

# Public Policy Response to COVID-19

**Tom Nichols & Brian Reardon**

Monday, March 30<sup>th</sup> 4pm ET

# Public Policy Response to COVID-19

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*Defending America's Individually & Family Owned Businesses*

# Public Policy Response to COVID-19

## Agenda

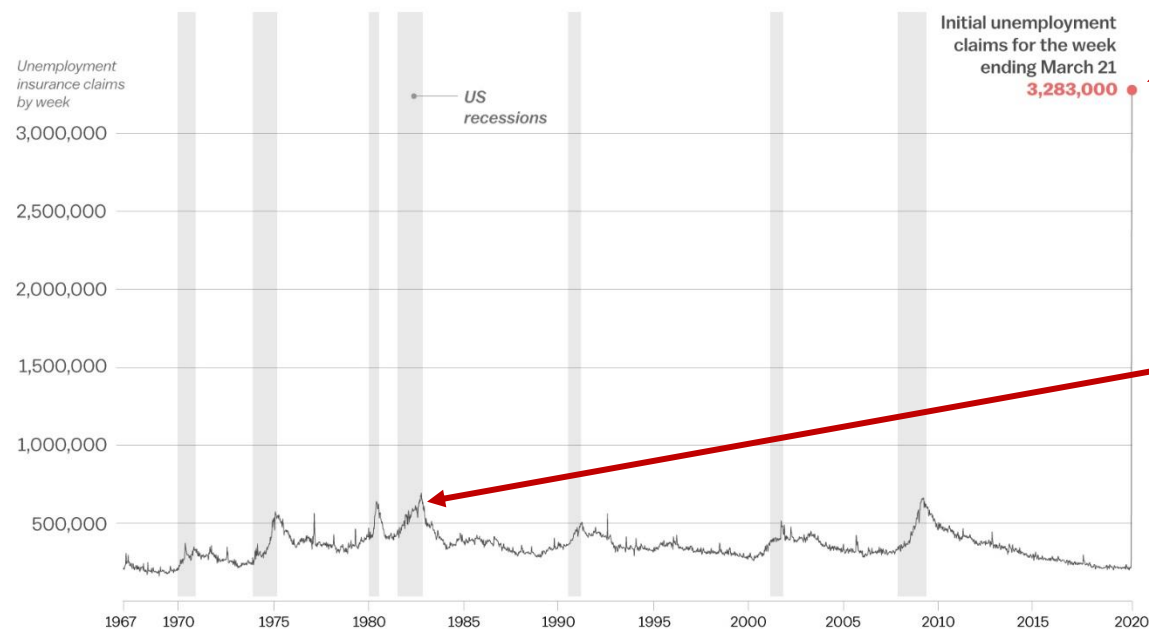
- Overview
- Mandated Leave Details
- Delayed Tax Filing & Payment
- Delayed Payroll Tax Payments & Other Tax Provisions
- New Small Business Loan Program
- Q&A

# Public Policy Response to COVID-19

## Economic Threat

- Initial UI claims jumped from 280k to 3.2m in just one week

### An unprecedented rise in unemployment



Source: US Employment and Training Administration

Vox

S=CORP

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## Economic Threat

- Looking forward, Morgan Stanley estimates the economy will contract 30% and unemployment will rise to 12.8% in the 2<sup>nd</sup> Quarter
  - That means 15 million people will lose their jobs in the coming weeks
  - A 30% contraction means \$1.7 trillion in lost income in just one quarter
- Bottom Line:
  - The health-care response to COVID-19 is having an unprecedented impact on our economy and workers
  - As our business letter requested, the policy response needs to be just as missive



# Public Policy Response to COVID-19

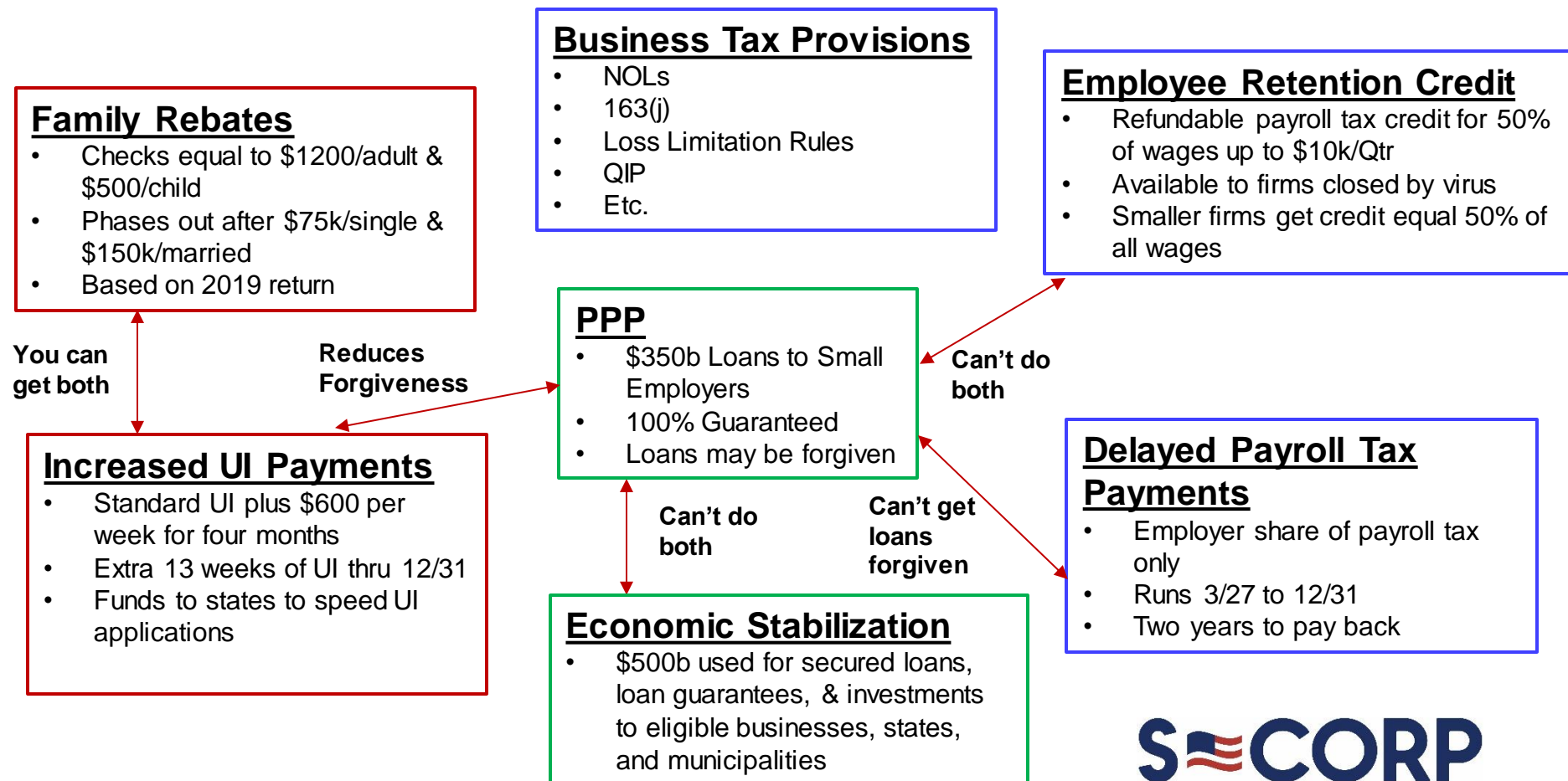
## Congressional Response to Date

- March 6: Phase I (HR 6074) Includes \$8.3b in health-related spending
- March 18: Phase II (HR 6201) Includes Mandatory Paid Leave, funding for health care providers, coverage for COVID-19 testing, increased UI funding
- March 27: Phase III (CARES Act) includes **massive** funding for families and businesses
  - Direct Payments to families and expanded UI benefits
  - \$350 billion to health care professionals
  - Small and large business loans
  - Significant tax benefits
  - Many, many other provisions designed to help families and businesses
- This in addition to an unprecedented response by the Fed and the Treasury



# Public Policy Response to COVID-19

## How Does it All Work Together?



# Public Policy Response to COVID-19

## Response to Date

- Congress took the shotgun approach
  - Up to businesses and workers to decide which program is best for them
- For this call, we're going to focus on these policies:
  1. The new mandated sick and leave benefits in Phase II
  2. Delay of tax filling and payments by Treasury
  3. The delayed payroll tax payments in Phase III
  4. The new small business loan program included in Phase III



# Public Policy Response to COVID-19

## New Mandated Leave Rules

- The Phase II bill includes new mandated leave policies for employers with fewer than 500 employees:
  - The Emergency Family and Medical Leave Expansion Act
  - The Emergency Paid Sick Leave Act
- Costs of the paid leave are offset with refundable tax credits applied against the employer portion of payroll taxes
- The program is effective beginning April 1<sup>st</sup> and runs through December 31<sup>st</sup>
  - Covered employers will be required to post a notice of these benefits



# Public Policy Response to COVID-19

## New Mandated Leave Rules

- Employees who take sick leave because they are unable to work due to:
  1. The employee is subject to a quarantine or isolation order relating to COVID-19
  2. The employee has been advised by a health care provider to self-quarantine;
  3. The employee has symptoms of COVID-19 and is seeking a medical diagnosis;
- Are generally entitled to 2 weeks (80 hours) of paid leave at the greater of their regular pay or the applicable minimum wage
- Those amounts are capped at \$511 per day, or \$5110 total over two weeks



# Public Policy Response to COVID-19

## New Mandated Leave Rules

- Employees who take leave because they are unable to work due to:
  4. The employee is caring for an individual who is described in the first two categories;
  5. The employee is caring for a son or daughter if the school or place of care is closed due to COVID-19; or
  6. The employee is experiencing any other “substantially similar condition” as identified by the Secretary of Health and Human Services
- Are generally entitled to 2 weeks (80 hours) of paid leave at the greater of 2/3 their regular pay or the applicable minimum wage
- Those amounts are capped at \$200 per day, or \$2000 total over two weeks



# Public Policy Response to COVID-19

## New Mandated Leave Rules

- Employees who are unable to work due to the care for the son or daughter if (Reason number 5 listed above):
  - Their school or place of care has been closed; or
  - Their child-care provider is unavailable due to a public health emergency
- Are generally entitled to an additional 10 weeks of paid leave at the greater of 2/3 their regular pay or the applicable minimum wage
- Those amounts are capped at \$200 per day, or \$12,000 total over the total 12-week period (including both the two-week sick leave and expanded family leave)
- To qualify for expanded leave, it appears an employee must have been employed for at least 30 days



# Public Policy Response to COVID-19

## Mandated Leave Tax Credits

- The Act provides a dollar-for-dollar tax offset against payroll taxes for leave benefits paid by employers
- Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps.
- In most cases, the cost of the paid leave is simply subtracted from the payroll tax payments the employer would otherwise make to Treasury
- Where a refund is owed, the IRS will send the refund as quickly as possible
- Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage



# Public Policy Response to COVID-19

## Examples

- An eligible employer pays \$5,000 in sick leave and is otherwise required to deposit \$8,000 in payroll taxes. The employer can use up to \$5,000 of the \$8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required to deposit \$3,000 on its next regular deposit date
- An eligible employer paid \$10,000 in sick leave and was required to deposit \$8,000 in payroll taxes. The employer could use the entire \$8,000 in order to make qualified leave payments and request an accelerated credit for the remaining \$2,000
- Equivalent child-care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances
  - These credits will be claimed on their income tax return and will reduce estimated tax payments



# Public Policy Response to COVID-19

## Exemptions

- Small businesses with fewer than 50 employees will be eligible for an exemption from the leave requirements relating to school closings or child care unavailability where the requirements would jeopardize the ability of the business to continue as an ongoing concern
  - The provision of paid leave would result in the small business's expenses exceeding revenues;
  - The absence of the employee would entail a substantial risk to the financial health or operational capabilities of the business; or
  - There are insufficient workers able, willing, and qualified whose services are needed for the business to operate at a minimal capacity
- An employer of an employee who is a healthcare provider or an emergency responder may elect to exclude such employee from the application of this section



# Public Policy Response to COVID-19

## Notice Requirement

- Employers must post a notice regarding the requirements of the law
  - The Secretary of Labor is required to make a model notice publicly available no later than 7 days after enactment of the new law
- After the first workday an employee receives Emergency Paid Sick Leave, the employer may “require the employee to follow reasonable notice procedures in order to continue receiving such paid sick time.”
- Rules are in effect April 1<sup>st</sup> through December 31, 2020
- DOL Guidance: <https://www.dol.gov/newsroom/releases/whd/whd20200324>
- DOL Posters: [https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA\\_Poster\\_WH1422\\_Non-Federal.pdf](https://www.dol.gov/sites/dolgov/files/WHD/posters/FFCRA_Poster_WH1422_Non-Federal.pdf)





# Public Policy Response to COVID-19

## Treasury's Delayed Tax Payments and Tax Filing

- First Treasury Announcement (March 18)
  - Tax payment of income taxes for corporations and individuals delayed until July 15<sup>th</sup>
  - Deferred taxes capped at \$10m for corps and \$1m for individuals, estates, and trusts
  - Concerns about confusing multiple dates and the caps on deferred taxes
- Second Treasury Announcement (March 21<sup>th</sup>)
  - Delayed until July 15<sup>th</sup> both the filing *and* payment of ALL income taxes
  - The delayed filing and payment dates are automatic – no action required
- Many states are also providing relief:
  - The AICPA is keeping a complete list at:  
<https://www.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/coronavirus-state-filing-relief.pdf>



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## Phase III Payroll Tax Delay

- The Phase III bill allows the delay of employer payroll taxes through the end of 2020:
  - Runs from the date of enactment (March 27<sup>th</sup>) through the end of the year
  - Allows employers to forego paying *the employer* share of their payroll taxes
  - Gives employers two years (2021 and 2022) to repay payroll taxes deferred
- Businesses that have loans forgiven under the new small business loan program are ineligible for this relief
- Meanwhile, its unclear is how the payroll tax delay coordinates with the payroll tax credits under the mandated leave program
  - Both reduce or delay the employer's share of payroll taxes
  - The simple answer is it appears any interaction would increase refunds under the mandated leave program
  - Will have to wait for Treasury guidance to make certain



# Public Policy Response to COVID-19

## Other Helpful Tax Provisions

- NOL Carrybacks
- Relief from Loss Limitations for Pass-Through Businesses
- Modification of the 163(j) Interest Deductibility Cap
- QIP Technical Fix



***CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (“CARES ACT”)***

*KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT (TITLE I of CARES ACT)*

*PAYCHECK PROTECTION PROGRAM (CARES ACT § 1102(a)(2) amending the Small Business Act (“SBA ACT”), 15 U.S.C. § 636(a), to add section 7(a)(36))*

*LOAN FORGIVENESS (CARES ACT § 1106)*

**Monday, March 30, 2020**

*Thomas J. Nichols, Shareholder and President at Meissner Tierney Fisher & Nichols S.C.*

# SMALL BUSINESS CONCERN

1. “any business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) [of the SBA]” that employs no more than 500 employees
    - SBA § 7(a)(36)(D)(i)(I)
  2. Higher employee caps for certain industries (e.g., 1,500 for some mining industries, 1,000 for some food manufacturing industries)
    - SBA § 7(a)(36)(D)(i)(II); 13 C.F.R. § 121.201
  3. “individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals [under the sick leave provisions of the Families First Coronavirus Response Act (“FFCRA”)]”
    - SBA § 7(a)(36)(D)(i)(I), (A)(v)
- 
- “the term ‘employee’ includes individuals employed on a full-time, part-time, or other basis”
    - SBA § 7(a)(36)(D)(v)

# AFFILIATION RULES

1. The affiliation rules under 13 C.F.R. § 121.103 “apply with respect to a nonprofit organization and a veterans organization in the same manner as with respect to a small business concern.”
  - SBA § 7(a)(36)(D)(vi)
2. In general, “[c]oncerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party has the power to control both.”
  - 13 C.F.R. § 121.103(a)(1).
3. Whether affiliation exists is based on the totality of the circumstances. Factors relevant in determining whether affiliation exists include ownership, management, previous relationships, ties and contractual relationships.
  - 13 C.F.R. § 121.103(a)(2), (5)
4. The affiliation rules are waived for “(I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72 [hospitality and restaurant industries]; (II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and (III) any business concern that receives financial assistance from [the Small Business Investment Company program].”
  - SBA § 7(a)(36)(D)(iv)
5. In addition, “any business concern that employs not more than 500 employees per physical location of the business concern that is assigned a North American Industry Classification System code beginning with 72 [hospitality and restaurant industries] at the time of disbursement shall be eligible to receive a covered loan.”
  - SBA § 7(a)(36)(D)(iii).

# AVAILABILITY OF LOANS

1. Until June 30, 2020
  - SBA §§ 7(a)(36)(A)(ii), (iii)
2. Possible refinancing of other loans under SBA § 7(b)(2) on or after January 31, 2020 and before “the date on which covered loans are made available”
  - SBA § 7(a)(36)(F)(iv)
3. Possible deferment of principal, interest and fees for not less than six months and not more than one year for loans to eligible recipients approved on or after date of enactment
  - SBA § 7(a)(36)(M)(i)

# INCLUDED PAYROLL COSTS

“compensation with respect to employees”

- SBA § 7(a)(36)(A)(viii)(I)(aa)
  1. “salary, wage, commission, or similar compensation”
  2. “cash tip or equivalent”
  3. “vacation, parental, family, medical, or sick leave”
  4. “allowance for dismissal or separation”
  5. “**required** for the provisions [sic] of group health care benefits, including insurance premiums”
  6. “any retirement benefit”
  7. State or local tax assessed on the compensation of employees”
    - Withholding? Employee’s income tax?

“compensation **to or** income of a sole proprietor or independent contractor that is a [sic] wage, commission, income, net earnings from self-employment or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period”

- SBA § 7(a)(36)(A)(viii)(I)(bb)
- **\$37,158** for the period from February 15, 2020 through June 30, 2020
- Full disallowance if exceed limit?
- No “salary”?
- Cover “compensation to . . . independent contractor”?
  - SBA § 7(a)(36)(D)(ii)(II) lists “payroll tax filings reported to the Internal Revenue Service, **Forms 1099–MISC**” as documentation necessary to establish eligibility for covered loans, but only for an “eligible self-employed individual, independent contractor or sole proprietorship”
  - SBA § 7(a)(36)(F)(ii)(II) requires a lender to consider not only whether a borrower was in operation on February 15, 2020, but also whether the borrower “(AA) had employees for whom the borrower paid salaries and payroll tax **or (BB) paid independent contractors, as recorded on a Form 1099–MISC**”



# EXCLUDED PAYROLL COSTS

## SBA § 7(a)(36)(A)(vii)(II)

1. “compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period”
  - \$37,158 for the period from February 15, 2020 through June 30, 2020 (\$15,301 for 8-week period)
  - Compensation below cap covered?
2. “taxes imposed or withheld under chapters 21 [FICA], 22 [RRTA], or 24 [withholding] of the Internal Revenue Code of 1986 during the covered period”
  - Excluded because not payable until July 15, 2020?
  - Can’t borrow to pay these amounts?
  - No loan forgiveness for these amounts?
3. “employee whose principal place of residence is outside the United States”
4. “qualified sick leave wages” creditable under FFCRA
5. “qualified family leave wages” creditable under FFCRA

# PROGRAM CONSIDERATIONS

1. Register within 15 days under borrower's TIN
  - SBA § 7(a)(36)(C)
2. “In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph [SBA § 7(a)(36)], a lender shall consider whether the borrower – (aa) was in operation on February 15, 2020; and (bb)(AA) had employees for whom the borrower paid salaries and payroll taxes; or (BB) paid independent contractors, as reported on a Form 1099–MISC.”
  - SBA § 7(a)(36)(F)(ii)(II)
3. “The authority to make loans under this paragraph shall be extended to additional lenders determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.”
  - SBA § 7(a)(36)(F)(iii)
4. No SBA fee for guarantees sold into the secondary market
  - SBA § 7(a)(36)(N)
5. Risk Weighting: 0%
  - SBA § 7(a)(36)(O)(i)
6. Deferred reporting for modifications of “a covered loan in relation to COVID-19-related difficulties in a troubled debt restructuring on or after March 13, 2020”
  - SBA § 7(a)(36)(O)(ii)

7. Processing Fees
  - SBA § 7(a)(36)(P)(i)

Loan Amount	Percentage
\$0 - \$350,000	5%
\$350,000 - \$2 million	3%
\$2 million +	1%

8. Authorized Commitment: \$349 billion
9. Reimbursement to Banks
  - Within 90 days of determination of amount of forgiveness, plus interest through the date of payment
    - CARES ACT § 1106(c)(3)
  - Within 15 days for advance purchases.
    - CARES ACT § 1106(c)(4)

# MAXIMUM LOAN AMOUNT

## SBA § 7(a)(36)(E)

- A. General Rule: “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” times 2.5
- Must reconcile “payments” and “incurred”
  - Difficult to compute cap if payroll costs are changing right before loan taken out
  - Loan forgiveness based upon eight weeks (56 days, roughly two months), not 2.5 months (roughly 76 days)
- B. Special Rule for seasonal employers
1. February 15, 2019 through May 9, 2019
  2. March, April, May and June, 2019
- C. Special Rule for new employers not in business until after June 30, 2019: January and February, 2020
- Note, however, that, in “evaluating the eligibility of a borrower for a covered loan . . . a lender shall consider whether the borrower . . . was in operation on February 15, 2020”
- D. Overall Cap: \$10 million

# ALLOWABLE USES

## SBA § 7(a)(36)(F)(i)

- A. “payroll costs”
- B. “costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums”
  - Isn’t this included in “payroll costs”? (SBA § 7(a)(36)(A)(viii)(II)(dd) and (ee) only exclude “qualified sick leave **wages**” and “qualified family leave **wages**”)
- C. “employee salaries, commissions, or similar compensation”
  - Is this just intended to pick up compensation in excess of \$100,000?
- D. “payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation)”
  - “covered mortgage obligation” is defined in the loan forgiveness provisions as “any indebtedness or debt instrument incurred in the ordinary course of business that – (A) is a liability of the borrower; (B) is [secured by] a mortgage on real **or personal** property; and (C) was **incurred before February 15, 2020** [CARES ACT § 1106(a)(2)]
- E. “rent (including rent under a lease agreement)”
- F. “utilities”
- G. “interest on any **other** debt obligations that were incurred before the covered period,” i.e., before February 15, 2020
  - So it is only interest on debt obligations that were incurred on or after February 15, 2020 and are not “mortgage obligations” that is not “allowable”
- H. “allowable uses of the loan made under this [SBA] subsection [7(a)]”

# LOAN TERMS

1. “Except as otherwise provided in this paragraph [SBA § 7(a)(36)], the [Small Business Administration] may guarantee covered loans under the same terms, conditions, and processes as a loan made under this subsection [(a)].”
  - SBA § 7(a)(36)(B)
2. No “recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under clause (i) [allowable uses]”
  - SBA § 7(a)(36)(F)(v)
  - Apparently, **entity** shareholders, members and partners could be fair game
  - Presumably, individual shareholders, members and partners could be personally liable, but only if “such shareholder, member, or partner uses the covered loan proceeds” himself or herself for an unallowable use?
3. No fees under paragraphs (18)(A) or (23)(A)
  - SBA § 7(a)(36)(H)
4. No requirement that the borrower “is unable to obtain credit elsewhere”
  - SBA § 7(a)(36)(I)
5. No personal guarantee
  - SBA § 7(a)(36)(J)(i)
6. No collateral
  - SBA § 7(a)(36)(J)(ii)
7. Maximum maturity for unforgiven portion: 10 years after application for loan forgiveness
  - SBA § 7(a)(36)(K)(ii)
  - What happens if the borrower never applies for loan forgiveness?
8. Maximum interest rate: 4% for entire period loan is outstanding
  - SBA § 7(a)(36)(L)
9. Deferment of principal, interest and fees for not less than six months and not more than one year for loans to eligible recipients approved on or after date of enactment
  - SBA § 7(a)(36)(M)(i)
10. No prepayment penalty
  - SBA § 7(a)(36)(R)

# CERTIFICATION

## SBA § 7(a)(36)(G)(i)

“An eligible recipient applying for a covered loan shall make a good faith certification-

- i. that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;*
- ii. acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- iii. that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
- iv. during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.”

# LOAN FORGIVENESS TERMS

## CARES ACT § 1106(a)

- “covered mortgage obligation” -- “any indebtedness or debt instrument [obligation] incurred in the ordinary course of business that – (A) is a liability of the borrower; (B) is [an obligation secured by] a mortgage on real *or personal* property; and (C) was *incurred before February 15, 2020*”
- “covered period” – “*8-week period* beginning on the date of the origination of the covered loan”
- “covered rent obligation” – “rent obligated under a leasing agreement *in force before February 15, 2020*”
- “covered utility payment” – “payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which *service began before February 15, 2020*”
  - Switching carriers not make a difference? How about locations?
  - Reference to “payment” versus “obligation” seems intended to reflect the fact that there is no obligation on February 15, 2020

# ALLOWABLE vs. FORGIVABLE AMOUNTS

## Allowable Amounts [See Slide 9]

- “Payroll Costs”
- Paid Sick, Medical or Family Leave Group Health Care Benefits
- “Employee Salaries, Commissions, or Similar Compensation”
- Mortgage Obligation Interest
- “Rent (Including Rent Under A Lease Agreement)”
- “Utilities”
- Other Obligation Interest
- Other Allowable SBA Uses

## Forgivable Amounts\* [CARES ACT §1106(b)\*\*]

- “Payroll Costs”\*\*\*
- Capped at \$100,000 per Employee?
- Capped at \$100,000 per Employee
- “Covered Mortgage Obligation” Interest
- “Covered Rent Obligation”
- “Covered Utility Payments”
- Not Forgivable
- Not Forgivable

\* Limited to the principal amount of the covered loan

- CARES ACT § 1106(d)(1)

\*\* “An eligible recipient shall be eligible for forgiveness of indebtedness on the covered loan in an amount equal to the sum of the following costs **incurred** and **payments made** during covered period”

- Do both the “costs” have to be “incurred” and the “payments” have to be “made” “during the covered period”?

\*\*\* Should included additional wages paid to tipped employees

- CARES ACT § 1106(d)(4)



# REDUCTION IN WORK FORCE CARES ACT § 1106(d)(2)

NUMERATOR: “average number of full-time equivalent employees\* per month” during the 8-week covered period commencing on the origination date for the covered loan

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DENOMINATOR: “average number of full-time equivalent employees per month” during one of the following periods selected by the borrower

- 4.5 month period from February 15, 2019 through June 30, 2019\*\*
- 2 month period from January 1, 2020 through February 29, 2020

\*Based upon “average number of full-time equivalent employees for each pay period falling within a month”

\*\*It looks like seasonal employees must use this 4.5 month period

# REDUCTION IN SALARY/WAGES

## CARES ACT § 1106(d)(3)

Dollar-for-dollar reduction for “the amount of any reduction in total **salary or wages** of any **employee described in subparagraph (B) during** the covered period that is in excess of 25 percent of the **total** salary or wages of the employee during the **most recent full quarter** during which the employee was employed before the covered period”

- “salary or wages” – Apparently, reductions in fringe benefits don’t count
- “employee” – Presumably excludes employees who quit or were laid off
- “described in subparagraph (B)” – “employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000”
  - All employees who didn’t work during calendar year 2019 count, including those hired in calendar year 2020 at an “annualized rate of pay” greater than \$100,000
  - Employees making over \$100,000 during calendar year 2019 don’t count; you could reduce their pay to \$0
  - Lower-paid employees who received a bonus during “any single pay period” triggering an “annualized rate of pay” over \$100,000 don’t count
- “during” – This can’t mean that you can avoid this provision simply by making the reduction “before the covered period.” This most likely was intended to refer to a reduction “from” the comparison period.
  - Apparently, reductions in pay both before and after the “covered period” should have no impact
- “total” – Does this really mean that this provision triggers when there is a reduction in “total salary or wages” during the covered period (an 8-week period) from the “total salary or wages” during the most recent full quarter (a 13-week period)? If the rate of pay stays the same, the “total” would be reduced by 38.46%, not 25%. This probably was intended to refer to a 25% reduction in something like the “average weekly rate of pay,” rather than the “total” for these two unequal periods
- “most recent full quarter” – Presumably, this will be the calendar quarter ending March 31, 2020
  - Does the employee have to have worked for that entire “full quarter”?
  - If not, watch out for an employee that was hired at a rate in excess of \$100,000 whose “salary or wages” are being reduced
  - Can an employee hired after March 31, 2020 be ignored?

# CURING REDUCTIONS IN LOAN FORGIVENESS AMOUNT

A reduction in workforce during the period February 15, 2020 through April 26, 2020 will be ignored if “not later than June 30, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees”

- CARES ACT § 1106(d)(5)(A), (B)(i)
- Reductions in workforce prior to February 15, 2020 can't be cured, though the employer may elect the January/February, 2020 base period, which could help.
- Does hiring somebody on June 30, 2020 do the trick?
- Does firing them on July 1, 2020 create a problem?
- Presumably, the rehires don't need to be the same people

A reduction in salary/wages during the period February 15, 2020 through April 26, 2020 will be ignored if “not later than June 30, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees”

- CARES ACT § 1106(d)(5)(A), (B)(ii)
- Reductions in salary/wages prior to February 15, 2020 can't be cured, but the base period is January/February/March, 2020 to begin with
- Does the employer have to increase the salary/wages all the way back to the prior reduction? Or just for the covered period?
- It looks like increased salary/wages must go to “such employees”
- It is unclear, but it looks like salary/wage reductions can be cured for some employees, and not others

# APPLICATION PROCESS

## CARES ACT § 1106(e), (f)

“An eligible recipient seeking loan forgiveness under this section shall submit to the lender that is serving the covered loan an application, which shall include –

- (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including –
  - (A) payroll tax filings reported to the Internal Revenue Service; and
  - (B) State income, payroll, and unemployment insurance filings;
- (2) documentation, including cancelled checks, payments receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- (3) a certification from a representative of the eligible recipient authorized to make such certifications that –**
  - **(A) the documentation presented is true and correct; and**
  - **(B) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and**
- (4) any other documentation the Administrator determines necessary.”

Decisions are to be made within 60 days of receipt of the application

- CARES ACT § 1106(g)

# INCOME EXCLUSION

## CARES ACT § 1106(i)

“For purposes of the Internal Revenue Code of 1986, any amount which (but for this subsection) would be includible in gross income of the eligible recipient by reason of forgiveness described in subsection (b) shall be excluded from gross income.”

- Are the expenses that the loan proceeds were used to pay still deductible?

# **REGULATIONS**

## **CARES ACT § 1106(k)**

“Not later than 30 days after the date of enactment of this Act, the Administrator shall issue guidance and regulations implementing this section.”

# Public Policy Response to COVID-19

**Tom Nichols & Brian Reardon**

Monday, March 30<sup>th</sup> 4pm ET