole proprietorships and self-employed individuals
 - Maximum amount of loan received is lesser of (1) \$10 million, or (2) 2.5 times the average total monthly payroll cost during the prior twelve months
 - Payroll costs includes salaries, wages, commissions and tips (capped at \$100,000) as well as certain employee benefits, state and local taxes, etc...
 - Payments on the loan are deferred for six months
 - Loan proceeds used for specified expenses during the eight week period after loan proceeds are disbursed are eligible to be forgiven
 - Eligible expenses include payroll costs, mortgage interest, rent and utilities

CARES Act: Business Provisions

- In order to qualify for forgiveness at least 75% of PPP proceeds must be used for payroll costs (with up to 25% used for other eligible expenses)
 - If non-payroll costs exceeded 25%, then the forgiveness request is reduced until no more than 25% of the amount to be forgiven is qualifying non-payroll costs
- If an employer reduces staff, loan forgiveness will be reduced by the percentage reduction in full-time equivalent employees over the eight-week period
 - Workaround allows use the total number of FTE employees on June 30, 2020
 - Recent guidance states that if a small business makes a written offer to re-hire a worker and that worker chooses not to accept, then the employee will not be counted against the small business for purposes of the FTE forgiveness-reduction rule

CARES Act: Business Provisions

- Forgiven amounts are not included in the taxpayer's taxable income
 - Recently issued IRS Notice 2020-32 clarifies that expenses paid for with forgiven PPP proceeds are not tax deductible
 - The practical implications of this is that small businesses will have an increase in their PPP loan forgiveness as they will not be able to deduct those expenses (payroll costs, rent, mortgage interest, utilities)
 - However, after pressure from top tax advisors and pending bipartisan bills in Congress to overrule the IRS interpretation, the Treasury has noted this guidance is currently under review
- Any loan amounts not forgiven are carried forward as an ongoing loan at a term of two years at a 1% fixed interest rate

CARES Act: Business Provisions

- Employee Retention Credit (“ERC”)
 - Eligible employers (including nonprofit organizations) are allowed a 50% refundable payroll tax credit on qualified wages paid after March 12, 2020 and before January 1, 2021
 - Credit will offset employer’s 6.2% share of social security taxes on up to \$10,000 of qualified wages (including health care costs) for a maximum credit of \$5,000 per employee
 - To qualify, an employer’s business operations must either:
 - Be fully or partially suspended due to orders from an appropriate government authority limiting commerce, travel or group meetings due to COVID-19, or
 - A significant decline in gross receipts (generally a 50% reduction compared to same quarter in 2019)

CARES Act: Business Provisions

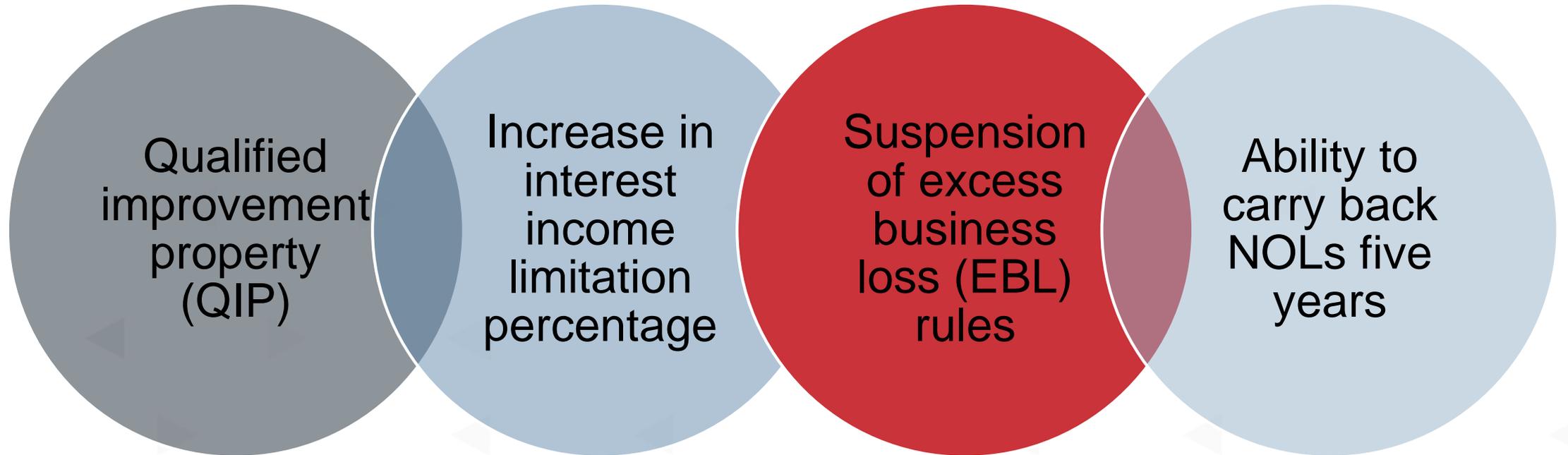
- Qualified wages determined by average number of fulltime employees during 2019:
 - Employers < 100 employees = qualified wages are generally those wages paid to employees that are *not providing services* because operations were impacted as noted above
 - Employers with 100 or more employees = qualified wages are those wages paid to any employee during the period operations were impacted as noted above *regardless of whether or not its employees are providing services*
 - Based on recent FAQs issued May 7, 2020, employers may treat health plan expenses for furloughed employees as qualified wages
 - Employers who receive a PPP loan are not eligible for the ERC; however, the IRS also clarified with a May 7 FAQ update that employers that repay a PPP loan by May 14, 2020 are not disqualified from the ERC

CARES Act: Business Provisions

- Deferral of Payroll Taxes
 - Employers and self-employed individuals may defer payment of the employer share of payroll taxes owed on wages paid for the period March 27, 2020 - December 31, 2020
 - The deferred taxes are due in two installments: 50% by December 31, 2021, and 50% by December 31, 2022
 - This payroll tax deferral applies to all employers, with no requirement to show any specific COVID-19-related impact
 - The deferral is not available to any employer that receives PPP loan forgiveness
 - Employers may defer payroll taxes until the PPP loan is actually forgiven and deferral on pre-forgiveness payroll taxes will continue as noted above

Business Income Tax Provisions

(For Pass-Through Owners & Sole Proprietors)



Individual Income Tax Provisions

Recovery rebate of \$1,200 (\$2,400 married); subject to phaseout

Ability to withdraw coronavirus-related distributions from qualified retirement accounts up to \$100,000 without incurring 10% early withdrawal penalty

Temporary waiver of required minimum distribution rules for certain defined contribution plans & IRAs for 2020

Suspension of the 60% AGI limit on the charitable contribution deduction for 2020; above-the-line deduction for contributions up to \$300

Thank You

Susan W. Jones, J.D.

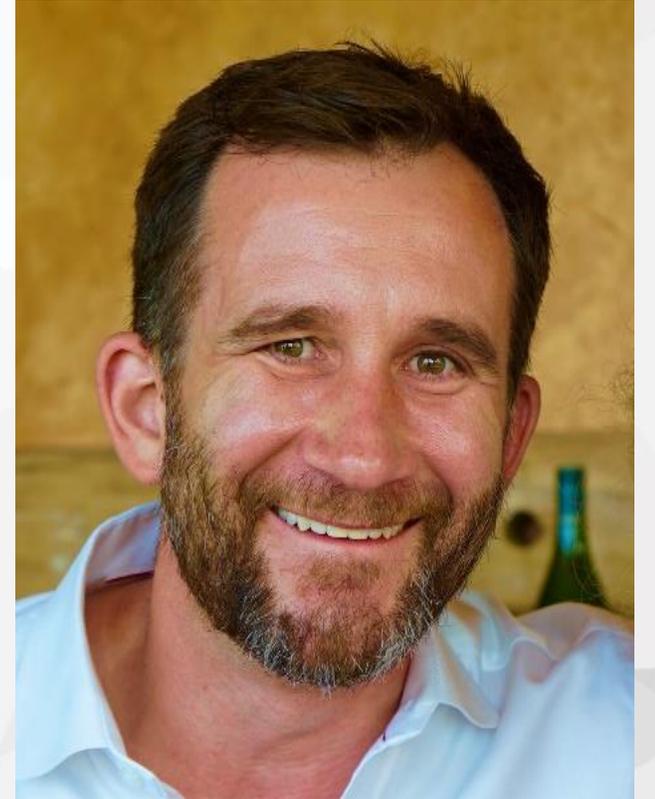
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Return to Work



- NCCI – COVID19 Code
- Updated HR policies – i.e. Handbook
- Potential uptick in:
 - Work Compensation
 - Employee Practice Liability Insurance
 - Director and Officer
- COVID Calculator
 - Review is “FREE”

Resources on MarshMMA.com

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Coronavirus Resource Page

Coronavirus (COVID-19) Pandemic Risk Hub

LEGISLATIVE ALERT FOR EMPLOYERS FOR EMPLOYEES FOR FAMILIES

FINANCIAL WELLNESS UPCOMING EVENTS PAST RECORDINGS MORE RESOURCES

The Coronavirus pandemic is affecting all companies and their employees. Throughout this Resource Center you will find thought leadership, expert views, links to government sites, and solutions and strategies that you can apply as you navigate the challenges posed by COVID-19.

Legislative Alerts

[CARES Act Signed Into Law](#) | April 10, 2020 NEW
While most of the CARES Act provisions involve economic relief for employers and employees that are beyond the scope of this Alert, there were several changes affecting group health plans. Some of these changes are permanent while others are of limited duration to address the COVID-19 pandemic period.

[Families First Coronavirus Response Act](#) | April 7, 2020 NEW

Receive Email Updates COVID-19

STAY UPDATED

REGULATORY ALERTS

[Life and Annuity NYDFS Notice Commercial and Personal Insurance NYDFS Notice](#)

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mma.marshmma.com/coronavirus-outbreak-resourcepage

Thank You

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THANK YOU

