



The CARES Act: Accessing Financial Support and Understanding Employment Rules

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Agenda

- Paycheck Protection Program
 - Eligibility
 - Maximum loan amount
 - Forgiveness
- *Families First Coronavirus Response Act*
 - Paid Emergency Sick Leave Act
 - Emergency Family and Medical Leave Expansion Act
- The CARES Act and Higher Education
 - Education Stabilization Fund
 - Other relevant provisions

Federal Coronavirus Legislation

- *Families First Coronavirus Response Act*
 - Enacted March 18, 2020
 - Primarily focused on providing additional paid leave to employees
- *Coronavirus Aid, Relief, and Economic Security Act (CARES Act)*
 - Enacted March 27, 2020
 - Broad stimulus bill creates Paycheck Protection Program and Education Stabilization Fund

Paycheck Protection Program (PPP)

- Expansion of existing Small Business Administration (SBA) loan program
- Congress appropriated \$349 billion to this program
- Treasury Secretary Mnuchin has reportedly requested Congress appropriate an addition \$250 billion
- Permissible uses of funds include:
 - Payroll costs
 - Mortgage or rent payments (on obligations prior to February 15, 2020)
 - Utilities
 - Interest on other debts incurred prior to February 15, 2020

Paycheck Protection Program: Eligibility

- “Small business concerns” are eligible for Paycheck Protection Program loans
- Definition of “small business concern” includes:
 - Businesses with 500 employees or fewer
 - Businesses who meet size-standard published by SBA
- Definition of “employee” includes *all* full-time and part-time employees
 - Includes work-study employees
- No requirement that borrower is unable to obtain credit elsewhere

Paycheck Protection Program: Maximum Loan Amount

- Maximum loan amount of lesser of:
 - \$10,000,000; or
 - 2.5 times average monthly “payroll costs” incurred in 12 months before date of loan.
 - “Seasonal employers” may use 12-week period beginning February 15, 2019, or March 1, 2019 to determine average.
 - Employers not in business on February 15, 2019, may use period from January 1, 2020, to February 29, 2020, to determine average.
- Refinance outstanding amount Economic Impact Disaster Loan made after January 31, 2020, into PPP loan

Paycheck Protection Program: Payroll costs

- Definition of “payroll costs” includes:
 - Employee wages, salary, compensation
 - Paid vacation, parental, family, medical, or sick leave
 - “Allowance” for dismissal or severance
 - Retirement benefits
 - Payment for group health benefits, including insurance premiums
 - State and local taxes
- Expressly excluded from definition of “payroll costs”:
 - Compensation of an employee above \$100,000, annualized
 - Compensation for employees whose primary residence is outside United States
 - Paid leave under *Families First Coronavirus Response Act*
 - Payroll taxes and federal withholdings

Paycheck Protection Program: Forgiveness

- Borrowers shall be entitled to forgiveness for the following costs incurred, and paid, in the eight weeks following the date of loan:
 - Payroll costs (excluding pay to an employee above \$100,000, annualized)
 - Interest on mortgage payments (mortgage must predate Feb. 15, 2020)
 - Rent payments (lease must predate Feb. 15, 2020)
 - Utility payments for service established before Feb. 15, 2020
- No more than 25% of forgiveness amount may be attributable to non-payroll costs

Paycheck Protection Program: Forgiveness Limitations

- Amount of loan forgiveness shall reduced by:
 - Proportion of the number of “full-time equivalent” employees per month in the eight weeks following date of loan as compared to, at borrower’s election, number of average monthly “full-time equivalent” employees from:
 - February 15, 2019, to June 30, 2019, or
 - January 1, 2020, to February 29, 2020.
 - Reduction of wages of any employee in eight weeks following date of loan by more than 25% as compared to last full quarter preceding date of loan
 - Does not apply to employees earning more than \$100,000 annually

Paycheck Protection Program: Other notable provisions

- Automatic 6-month deferment
- Term of 2 years
- Interest rate of 1%
- Amounts forgiven does not count as discharge of indebtedness income
- No personal guarantee or security; no recourse against owner, shareholder, or partner
 - Personal recourse, and criminal liability, may exist if funds are not used for permissible uses

Families First Coronavirus Response Act

- First federal legislation addressing employment concerns regarding coronavirus
- Contains two programs that provides paid leave to employees:
 - Paid Emergency Sick Leave Act
 - Emergency Family and Medical Leave Expansion Act
 - Both expire on December 31, 2020
- Provides payroll tax credit for amounts paid by employers under these programs

Paid Emergency Sick Leave Act

- Applies to employers with fewer than 500 employees
 - Exceptions for health care providers and emergency responders
 - Exception for employers with fewer than 50 employees
- Provides up to 80 hours of paid emergency sick leave for employees are unable to work **or telework** because they are:
 - Quarantined after diagnosis with coronavirus or upon recommendation of a doctor or public health official;
 - Experiencing COVID-19 symptoms and are seeking diagnosis; or
 - Providing care to a family member who quarantined due to coronavirus, or caring for a child whose school or child care provider is closed or otherwise unavailable due to coronavirus.

Paid Emergency Sick Leave Act

- Employees are entitled emergency paid sick leave in the amount of the average number of hours worked in 2 weeks, not to exceed 80 hours total
 - Employees whose schedule varies, may use 6-month average to determine amount of leave
- Rate of pay:
 - Employees taking leave for their own quarantine or coronavirus symptoms are entitled for their **full rate of pay**, not to exceed \$511 per day and \$5,110 in aggregate
 - Employees taking leave to care for a family member or for child care reasons, are entitled to **two-thirds** regular rate of pay, not to exceed \$200 per day and \$2,000 in aggregate

Emergency Family and Medical Leave Expansion Act

- Applies to employers with fewer than 500 employees
 - Exceptions for health care providers and emergency responders
 - Exception for employers with fewer than 50 employees
- Employee must have worked for employer for 30 calendar days to be eligible
- Only available to employees who are unable to work **or telework** due to closure of school or daycare

Emergency Family and Medical Leave Expansion Act

- Eligible employees are entitled to up to 12 weeks of paid public health emergency FMLA leave
- First 10 days is unpaid, remaining 10 weeks is paid at **two-thirds** regular rate of pay, not to exceed \$200 per day and \$10,000 in aggregate
 - Employer may require employee use vacation or other accrued time, but must pay full pay
- Emergency Paid Sick Leave, or other accrued vacation time may be used for first 10 days
- Employees are only entitled to 12 weeks total of traditional FMLA and emergency paid FMLA during 12 month period

Education Stabilization Fund

- The CARES Act appropriates \$30.75 billion to the Education Stabilization Fund.
- The Fund is allocated in three distinct categories:
 - Higher Education Emergency Relief Fund: \$13.953 billion (appx.)
 - Elementary and Secondary School Emergency Relief Fund: \$13.229 (appx.)
 - Governor's Emergency Education Relief Fund: \$2.953 billion (appx.)

Education Stabilization Fund

- Elementary and Secondary School Emergency Relief Fund
 - Available only to elementary and secondary schools
- Governor's Emergency Education Relief Fund: \$2.953 billion (appx.)
 - To be distributed in discretion of state governors
 - Institutions of higher education **are** eligible
 - Funds must be allocated by governors within one year, or will be returned to federal government

Higher Education Emergency Relief Fund

- \$13.953 billion fund further divided as follows:
 - 90% (appx. 12.558) to be disbursed directly to Institutions of Higher Education through Title IV system
 - 75% of this amount will be apportioned based on on-campus, full-time Pell Grant recipients
 - 25% of this amount will be apportioned according to number of on-campus, full-time students not receiving Pell Grant
 - 7.5% (appx. 1.047 billion) apportioned to minority-serving institutions (HBCU)
 - 2.5 (appx. \$349 million) reserved for smaller institutions with “greatest unmet needs,” with priority to intuitions that did not receive at least \$500,000 in grants from programs above

Higher Education Emergency Relief Fund

- Use of Higher Education Emergency Relief Fund grants are limited.
- **May not** be used for
 - Payments to contractors for pre-enrollment recruitment
 - Endowments or capital outlays associated with athletics, sectarian instruction, or religious worship
- Institutions **shall** use at least 50% of grant funds to provide emergency financial aid grants to students “for expenses related to disruption of campus operations due to coronavirus”

Other Provisions Relevant to Higher Education

- Institutions may award Supplemental Educational Opportunity Grants to students
- Suspended requirement to match Federal funds for FWS and SEOG, and limits on transferring funds between two programs
- May continue to issue Federal Work Study payments to students unable to fulfill their work-study obligations
- Subsidized loan and Pell Grant usage and duration limits do not count towards max if student is unable to complete term
- If student withdraws due to coronavirus-related reasons, institutions and students do not have to return Pell Grant funds, and borrowers are relieved from repaying federal student loans
- Payments and interest on existing federal student loans suspended through September 30, 2020

Questions/Discussion?

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