



What you need to know about the

CARES Act

Coronavirus Aid, Relief and Economic Security Act

LET'S TALK: CARES ACT AMENDMENT

TODAY'S AGENDA

Cares Act Amendment Summary

1. Alternative Covered Period
2. 5-Year Minimum Maturity
3. Payment Deferral Extension
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5. New safe harbor
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8. Delay of Payment of Employer Payroll Taxes
9. Forgiveness Application



**5-YEAR
MINIMUM
MATURITY
AND
EXTENSION OF
COVERED
PERIOD**

24-Week Covered Period *(previously 8 weeks)*

- If a borrower received a PPP loan prior to enactment of the amendment to the Cares Act (June 5th), such borrower may elect an 8-week covered period or a 24-week covered period.
- If a loan is received on or after June 5th, the borrower is stuck with 24-week covered period.

5-Year Minimum Maturity (previously 2 years under regs)

- Any portion of the PPP loan which does not qualify for forgiveness will have a minimum maturity of 5 years from the date on which the borrower *applies* for loan forgiveness.
- No deadline for the forgiveness application, but the deferment will expire, and payments will become due, if a forgiveness application has not been remitted within 10 months of expiration of covered 24-week period.



PAYMENT DEFERRAL EXTENSION

Payment Deferral Extension

Payment Deferral Extension (previously 6 months from funding of PPP loan)

Payments of principal, interest, and fees under the PPP loan are deferred until the earlier of:

- The date on which the amount of approved forgiveness is remitted by SBA to the borrower's lender; or
- 10 months following the last day of the covered period, if an eligible recipient fails to *apply* for forgiveness within such 10-month period.



Reductions of Wages or FTE

General existing rule under Cares Act- loan forgiveness reduced on a percentage basis equal to the reduction of full-time equivalent employees (FTE) or salaries during the covered period as compared to reference period of (i) February 15, 2019 through June 30, 2019 or (ii) January 1, 2020 through February 29, 2020, or if a seasonal business (iii) any consecutive 12-week period between May 1, 2019 and September 15, 2019 or the periods of (i) or (ii) above.

Extension of Existing Safe Harbor

Amendment effects an extension of the existing safe harbor period from June 30, 2020 to December 31, 2020 for restoring FTE headcount or salaries to the extent reduced during a covered period falling within the period beginning February 15, 2020 and ending April 26, 2020.



New Safe Harbor

For reductions of FTE employees (not wage reductions), occurring during covered periods which fall between February 15, 2020 and December 31, 2020, a borrower's forgiveness will not be reduced if the borrower can document:

- (i) an inability to rehire individuals who were employees of the borrower on February 15, 2020; and
- (ii) an inability to hire similarly qualified employees for unfilled positions on or before December 31, 2020;

New Safe Harbor *cont.*

OR if a borrower is able to document an inability to return to the same level of business activity as such business was operating at before February 15, 2020, due to compliance with governmental orders and restrictions imposed by the Secretary of Health and Human Services, CDC, or OSHA during the period between March 1, 2020 and December 31, 2020, related to the maintenance of standards for sanitation, social distancing, or any other worker or customer safety requirement related to COVID-19.

This new safe harbor tightens certain restrictions while broadening of the scope of borrowers who may benefit from a safe harbor under the Cares Act.

Borrowers should still follow the regulation requiring notification to the unemployment office if an employee declines the offer to return. (See Webinar posted June 1, 2020)

Forgiveness Cliff

Old Rule: No more than 25% of forgiveness could be attributable to forgivable non-payroll costs (i.e., forgivable non-payroll costs capped at 1/3 of forgivable payroll costs expended during covered period). Borrower had flexibility regarding how much of the loan proceeds to allocate to payroll during covered period.

New Rule: In order to qualify for **any** forgiveness, a borrower must use at least 60% of the loan amount for covered payroll costs.

Permitted Uses of Funds

- Borrower is only permitted to use up to 40% of the loan for payment of the covered non-payroll costs, which is another way of saying that at least 60% of the loan must be utilized for covered payroll costs.
- The restrictions on use of the loan proceeds is still in place.
- Only the percentage allocations have been relaxed.



Delay of Payment of Employer Payroll Taxes

This previously excluded borrowers enjoying forgiveness of PPP loan, but now extends to **all** taxpayers.

- The payment of applicable employment taxes for the payroll tax deferral period shall not be due before the applicable date.
- Applicable employment taxes = employer payroll taxes
- Payroll tax deferral period = March 26, 2020- December 31, 2020
- Applicable date = December 31, 2021, with respect to 50% of the applicable employment taxes accruing during payroll tax deferral period, and December 31, 2022 with respect to balance of applicable employment taxes accruing during payroll tax deferral period.

Forgiveness Application

Certain portions of the Cares Act (as amended), which discuss the forgiveness application, requires the applicant to supply documentation verifying the number of FTE employees and pay rates for the periods described in Section d of Section 1106 of the Act. Section d describes various periods, some of which now extend all the way to December 31st. The latest version of the forgiveness application also calls for the borrower to certify the number of FTE employees as of June 30th (which will now be updated to December 31st). How can a borrower make a certification as to how many employees the borrower will have on a future date which is possibly months away?

Forgiveness application does require the borrower to certify as to the appropriate use of the loan proceeds, which suggests that a borrower will need to spend all of the loan proceeds before filing the forgiveness application.

THANK YOU FOR JOINING US!



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