

# Business Planning and Borrowing Options for Medical Practices in the COVID-19 World

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PALEY  
ROTHMAN

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# A PRESENTATION FOR THE MONTGOMERY COUNTY MEDICAL SOCIETY



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# *The CARES Act*

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT OVERVIEW

- Signed into law on March 27, 2020
- Initially a \$2.2 trillion stimulus bill
  - the largest spending bill in US history
  - Phase Three
- Intended to help shore up the economy and provide relief for businesses and individuals

# CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT OVERVIEW

- Primary Objectives:
  - Keep workers paid and employed
  - Expand unemployment
  - Expand paid leave and sick leave
  - Provide tax relief to individuals and businesses
  - Bolster America's health care system
  - Provide for testing and care for COVID-19 patients

# *The Paycheck Protection Program*

# PAYCHECK PROTECTION PROGRAM (PPP) - OVERVIEW

- Initially \$349 billion
  - To be distributed through SBA 7(a) loan program
  - Applications through SBA approved banks
- Maximum loan = \$10 million or 2.5 average monthly “payroll costs” – whichever is less
- Open until June 30, 2020
  - Funding ran out as of April 16, 2020
  - About 13 days after SBA started accepting applications

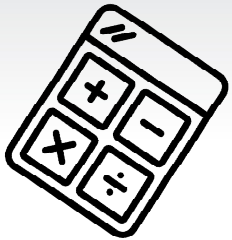


# PAYCHECK PROTECTION PROGRAM (PPP) – ELIGIBILITY

- Who may qualify for a PPP loan?
  - Businesses that:
    - were in operation as of February 15, 2020, and
    - have 500 or fewer employees
      - special rules apply for hotel and restaurant franchises
      - Affiliation rules apply for companies with common ownership
  - Sole proprietors, independent contractors and eligible self employed individuals

# PAYCHECK PROTECTION PROGRAM (PPP) – AN EXAMPLE

How to Calculate Monthly Payroll Costs (Simple Example):



**AVERAGE  
MONTHLY  
PAYROLL  
COSTS**

=

sum of **wages and benefits**,  
including health insurance,  
dental insurance, other  
allowable payroll costs,  
state unemployment taxes,  
and all matched pensions

–

renumeration for  
any employee in  
excess of \$100,000

× 2.5

## PAYCHECK PROTECTION PROGRAM (PPP) – “PAYROLL COSTS” AND USE OF PROCEEDS

- Payroll Costs include the sum of payments of any compensation with respect to employees that is:
  - salary, wages, commission, or similar compensation
  - guaranteed payments or profit distributions
  - vacation, parental, family, medical, or sick leave
  - allowance for dismissal or separation
  - required for provision of group health care benefits, including insurance premiums
  - retirement benefits
  - state unemployment tax on employee compensation

## PAYCHECK PROTECTION PROGRAM (PPP) – “PAYROLL COSTS” AND USE OF PROCEEDS

- In addition to Payroll Costs, a PPP loan calculation should include, and can be used to cover:
  - Business rent
  - Business mortgage interest
  - Interest payments on debt incurred before February 15, 2020
  - Refinancing of an SBA Economic Injury Disaster Loan (EIDL) taken between January 31 and April 3, 2020

## PAYCHECK PROTECTION PROGRAM (PPP) – “PAYROLL COST” EXCLUSIONS

- “Payroll Costs” do not include:
  - Compensation to an individual employee over \$100k (prorated for the 8 week period)
  - Payroll taxes and income tax withholdings from February 15, 2020 through June 30, 2020
  - Compensation to an employee whose principal place of residence is outside the US
  - Wages paid to employee taking qualified sick or family leave for which a refundable tax credit is available under the Families First Coronavirus Response Act

# PAYCHECK PROTECTION PROGRAM (PPP) – IMPORTANT CONSIDERATIONS

- Businesses need to demonstrate that “current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.”
- Will need to provide a good faith certification that the loan funds are used to retain workers and maintain payroll or make mortgage interest, lease payments, and utility payments.
- No more than 25% of the loan funds will be used for non-payroll costs.

## PAYCHECK PROTECTION PROGRAM (PPP) – IMPORTANT CONSIDERATIONS

- Loan payments will be deferred for six months.
- No collateral or personal guarantees are required.
- Loan maturity of two years and an interest rate of one percent.

# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS

- A PPP borrower is eligible for loan forgiveness equal to the amount the borrower spent on the following during the eight-week period beginning on date of origination of loan (“Covered Period”):
  - Payroll costs (**at least 75%** used for payroll and using same definition of payroll costs used to determine loan eligibility).
  - Interest on mortgage obligation incurred in ordinary course of business and originated prior to February 15, 2020.
  - Rent on a leasing agreement that originated prior to February 15, 2020.
  - Payments on utilities, such as electricity, gas, water, transportation, telephone, and Internet.



## PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS

- Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020
- Loan forgiveness cannot exceed principal of PPP loan.
- Amount of PPP loan forgiven will not be considered income to the business.

# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS: REDUCTIONS TO FORGIVABLE AMOUNT

- The amount eligible for loan forgiveness will be reduced proportionately if:
  - The business reduces the average number of full-time equivalent employees that it employs

AND/OR

- The business reduces the wages or salaries of employees making less than \$100k per year by more than 25% during the Covered Period - compared to the employee's salary or wages during the most recent full quarter before the Covered Period

# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS

## Test 1: What if Business Brings Back Employees or Restores Wages

- Full loan forgiveness if:
  - 100% of loan proceeds are used within 8 weeks of the loan origination date (at least 75% on payroll)
  - The borrower restores their full-time equivalent (FTE) head count and wages to February 15, 2020 level by June 30, 2020

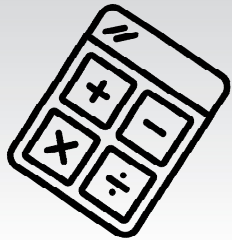


# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS

## Test 2: How Forgiveness Could Be Reduced (Review)

- If business fails Test 1, the amount of loan forgiveness can be reduced if there was a reduction in 1) the number of employees or 2) of more than 25% of the wages paid to employees.
- The reduction can be calculated based on the **higher** of:
  - Of number of employees OR
  - In salaries.

# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS: CALCULATING EMPLOYEE-BASED REDUCTIONS



Average number of full-time equivalents (FTEs) per month for the eight weeks beginning on loan origination



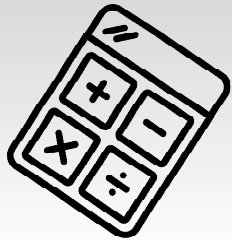
## Option 1:

Average number of FTEs per month from Feb. 15, 2019 to June 30, 2019

## Option 2:

Average number of FTEs per month from Jan. 1, 2020 to Feb. 29, 2020

# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS: CALCULATING SALARY-BASED REDUCTIONS



PAYROLL COSTS



The amount of any reduction in wages (for employees making less than \$100,000) that is greater than 25% compared to their most recent full quarter prior to the “Covered Period” of the loan

## PAYCHECK PROTECTION PROGRAM (PPP) – BEST PRACTICES: LOAN TRACKING

- Best practices / recommendations re: PPP loan proceeds:
  - Keep PPP loan proceeds segregated (e.g., separate bank account)
  - Track usage of PPP loan proceeds carefully (e.g., journal or account ledger)
  - Maintain appropriate documentation (payroll records, receipts, etc.)

## PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS: DOCUMENTATION

- Documents to confirm number of full-time equivalent employees on February 15, 2020 and June 30, 2020
- Proof of where the PPP loan funds went during the Covered Period:
  - Payroll records following the loan origination date (e.g. payroll tax filings, payroll summary reports)
  - Proof of payments for rent, utilities, mortgage obligations (e.g. canceled checks, invoices)
- Borrower must attest that it has accurately verified the payments were for forgivable costs



# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS – TAX IMPLICATIONS

- What we know:
  - Any loan forgiveness is non-taxable at the federal level
- What we don't know:
  - Can you deduct expenses that are covered by forgiven loan proceeds?
  - Is the loan forgiveness non-taxable at the state level too?

# *The CARES Act - Interim Funding (Phase 3.5)*

## THE CARES ACT – PHASE 3.5

- PPP and Health Care Enhancement Act
  - Signed by President Trump on April 24th
- Additional funding for CARES Act - \$484 billion more!
  - \$320 billion added to the PPP
    - **\$60 billion reserved for PPP loans by small banks**
  - \$10 billion added to emerg. Economic Injury Disaster Loans
  - \$50 billion added to SBA Disaster Relief Fund
  - \$75 billion to Public Health and Social Services Emergency Fund (mostly hospitals)
  - \$25 billion to coronavirus testing (R&D, administration, etc.)

## THE CARES ACT – PHASE 3.5 (CONT.)

- Practical Note:
  - SBA resumed accepting PPP applications on April 27, 2020 at 10:30 AM.
  - If you did not submit application earlier, or if original application was not granted:
    - call your bank immediately to discuss next steps;
    - call your accountant about helping to do calculations
  - Remember: Applicants need to certify that current economic uncertainty makes loan necessary to support ongoing business operations

# *The Families First Coronavirus Response Act*

# FEDERAL FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA)

- Effective through December 31, 2020
- Addresses leave benefits in two ways:
  1. Emergency Family and Medical Leave Expansion Act (EFMLEA)
  2. New Federal Paid Sick Leave Law (PSLL)

## EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA)

- Covers employers with 500 or fewer employees
- Employee must be employed for 30 days to be eligible
- Applies when employee needs leave for the following **COVID-19 reasons**:
  - ONLY applies to school or child-care closure
- Employee entitled to 12 weeks of leave
  - First 10 days may consist of unpaid leave (subject to other leave benefits that employee may elect to use)
  - Then, employee must be paid at 2/3 the employee's regular pay rate - up to \$200 per day/per employee (\$10,000 aggregate/per employee)

## EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (EFMLEA) (CONT.)

- If fewer than 50 employees can apply for exemption
  - Standard: Jeopardizes viability of business as a going concern
- Reinstatement exception if fewer than 25 employees
  - FMLA leave generally requires employers to reinstate employees in the same job or an equivalent position when they return to work, but there is an exception for employers with fewer than 25 employees if the position no longer exists due to economic conditions or operational changes that are made because of the public health emergency



## NEW FEDERAL PAID SICK LEAVE LAW (PSLL)

- Covers employers with 500 or fewer employees
- Employee is covered from the first day of hire
- 80 hours (*pro rata* for part-time) paid sick leave when employee:
  1. is subject to Federal, State, or local quarantine/isolation order related to COVID-19;
  2. has been advised by a health care provider to self-quarantine related to COVID-19;
  3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  4. is caring for an individual subject to an order described in #1, above, or self-quarantine as described in #2, above;
  5. is caring for a child whose school or place of care is closed (or child care provider is unavailable) for reasons related to COVID-19; or
  6. is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury

## NEW FEDERAL PAID SICK LEAVE LAW (PSLL) (CONT.)

- Caps on paid leave
  - For numbers 1, 2, 3 and 6 (on previous slide)
    - \$511 per day/per employee (\$5,110 per employee)
  - For numbers 4 and 5 (on previous slide)
    - \$200 per day/per employee (\$2,000 per employee)
- Employers with fewer than 50 employees can apply for an exemption, but only for number 5 (on the previous slide)
  - Standard: Jeopardizes the viability of the business as a going concern

# HEALTH CARE WORKER EXCLUSION UNDER FFCRA

- Health Care Workers Can be Excluded:
  - Allows the Secretary of Labor to exclude health care providers and emergency responders from the definition of employees who are allowed to take leave.
- Secretary of Labor's Definition of "health care provider":
  - Very broad – Includes anyone employed at any doctor's office, hospital, health care center, clinic, post-secondary educational institution offering health care instruction, medical school, local health department or agency, nursing facility, retirement facility, nursing home, home health care providers, and facility that performs laboratory or medical testing, pharmacy, or similar institution, employer, or entity.

# FFCRA EMPLOYER TAX CREDITS

- For employers with fewer than 500 employees (includes tax-exempt organizations)
- Applies to “qualified family leave wages” under FFCRA
- Dollar-for-dollar credit: Equal to 100% of those leave wages – subject to the daily/aggregate limits noted above
- Under both EFMLEA and PSLL, eligible employers are entitled to additional tax credit based on costs to maintain health insurance coverage for eligible employees during leave period
- Can be claimed quarterly against employer’s payroll taxes. If allowable credit exceeds payroll tax liability, the difference can be treated as an overpayment
- Guidance to be released within the next week

## FFCRA EMPLOYER TAX CREDITS (CONT.)

- Employer can retain an amount of payroll taxes equal to the amount of qualifying sick or child care leave instead of depositing them with quarterly payroll tax deposits
- Withhold from quarterly payroll taxes when filing Form 941
- Payroll taxes eligible for retention include:
  - Federal income taxes
  - Employee share of Social Security and Medicare taxes
  - Employer share of Social Security and Medicare taxes with respect to all employees
- If there are insufficient payroll taxes to cover the costs of qualified leave paid, employer can file a request for an accelerated payment form with the IRS

## FFCRA EMPLOYER TAX CREDITS (CONT.)

- For each quarter, the employer should calculate:
  - its payroll tax liability
  - the aggregate amount of qualified sick leave wages and qualified family leave wages paid to covered employees
  - maximum credit allowed for wages paid to all covered employees
    - while this is a 100 percent credit, it is 100 percent of the maximum benefit amount as set forth in the Act for each type of paid leave
  - the aggregate amount of qualified health plan expenses
- The sum of the wages paid, plus the amount of employer-paid health insurance premiums and expenses, is the credit amount for the relevant quarter.
- Employers should apply the credit against its payroll tax liability for that quarter. The excess (if any) will be treated as an overpayment and paid to the employer as a refund.

# *Other Loan Options And Help*

# EMPLOYEE RETENTION CREDIT

- Only available to businesses that are not getting a forgivable PPP loan
- For any business that has had to fully or partially suspend operations due to a COVID-19 order OR experienced more than a 50% reduction in gross receipts
- Refundable tax credit against employer payroll tax
  - 50% of the first \$10,000 of wages paid between March 13, 2020 and December 31, 2020
  - Max credit = \$5,000 per employee



## EMPLOYEE RETENTION CREDIT (CONT.)

- If the business has more than 100 employees:
  - only wages or health plan expenses for employees who are not working (in person or remotely) due to COVID-19 eligible for credit
- If the business has 100 or fewer employees:
  - all wages and health expenses will count (regardless of whether the employee is working)
- Wages paid for employees on FFCRA covered leave (for which the employer is already eligible for a payroll tax credit) are excluded from the credit calculation

## ECONOMIC INJURY DISASTER LOAN (EIDL)

- Administered by the SBA
- Loans to businesses suffering an economic disaster
  - right now that is everyone thanks to COVID-19
- Available to businesses with fewer than 500 employees
  - Includes sole proprietorships, independent contractors, and self-employed persons
- Maximum loan amount is \$2 Million
  - The CARES Act permits emergency advance funds (\$10,000) are available within days of successful application

## ECONOMIC INJURY DISASTER LOAN (EIDL) (CONT.)

- To receive emergency advance must qualify as “small business concern”
  - based on revenue and number of employees
- Emergency advance does not need to be repaid, but will reduce PPP
- Repayment deferred for six months
- EIDL taken because of the coronavirus can be refinanced with a PPP loan ... but forgiveness is subject to PPP requirements
- Lapse in appropriations, so no new application are being accepted at this time.

# MONTGOMERY COUNTY PUBLIC HEALTH EMERGENCY GRANT (PHEG) PROGRAM

- Open to Montgomery County-based businesses
  - with 100 or fewer full-time equivalent employees
  - suffered adjusted revenue loss of 50% or more for public health emergency period
  - priority for restaurants and retail storefront businesses
- Available to independent contractors and sole proprietors
- Up to \$75,000 grant
- Funds are limited (\$10 Million)
  - *Application window closed at 5:00 PM on April 25, 2020*
- County encouraging businesses to look elsewhere

# PAYCHECK PROTECTION PROGRAM (PPP) – LOAN FORGIVENESS – TAX IMPLICATIONS

- You can delay paying 2020 payroll taxes:
  - Pay 50% by December 31, 2021
  - Pay 50% by December 31, 2022
- Net Operating Loss (NOL) Carryback
  - C-Corporations or individuals that incur(ed) losses in 2018, 2019 or 2020 can carry back the losses up to five years from the year the NOL was generated.
- 100% Bonus Depreciation of Qualified Improvement Property
  - If an interior buildout was conducted and placed in service in 2018 or 2019 – 100% tax deduction
  - Tax incentive is valid through December 31, 2022

## ACCELERATED AND ADVANCE PAYMENT PROGRAM

- CMS expanded Accelerated and Advance Payment Program
- Continues through current public health emergency
- CMS will advance three months of Medicare payments
- Essentially a “free” loan
- Quick turn-around – seven days
- Reconciliation and repayment will not begin until 210 days after the date of the accelerated and advance payment
- Reconciliation is through offset from new claims submitted after the 210 day advance period.

## ACCELERATED AND ADVANCE PAYMENT PROGRAM (CONT.)

- To qualify for accelerated and advance payment, provider must:
  - have billed Medicare for claims in the prior 180 days;
  - not be in bankruptcy proceedings;
  - not be under medical review or program investigation; and
  - not have any outstanding delinquent Medicare overpayments.
- Application for program is available through provider's Medicare Administrative Contractor

# CARES ACT PROVIDER RELIEF FUND

- Automatic deposits from HHS
- Approximately 6.2% of total payments made in 2019
  - \$50 Billion total
  - \$30 Billion distributed as of April 24, 2020
    - Initial amount was based on 2019 Medicare fee-for-service reimbursements
- Provider's share is based on 2018 net patient revenue
  - If provider did not have adequate cost report data, still can submit revenue information to HHS
- Initial payments were distributed on April 10 and April 17



## CARES ACT PROVIDER RELIEF FUND (CONT.)

- “Acceptance” of deposits requires providers to:
  - agree to comprehensive Terms and Conditions; and
  - sign an attestation confirming receipt of funds.
- Terms and Conditions require:
  - certification that provider “provides or provided ... diagnoses, testing, or care for individuals with possible or actual cases of COVID-19”
    - services do not need to be specific to COVID-19;
    - “HHS views every patient as a possible case of COVID-19.”

## CARES ACT PROVIDER RELIEF FUND (CONT.)

- Terms and Conditions require (cont.):
  - certification that funds “will only be used to prevent, prepare for, and respond to coronavirus, and ... shall reimburse ... only for health care related expenses or lost revenues ... attributable to coronavirus.”
  - certification it will not use funds to reimburse expenses or losses reimbursed from some other source (e.g., PPP)
  - agreement not to seek out-of-pocket payments from actual or presumptive COVID-19 patients that is greater than patient would have been required to pay to in-network provider

## CARES ACT PROVIDER RELIEF FUND (CONT.)

- Terms and Conditions require (cont.):
  - restrictions on use of funds (e.g., lobbying, abortions)
  - meticulous accounting
  - quarterly reporting
- If terms and conditions are met, payments do not need to be repaid
- Practical Note: Use these funds last, if possible
- Significant dollars were included in appropriation to prevent fraud and abuse

# STATE GRANT PROGRAMS

- Visit <https://reliefwizard.net/>
- **Maryland Emergency Support Programs**  
*Programs in **RED** are currently not accepting applications*
  - Small Business Emergency Relief Loan
  - Small Business Emergency Relief Grant
  - Manufacturing Emergency Relief Fund
  - MARBIDCO Pandemic Adjustment Loan Fund Program
  - MSAC Emergency Grant
  - Layoff Aversion Fund
  - Department of Labor Work Sharing

# *Telehealth - Another Revenue Stream*

## TELEHEALTH (FEDERAL)

- CARES Act includes measures to increase telehealth use
- Provides waivers of certain Medicare and Medicaid reqs.
- Telehealth Requirements Pre-COVID-19
  - Patient must be at eligible “originating site” facility
  - Patient must be in rural health professional shortage area
    - Unless exception exists
  - Service must be on list of “Medicare telehealth services”
  - Service must be rendered by approved type of provider
  - Service must be furnished through synchronous audio and video

## TELEHEALTH (FEDERAL)

- Telehealth Requirements DURING Public Health Emerg.
  - Deletes eligible originating site requirement
    - Patient can be anywhere – even at home
  - Deletes rural health professional shortage area requirement
  - Adds 80 additional services to list of “Medicare telehealth services”
  - Permits consults by telephone for certain services where audio-video communication is not possible
  - Relaxes same state licensure requirement
  - Relaxes pre-existing provider/patient relationship req.

## TELEHEALTH (STATE)

- Maryland also has relaxed telehealth rules
  - Allows telephone-only service for most consultations
    - Not PT, OT, speech language services
    - Don't use public-facing apps like Facebook Live
  - Providers must:
    - explain telehealth service and privacy/security issues
    - obtain patient consent for telehealth and note consent in patient's medical record
  - Maryland still requires Maryland license and that patient and provider be located in Maryland
  - Scope of practice requirements still in place



# *What Our Clients Are Asking??*

## Q&amp;A

Can we still get a PPP loan if we have reduced pay or furloughed or terminated employees to make ends meet?

## Q&amp;A

If we have reduced compensation to make ends meet, can we use our PPP loan to "catch-up" our employees to where they should have been?

## Q&amp;A

Do we get “credit” for keeping our employment roles and wages consistent prior to the period when we get the loan?

## Q&amp;A

How do the PPP loans work if we have a number of employees making over \$100k?

## Q&amp;A

What if we have workers who voluntarily resign – will that impact our loan forgiveness?

## Q&amp;A

If my PPP loan application hasn't been accepted, can I reapply?

## Q&amp;A

How does the PPP loan application work if I'm self-employed and do not have any employees?



## Q&amp;A

How would the loan forgiveness be calculated if I'm self-employed with no other employees?

## Q&amp;A

I received my PPP loan!  
What do I do next?

## Q&amp;A

What is the interplay between the PPP loans and the EIDL loans?

## Q&amp;A

Can I prepay six month of rent during the eight week coverage period and then use that to qualify for PPP loan forgiveness?

## Q&amp;A

What happens if I don't spend at least 75% of the PPP loan proceeds on payroll costs?

## Q&amp;A

If the PPP loan is forgiven, do I still have to pay accrued interest?

## Q&amp;A

# How does the CARES Act expand unemployment?

*Thank You!!*



PLEASE DON'T HESITATE TO  
CONTACT US WITH QUESTIONS!



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