

Dear MHA Members:

We hope you and your loved ones are well during this time and thank you for the frontline work your organizations are doing for Maine and its visitors. As a result of the Emergency Declaration, much legislation has been passed, regulations continue to change daily, and it is a large task to sort it all out.

The focus of this communication is on the loans available through the Paycheck Protection Program and other individual and business provisions available to your organizations, outside the numerous healthcare provisions you have been tracking. Some of this information is fairly time sensitive; please review the information below and contact us with questions or for any assistance.

In an effort to get this information to you quickly, here is what we have assembled:

- First, we'll focus on the Paycheck Protection Program (PPP) in the Coronavirus Aid, Relief, and Economic Security (CARES) Act published Friday, March 27, 2020. Acceptance of applications begins April 3, 2020 and the Treasury released the interim final rules for PPP on April 2, 2020. Please be aware participation in this program precludes participation in other relief programs as described in Section I below.
- Second, we have a recap of the provisions of the Emergency Paid and Family Leave provisions contained in the Families First Coronavirus Response Act (FFCRA).
- Third, we provide a table of applicable individual and business provisions and brief explanations.

### **Section I - CARES Act Section 1102 - Paycheck Protection Program (PPP) and Section 1106 – Loan Forgiveness**

The PPP is designed to assist small businesses with 500 or fewer employees maintain payroll and pay for qualified expenses during the coronavirus quarantine period. Hospital participation in Small Business Administration (SBA) programs is typically limited by revenue. The CARES Act increases these limits based on number of employees. Eligible hospitals include for-profit and 501(c)(3) hospitals.<sup>1</sup> Based on the interim final rules issued by the Treasury, the “SBA intends to promptly issue additional guidance with regard to the applicability of affiliation rules at 13 CFR 121.103 and 121.301” for purposes of determining if you are a small business for PPP.<sup>2</sup>

Highlights:

- The amount that can be borrowed is 2.5 times monthly “payroll costs”, which are calculated based on the average of the last 12 months of payroll, plus group health insurance, employer retirement benefits paid, and state and local tax assessed on the compensation of employees (such as mandatory unemployment), less any individual compensation over \$100,000, compensation of non-US residents, any sick and family leave wages for which a credit is allowed under FFCRA, or employer taxes imposed or withheld under chapters 21, 22, or 24 under the Internal Revenue Code (such as Social Security and Medicare) – up to a maximum of \$10M per employer.

- The funds are intended to be used to pay wages, rent, utilities, group health insurance, and interest on qualifying mortgages over the 8 week period after the loan is made.
- The balance of the loan can be forgiven. Forgiveness is based on maintaining or hiring employees and maintaining salary levels, and will be reduced for the following:
  - Number of Staff: A decrease in FTE headcount;
  - Level of Payroll: A decrease in salaries and wages by more than 25% for any employee earning less than \$100,000 in 2019 (calculated based on any single pay period annualized);
  - Exemption for Re-Hiring: If by June 30, 2020, FTE and salary levels for any changes made between February 15, 2020 and April 26, 2020 have been restored.
- No more than 25% of the amount forgiven can be for non-payroll costs.
- Any portion of the loan that is not forgiven will become a two-year loan at a fixed rate of 1%. Interest begins to accrue as of the forgiveness determination date. Loan payments may be deferred for six months. The SBA will be issuing additional guidance on loan forgiveness.
- These loans will be originated by banks (not the SBA), who will begin accepting applications starting on Friday, April 3, 2020. There is a limited amount of funds available, so we recommend being ready with your application when the bank is prepared to accept them.<sup>3</sup>
- The application is one page and requires some calculations to determine the eligible payroll base for the loan amount. Contact your payroll company or accountant to help calculate or review your payroll calculation prior to submitting your application.
- **IMPORTANT:** Participation in PPP (Section 1102 and 1106) precludes participation in the Employee Retention Credit (Section 2301) and Payment of Employer Payroll Taxes (Section 2302)<sup>4</sup> which are summarized in Section III.

**For your reference, a copy of the U.S. Department of the Treasury's Payroll Protection Program Information Sheet has been included with this document as Appendix A.**

### PPP Updates:

<sup>1</sup> On April 24, 2020, the SBA provided clarification that hospitals owned by governmental entities may also be eligible if the hospital receives less than 50% of its funding from state or local government entities, excluding Medicaid revenues.

<sup>2</sup> Interim final rules addressing affiliation for purposes of PPP were issued on April 4<sup>th</sup> and should be reviewed carefully for applicability.

<sup>3</sup> Additional funds for this program were approved on April 24, 2020.

<sup>4</sup> In recently released FAQs, the IRS said employers that have applied for and received a PPP loan are eligible to defer payment of employer payroll (FICA) taxes through the date the lender issues a decision to forgive the loan, without failure to deposit or failure to pay penalties. Once the decision of forgiveness is made, the employer is no longer eligible to defer payment of payroll taxes from that point forward. The repayment terms of the employer payroll taxes deferred through such date would still be applicable.

## **SECTION II – Families First Coronavirus Response Act (FFCRA) – Emergency Paid and Family Leave**

The President signed The Families First Coronavirus Response Act (hereinafter the “Act”) into law on March 18, 2020 and the provisions are effective April 2, 2020. There are two provisions of the Act that deal with paid leave provisions for employees. Here are some highlights for employers:

The provisions of the Act are only required for employers with fewer than 500 employees. Employers with over 499 employees are not required to provide the sick/family leave contained in the Act, but could voluntarily elect to follow the new rules. The expectation is that employers with over 499 employees are providing some level of sick/family leave benefits already. In any case, employers with over 499 employees are not eligible for the tax credits.

Employers with fewer than 500 employees are required to provide employees with up to 80 hours of paid sick leave over a two-week period if the employee:

- Self-isolates because of a diagnosis with COVID-19, or to comply with a recommendation or order to quarantine;
- Obtains a medical diagnosis or care if the employee is experiencing COVID-19 symptoms;
- Needs to care for a family member who is self-isolating due to a COVID-19 diagnosis or quarantining due to COVID-19 symptoms; or
- Is caring for a child whose school has closed, or childcare provider is unavailable, due to COVID-19.

These rules apply to all employees regardless of the length of time they have worked for the employer. The 80 hours would be pro-rated for those employees who do not normally work a 40-hour week.

Employees who take leave because they themselves are sick (i.e., the first two bullets above) can receive up to \$511 per day, with an aggregate limit of \$5,110. If, on the other hand, an employee takes leave to care for a child or other family member (i.e., the last two bullets above), the employee will be paid two-thirds of their regular weekly wages up to a maximum of \$200 per day, with an aggregate limit of \$2,000.

Days when an individual receives pay from their employer (regular wages, sick pay, or other paid time off) or unemployment compensation do not count as leave days for the purposes of this benefit.

### **Family and Medical Leave Act (FMLA)**

Employees who have been employed for at least 30 days also have the right to take up to 12 weeks of job-protected leave under the FMLA. The Act requires that 10 of these 12 weeks (i.e., after the sick leave discussed above is taken) be paid at a rate of no less than two-thirds of the employee’s usual rate of pay. Any leave taken under this portion of the Act will be limited to \$200 per day with an aggregate limit of \$10,000.

### **Exemptions**

The Secretary of Labor has the authority to issue regulations exempting: (1) certain healthcare providers and emergency responders from taking leave under the Act; and (2) small businesses with fewer than 50 employees from the requirements of the Act if it would jeopardize the viability of the business.

**Expiration**

The provisions of the Act are set to expire on December 31, 2020, and unused time will not carry over from one year to the next.

**Tax credits**

The Act provides for refundable tax credits to help an employer cover the costs associated with providing paid emergency sick leave or paid FMLA. The tax credits work as follows:

- A refundable tax credit for employers equal to 100 percent of qualified family leave wages paid under the Act.
- A refundable tax credit for employers equal to 100 percent of qualified paid sick leave wages paid under the Act.
- The tax credits are taken on Form 941 – Employer’s Quarterly Federal Income Tax Return filed for the calendar quarter when the leave is taken and reduce the employer’s portion of the Social Security taxes due. If the credit exceeds the employer’s total liability for Social Security taxes for all employees for any calendar quarter, the excess credit is refundable to the employer.

## SECTION III – CARES Act Provisions for Not-for-Profit (NFP) Organizations

The following table summarizes other individual and business provisions applicable to NFP organizations.

INDIVIDUAL PROVISIONS		
Section of CARES Act	Section Title	Highlights of New Law
2202	Special Rules for Use of Retirement Funds	<ul style="list-style-type: none"><li>• Can withdraw up to \$100,000 from a qualified retirement fund in 2020 with no 10% early distribution penalty</li><li>• Regular tax from the distribution may be spread over 3 years</li><li>• TP may repay funds to an eligible plan within the 3 year window without regard to the contribution cap during that year</li><li>• Amount repaid will be treated as a rollover contribution and will not be included in gross income</li><li>• Applies to individual or family members diagnosed with coronavirus or someone who was financially affected by coronavirus due to layoff, furlough, reduced hours, lack of child care or closed business</li></ul>
2203	Temporary Waiver of RMD Rues for Certain Retirement Plans and Accounts	<ul style="list-style-type: none"><li>• The Act suspends RMDs for 2020</li><li>• Does not apply to defined benefit plans</li><li>• Applies to all distributions due in calendar 2020, including ones due on April 1, 2020 to an individual who turned 70 1/2 during 2019</li></ul>
2204	Allowance of Partial Above the Line Deduction for Charitable Contributions	<ul style="list-style-type: none"><li>• Non-itemizers make take a \$300 charitable contribution deduction against their AGI in 2020</li><li>• The contribution may not be made to a 509(a)(3) supporting organization or to donor advised funds</li></ul>
2205	Modification of Limitations on Charitable Contributions During 2020	<ul style="list-style-type: none"><li>• Cash contributions made in 2020 are not subject to the 60% AGI limitation; they are allowed 100%, but deduction cannot exceed AGI minus all other deductions allowed in the year</li><li>• Donations to 509(a)(3) supporting organizations or to donor advised funds are not eligible for the 100% deduction</li><li>• Unused 100% contributions may be carried forward as 60% contributions for the succeeding 5 years</li><li>• Taxpayer must make an election on their 2020 return to deduct at 100%</li></ul>
2206	Exclusion of certain employer payments of student loans	<ul style="list-style-type: none"><li>• Employers who pay employee's student loan payments up to January 1, 2021 may exclude up to \$5,250 of those payments from the employee's income</li><li>• The \$5,250 annual maximum exclusion applies to both student loans repayments (principal and interest) as well as other education assistance such as tuition, books and fees provided by the employer under current law.</li></ul>

## BUSINESS PROVISIONS

Section of CARES Act	Section Title	Highlights of New Law
2301	Employee Retention Credit (ERC) for Employees Subject to Closure due to COVID-19	<ul style="list-style-type: none"> <li>Eligible employers that retain their employees will receive a payroll tax credit equal to 50% of eligible employee wages incurred from March 13 to December 31, 2020</li> <li>Eligible employers are ones who were shut down by the government or had revenues drop by more than 50% compared to the same quarter in 2019</li> <li>Eligible wages are wages up to \$10,000 per employee plus health care benefits</li> <li>Wage criteria is different for businesses with &gt; 100 FT employees vs. those with &lt; 100 FT employees</li> <li>Wages that qualify for the sick leave credit and FMLA credit under the prior CV bills do not qualify for this credit</li> <li>Employers who take loans under the Paycheck Protection Program (Sec 1102 of the CARES Act) are not eligible for this credit</li> <li>The credit will be taken against the employer's share of social security taxes (6.2%); if credit is greater than liability, the excess will be refunded</li> <li>You will need to run the numbers to see if the retention credit will be more advantageous vs. the Paycheck Protection Program</li> </ul>
2302	Delay of Payment of Employer Payroll Taxes	<ul style="list-style-type: none"> <li>The employer will be able to defer its share of the social security tax (6.2%) on wages paid from March 13 - December 31, 2020</li> <li>Self-employed may delay the deposit of 1/2 of the individual's SE tax liability</li> <li>50% of the deferred taxes need to be paid by December 31, 2021 and the remaining 50% by December 31, 2022</li> </ul>
2303	Modifications for Net Operating Losses	<ul style="list-style-type: none"> <li>NOLs arising in a tax year beginning after December 31, 2018 and before January 1, 2021 may be carried back 5 years</li> <li>Taxpayer can relinquish the 5 year carryback with an irrevocable election</li> <li>80% limitation waived; NOLs can fully offset income; (80% limitation comes back for tax years beginning after December 31, 2020)</li> <li>NOLs cannot offset Section 965(a) income in carryback years; taxpayer can exclude carryback years in which 965(a) applies</li> </ul>
2103	Self-Insured Nonprofits and Unemployment	<ul style="list-style-type: none"> <li>Reimburses self-insured nonprofit organizations 50% of the amounts of benefits provided to employees during the "Applicable Period", that being March 13, 2020 - December 31, 2020</li> <li>Funds for this provision will be provided by the FED to states "at such times" as the Secretary of Labor considers appropriate</li> </ul>

**For additional information on COVID-19-related guidance, please visit us at [berrydunn.com](http://berrydunn.com) or contact us at [hospitalgroup@berrydunn.com](mailto:hospitalgroup@berrydunn.com).**

## **PAYCHECK PROTECTION PROGRAM (PPP) INFORMATION SHEET: BORROWERS**

The Paycheck Protection Program (“PPP”) authorizes up to \$349 billion in forgivable loans to small businesses to pay their employees during the COVID-19 crisis. *All loan terms will be the same for everyone.*

The loan amounts will be forgiven as long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8 week period after the loan is made; and
- Employee and compensation levels are maintained.

Payroll costs are capped at \$100,000 on an annualized basis for each employee. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

Loan payments will be deferred for 6 months.

### **When can I apply?**

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.

**Where can I apply?** You can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Visit [www.sba.gov](http://www.sba.gov) for a list of SBA lenders.

**Who can apply?** All businesses – including nonprofits, veterans organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – with 500 or fewer employees can apply. Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries (click [HERE](#) for additional detail).

For this program, the SBA’s affiliation standards are waived for small businesses (1) in the hotel and food services industries (click [HERE](#) for NAICS code 72 to confirm); or (2) that are franchises in the SBA’s Franchise Directory (click [HERE](#) to check); or (3) that receive financial assistance from small business investment companies licensed by the SBA. Additional guidance may be released as appropriate.

**What do I need to apply?** You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020. Click [HERE](#) for the application.

**What other documents will I need to include in my application?** You will need to provide your lender with payroll documentation.

**Do I need to first look for other funds before applying to this program?** No. We are waiving the usual SBA requirement that you try to obtain some or all of the loan funds from other sources (i.e., we are waiving the Credit Elsewhere requirement).

**How long will this program last?** Although the program is open until June 30, 2020, we encourage you to apply as quickly as you can because there is a funding cap and lenders need time to process your loan.

**How many loans can I take out under this program?** Only one.

**What can I use these loans for?** You should use the proceeds from these loans on your:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

**What counts as payroll costs?** Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.

**Does the PPP cover paid sick leave?**

Yes, the PPP covers payroll costs, which include employee benefits such as costs for parental, family, medical, or sick leave. However, it is worth noting that the CARES Act expressly excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA) (Public Law 116–127). Learn more about the FFCRA’s Paid Sick Leave Refundable Credit [online](#).

**How large can my loan be?** Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount. That amount is subject to a \$10 million cap. If you are a seasonal or new business, you will use different applicable time



periods for your calculation. Payroll costs will be capped at \$100,000 annualized for each employee.

**How much of my loan will be forgiven?** You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

You will also owe money if you do not maintain your staff and payroll.

- **Number of Staff:** Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- **Level of Payroll:** Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than \$100,000 annualized in 2019.
- **Re-Hiring:** You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

**How can I request loan forgiveness?** You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments. The lender must make a decision on the forgiveness within 60 days.

**What is my interest rate?** 1.00% fixed rate.

**When do I need to start paying interest on my loan?** All payments are deferred for 6 months; however, interest will continue to accrue over this period.

**When is my loan due?** In 2 years.

**Can I pay my loan earlier than 2 years?** Yes. There are no prepayment penalties or fees.

**Do I need to pledge any collateral for these loans?** No. No collateral is required.

**Do I need to personally guarantee this loan?** No. There is no personal guarantee requirement. \*\*\*However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges against you.\*\*\*

**What do I need to certify?** As part of your application, you need to certify in good faith that:

- Current economic uncertainty makes the loan necessary to support your ongoing operations.
- The funds will be used to retain workers and maintain payroll or to make mortgage, lease, and utility payments.
- You have not and will not receive another loan under this program.
- You will provide to the lender documentation that verifies the number of full-time equivalent employees on payroll and the dollar amounts of payroll costs, covered

mortgage interest payments, covered rent payments, and covered utilities for the eight weeks after getting this loan.

- Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.
- All the information you provided in your application and in all supporting documents and forms is true and accurate. Knowingly making a false statement to get a loan under this program is punishable by law.
- You acknowledge that the lender will calculate the eligible loan amount using the tax documents you submitted. You affirm that the tax documents are identical to those you submitted to the IRS. And you also understand, acknowledge, and agree that the lender can share the tax information with the SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.