Update on Coronavirus Relief Legislation (FFCRA and CARES Act)

- **Paid Sick & Family Leave Provisions**
- **Tax Credit Provisions**
- **Small Business Loan Provisions**
- **Federal Reserve's Main Street Lending Program**

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Introduction

In the wake of the COVID-19 pandemic, Congress has enacted three measures to address the economic and public health impacts of the crisis. The second of these bills, H.R. 6201: the "Families First Coronavirus Response Act" (FFCRA), provided support for the medical response and direct aid for those impacted by COVID-19. The most recent package, S.3548: the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act), provided economic relief to industries, businesses, and individuals impacted by the pandemic.

Paid Sick and Family Leave Provision

FFCRA and CARES Provisions:

The FFCRA included a significant expansion of paid sick leave and family leave under the FMLA, which establishes:

- An emergency paid leave program requiring private sector employers with fewer than 500 workers to provide up to 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA) for employees who are unable to work or telework because they have to care for a child younger than 18 whose school or day care has closed because of the coronavirus; and
- a requirement that private sector employers with fewer than 500 workers and government entities would have to provide employees who are unable to work or telework with immediate 80 hours of paid sick time off for full-time employees to:
    - Comply with a federal, state, or local quarantine or isolation order
    - Self-quarantine per a health-care provider's advice
    - Obtain a medical diagnosis for coronavirus
    - Care for an individual who is in quarantine or for a child whose school or day care has closed due to coronavirus

Additionally, the CARES Act amends Section 5102 of the Emergency Paid Sick Leave Act (division E of the Families First Coronavirus Response Act) to limit the required employer contribution for paid sick leave. For employees unable to work because of government-sanctioned quarantine orders, medical professional-induced self-quarantine, or COVID-19 symptoms, employers must pay up to $511 per day and $5,110 in the aggregate in sick leave. For employees missing work to care for a family member impacted by COVID-19 or the previously designated quarantine, employers must provide up to $200 per day and $2,000 in the aggregate in sick leave.

Update to DOL Leave Guidance and FAQs:

On August 3, 2020, the U.S. District Court for the Southern District of New York found portions of the regulations invalid. The U.S. Department of Labor's Wage and Hour Division (WHD) subsequently posted revisions, which include the following provisions:

- Reaffirm and provide additional explanation for the requirement that employees may take FFCRA leave only if work would otherwise be available to them.
- Reaffirm and provide additional explanation for the requirement that an employee have employer approval to take FFCRA leave intermittently.
- Revise the definition of "healthcare provider" to include only employees who meet the definition of that term under the Family and Medical Leave Act regulations or who are employed to provide diagnostic services, preventative services, treatment services or other services that are integrated with and necessary to the provision of patient care which, if not provided, would adversely impact patient care.
- Clarify that employees must provide required documentation supporting their need for FFCRA leave to their employers as soon as practicable.
- Correct an inconsistency regarding when employees may be required to provide notice of a need to take expanded family and medical leave to their employers.

DOL Leave Guidance and FAQs:

- Temporary Rule for Paid Leave under the Families First Coronavirus Response Act
- Families First Coronavirus Response Act FAQ
- COVID-19 and the Fair Labor Standards Act FAQ
- COVID-19 and the Family and Medical Leave Act FAQ
- Families First Coronavirus Response Act: Employee Paid Leave Rights
- Families First Coronavirus Response Act: Employer Paid Leave Requirements Fact Sheet

Tax Credit Provisions

The FFCRA provided a refundable tax credits to employers to cover wages paid to employees while they are taking time off under the bill's sick leave and family leave programs. It also included new tax credits for employers of fewer than 500 individuals to cover the costs associated with providing such leave to their workers.

IRS Leave Tax Credit Guidance and FAQs:

- Tax Credits for Small and Midsized Businesses FAQs
- Amount of the Tax Credit for Qualified Sick Leave Wages
- Amount of the Tax Credit for Qualified Family Leave
- Credit Availability Timeline
- How to Claim Credits
- Determining the Amount of Allocable Qualified Health Plan Expenses
- What are Qualified Sick Leave Wages
- What are Qualified Family Leave Wages
- How Should an Employer Substantiate Eligibility for Tax Credits for Qualified Leave Wages
- Taxation and Deductibility of Tax Credits

- Interaction of FFCRA Tax Credits with Other Tax Credits
- Use of Third-Party Payers
- Other Issues
- Special Issues for Employees
- Additional Questions

The CARES Act included various tax provisions, including:

- The option for businesses and self-employed workers to defer payment of the employer share of Social Security tax through December 31, 2020. Deferred taxes would have to be repaid over the following two years, with 50% of the deferred amount due on December 31, 2021, and the remaining 50% due by December 31, 2022. Firms that utilize SBA loans for payroll purposes cannot use this credit.
- An employee retention tax credit provision allows for 50% of qualified wages, with a maximum value of $10,000, to serve as a refundable tax credit against payroll tax liability. Employers whose operations are completely or partially suspended through government orders and firms with a greater than 50% reduction of quarterly receipts, on a year-over-year basis, are eligible for this credit. Employee wages of furloughed or reduced hour workers are eligible. However, for employers with 100 or fewer fulltime employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. Wages used for payroll credits for required paid family or sick leave are ineligible.

IRS Employee Retention Credit Guidance and FAQs

- Employee Retention Credit under the CARES Act FAQ
- General Information
- Determining Which Employers are Eligible to Claim the Employee Retention Credit
- Determining Which Entities are Considered a Single Employer Under the Aggregation Rules
- Determining What Types of Governmental Orders Related to COVID-19 May be Considered for Purposes of the Employee Retention Credit
- Determining When an Employer's Trade or Business Operations are Fully or Partially Suspended Due to a Governmental Order
- Determining When an Employer is Considered to have a Significant Decline in Gross Receipts
- Determining the Maximum Amount of an Eligible Employer's Employee Retention Credit
- Determining Qualified Wages
- Determining the Amount of Allocable Qualified Health Plan Expenses
- How to Claim the Employee Retention Credit
- Interaction with Other Credit and Relief Provisions
- Special Issues for Employers: Income and Deduction
- Special Issues for Employers: Use of Third-Party Payers

- Other Issues

IRS Employment Tax Deposits and Payments Deferral Guidance and FAQs

- COVID-19 Business Tax Relief Tool
- Employment Tax Deposits and Payments Deferral FAQ

Small Business Loan Provisions

The CARES Act provided $377 billion in zero-interest loans to subsidize small businesses, which are firms employing up to 500 employees. $350 billion of the small business assistance funds create the Paycheck Protection Program (PPP). The PPP allows eligible firms to access zero-interest loans of up to $10 million to maintain workforces and operations, including paid sick leave. Small businesses can forgo eight weeks of payroll cost repayment if they retain workers at current salaries.

In April, Congress provided the PPP with an additional $310 billion after small businesses had exhausted the initial $349 billion. After the infusion, the SBA began accepting PPP applications on April 27, 2020. While the PPP has supported more than 4.5 million firms, including more than $500 billion of assistance, lawmakers worried that the program's requirements remained too restrictive. On June 3, the Senate passed legislation, H.R. 7010, that increased the PPP's flexibility. The bill allows businesses more time and flexibility to make qualifying expenditures for loan forgiveness and permits firms with forgiven loans to defer payroll taxes. Additional changes to the PPP include:

- Extending the PPP loan forgiveness period to include costs incurred over 24 weeks after a loan occurs or through December 31 and allowing businesses that received a loan before the measure takes effect to retain the current eight-week period.
- Extending to December 31, which was June 30, a period in which loans can be forgiven if businesses restore staffing or salary levels that were previously reduced. The provision also would apply to worker and wage reductions made from Feb. 15 through 30 days after the enactment of the CARES Act, which was signed into law on March 27, 2020.
- Maintaining forgiveness amounts for companies that document their inability to rehire workers employed as of February 15, and their inability to find similarly qualified workers by the end of the year. Under the modified measure, companies would be covered separately if they show that they could not resume business levels from before February 15 because they were following federal requirements for sanitization or social distancing.

- Requiring businesses to spend at least 60% of their PPP funds on payroll expenses to qualify for full loan forgiveness, which is a reduction compared to the original 75% rule.
- Repealing a provision from the CARES Act that banned companies with forgiven PPP loans from deferring their payroll tax payments.
- Allowing borrowers to defer principal and interest payments on PPP loans until the SBA compensates lenders for any forgiven amounts, instead of the current six-month deferral period. Borrowers that do not apply for forgiveness could wait at least 10 months after the program expires to start making payments.
- Establishing a minimum loan maturity period of five years after a loan forgiveness application, instead of the current two-year deadline set by the SBA. This provision would apply to PPP loans issued after the measure is enacted, though borrowers and lenders could extend existing loans.

Treasury Guidance for the PPP (Program has Expired):

- Treasury's Assistance for Small Businesses Page
- Fact Sheet
- Find Eligible Paycheck Protection Program Lenders
- How to Calculate Loan Amounts
- Loan Forgiveness Application
- FAQs
- Interim Final Rule on the Paycheck Protection Program
- Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility
- Interim Final Rule on Additional Criterion for Seasonal Employers
- Interim Final Rule on Disbursements
- Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria
- Interim Final Rule on Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan Request
- Interim Final Rule on Loan Increases
- Interim Final Rule on Eligibility of Certain Electric Cooperatives
- Interim Final Rule on Treatment of Entities with Foreign Affiliates
- Interim Final Rule on Second Extension of Limited Safe Harbor with Respect to Certification Concerning Need for PPP Loan and Lender Reporting
- Interim Final Rule on Loan Forgiveness
- Interim Final Rule on SBA Loan Review Procedures and Related Borrower and Lender Responsibilities
- Interim Final Rule on Revisions to First Interim Final Rule
- Interim Final Rule on Additional Revisions to First Interim Final Rule
- Interim Final Rule on Revisions to the Third and Sixth Interim Final Rules
- Interim Final Rule on Revisions to Loan Forgiveness Interim Final Rule and SBA Loan Review Procedures Interim Final Rule

- Interim Final Rule on Additional Eligibility Revisions to First Interim Final Rule
- Interim Final Rule on Certain Eligible Payroll Costs
- Interim Final Rule on Appeals of SBA Loan Review Decisions Under the PPP
- Interim Final Rule on Treatment of Owners and Forgiveness of Certain Nonpayroll Costs
- Interim Final Rule on Additional Revisions to Loan Forgiveness and Loan Review Procedures Interim Final Rules

SBA Guidance for the PPP (Program has Expired):

- SBA's Paycheck Protection Program Page
- Paycheck Protection Program FAQs
- Paycheck Protection Program Affiliation Rules
- Paycheck Protection Program Loan Overview
- Paycheck Protection Program Eligibility
- Paycheck Protection Program Loan Details
- Paycheck Protection Program

The legislation also allocates $17 billion to alleviate six months of principal, interest, and fee payments for businesses with existing SBA 7(a), 504, or microloans. New SBA borrowers can also utilize this benefit. The measure facilitates bank lending to small businesses by allowing extensions for existing loans. Additionally, eligible firms can also utilize PPP funds, but SBA loan repayment relief cannot fund PPP payments.

The legislation provides $10 billion to fund Economic Injury Disaster Loans (EIDL) loans of $10,000 for eligible small businesses withing three days of application. To qualify, firms must have been operating on January 31, 2020. The maximum principal for EIDL loans is $2 million, with interest rates up to 3.75% for companies and up to 2.75% for nonprofits. Borrowers can defer principal and interest for up to 4 years. Small businesses can utilize EIDL loan funds to provide paid sick leave to employees, maintain payroll, meet increased production costs due to supply chain disruptions, and to pay debts, rent and mortgage obligations. This funding source is available to small businesses, tribal businesses, private nonprofits, sole proprietors, and independent contractors.

SBA Application for the EIDL Loans:

- COVID-19 Economic Injury Disaster Loan and Loan Advance Application

The Federal Reserve's Main Street Lending Program

On Thursday, April 9, 2020, the Federal Reserve announced a bevy of emergency measures that created or expanded nine programs to provide up to $2.3 trillion in loans to support the economy during the Coronavirus pandemic. Principal among these is the Main Street Lending Program, which establishes two different lending facilities, one for new loans and one for existing loans.

Firms can only utilize one of the two facilities. These facilities are called the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF).

The Main Street Lending Program creates borrowing opportunities for small and mid-sized businesses by offering 4-year loans to companies employing up to 10,000 workers or with revenues of less than $2.5 billion. These loans must mature in four years, and creditors must use the adjustable Secured Overnight Financing Rate plus 2.5 to 4 percentage points, with an upfront origination fee of 1 percentage point, to determine the interest rate. Loans can be paid off early without a penalty and can be deferred for one year. Borrowers must commit to making reasonable efforts to maintain payroll and retain workers and face the executive compensation, stock buyback, and dividend restrictions that apply to direct loan programs under the CARES Act.

The maximum loan through the MSNLF is $25 million or an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 earnings before amortization, depreciation, interest, and taxes. The maximum loan through the MSELF is $150 million; or 30% of the borrower's existing outstanding and committed but undrawn bank debt; or an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, doesn't exceed six times the borrower's 2019 earnings before amortization, depreciation, interest, and taxes. PPP participation does not preclude Main Street Loan Program utilization.

On April 30, the Federal Reserve expanded eligibility for the Main Street Loan Program by allowing businesses with up to 15,000 employees or up to $5 billion in annual revenue to use the program. The minimum loan size for the MSNLF was lowered from $1 million to $500,000.

Additionally, the Federal Reserve created the Main Street Priority Loan Facility (MSPLF) to provide increased risk-sharing by lenders for borrowers with greater leverage. Lenders would retain a 15 percent share on loans that, when added to existing debt, do not exceed six times a borrower's income, adjusted for depreciation, interest payments, and taxes, and other appropriate adjustments through the MSPLF.

The Federal Reserve continues to update the program. The table on the next page provides a succinct and up-to-date outline of the three loan options:

Main Street Lending Program Loan Options	New Loans	Priority Loans	Expanded Loans
Term	5 years *(previously 4 years)*		
Minimum Loan Size	$250,000 *(previously $500,000)*		$10M
Maximum Loan Size	The lesser of $35M, or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted EBITDA *(previously $25M)*	The lesser of $50M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted EBITDA *(previously $25M)*	The lesser of $300M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted EBITDA *(previously $200M)*
Risk Retention	5%	5% *(previously 15%)*	5%
Principal Repayment	Principal deferred for two years, years 3-5: 15%, 15%, 70% *(previously principal deferred for one year and 33.33% repayment due in years 2-4)*	Principal deferred for two years, years 3-5: 15%, 15%, 70% *(previously principal deferred for one year and 15%, 15%, 70% repayment due in years 2, 3, and 4, respectively)*	
Interest Payments	Deferred for one year		
Rate	LIBOR + 3%		

Source: Federal Reserve

Updated Federal Reserve Term Sheets:

- Main Street New Loan Facility (MSNLF)
- Main Street Priority Loan Facility (MSPLF)
- Main Street Expanded Loan Facility (MSELF)

Federal Reserve Main Street Program Resources:

- Frequently Asked Questions
- Main Street Lending Program Forms and Agreements

Federal Reserve Press Release with Eligibility Chart:

- Press Release and Eligibility Chart