Revised Summary of
Coronavirus Aid, Relief and Economic Security (CARES) Act and Families First Coronavirus Response Act (FFCRA)
Tax Credit and Payroll Tax Relief[1]

This chart is a high-level overview of the various payroll and tax credit programs under the CARES Act and FFRCA and does not include the eligibility and technical requirements of each program, which are highly complex. Employers should consult counsel to help navigate these complex and technical requirements and to keep informed of future guidance.

Current as of July 6, 2020	Paycheck Protection Program (PPP)[2]	Economic Injury Disaster Loans (EIDL) and Emergency Grants	Loan Assistance for Mid-Sized Businesses	Payroll Tax Credit for Emergency Sick and Family Leave (FFCRA)	Delay of Payment of Employer Payroll Taxes	Employee Retention Tax Credit (ERTC)
Coronavirus Aid, Relief and Economic Security (CARES) Act Section	1102 (PPP) 1106 (Loan Forgiveness)	1110	4003(c)(3)(D)	3601, 3602, 5603 (amends FFCRA Sections 7001 and 7003)	2302	2301
Loan or Credit	Unsecured loan[3] (possible forgiveness if loan used for "forgivable purposes" and employee and compensation levels maintained). Forgiven loan not included in gross income.	Unsecured loan[4] and grant.[5]	Secured loan.[6]	Credit; excess refundable with possible advanced credit.[7]	N/A – Deferred payment of employer portion of Social Security payroll taxes (6.2%). (essentially a short-term, interest-free line of credit)	Credit against Form 941 payroll tax deposits; excess refundable with possible advanced credit. (Credit recaptured if employer receives PPP loan in subsequent quarter.)
Size Eligibility	Small business[8] (together with its affiliates[9]) in operation on February 15, 2020 that either: • has 500 or fewer US employees; • is within an industry for which	Small businesses[10] in operation on January 31, 2020 that are located in a declared disaster area,[11] suffer a substantial economic injury due	Target businesses (and nonprofits) with between 500 and 10,000 employees and other businesses that have not received adequate	Employers[13] with fewer than 500 employees are required to provide paid sick leave under the Emergency Paid Sick Leave	All employers are eligible.	Any business[14] (regardless of size) that operates a trade or business during 2020 and either: • suspends operations due to COVID-19

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	the SBA established a number of employee standard in excess of 500; or • is a "small business concern" with certain maximum tangible net worth.	to COVID-19 and meet SBA size standards (including SBA affiliation rules).	economic relief under the CARES Act. US domiciled business with significant operations/employees in US. Not eligible if business is a debtor in bankruptcy. Non-profits meeting certain eligibility requirements.[12]	Act and to provide paid family leave under the Expanded Family and Medical Leave Act.		during any calendar quarter; or • has gross receipts below 50% of the comparable quarter in 2019.[15] Not eligible if employer (i) receives a Small Business Interruption Loan under the PPP or (ii) is a state and local government or instrumentality.
Covered Period	Application period: Begins April 3, 2020 (April 10 for independent contractors/self employed) and ends August 8, 2020 or until the funds made available for this purpose are exhausted.[16]	January 31, 2020 – December 31, 2020.	Loans must be made prior to December 31, 2020.	April 1, 2020 – December 31, 2020.	Employer's portion of Social Security taxes that are otherwise due during the period beginning March 27, 2020 and ending December 31, 2020.[17]	Qualified wages paid after March 12, 2020, and before January 1, 2021.
Employee Retention Requirements	Yes, loan forgiveness amount reduced if full-time headcount declines. See "Loan Forgiveness," below.	No	Yes, until September 30, 2020, must maintain employment levels as of February 1, 2020, to the extent practicable, and	No	No	No

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			retain no less than 90% of employees as of that date.			
Required Employee Compensation Levels	Yes, loan forgiveness amount reduced if compensation decreases. See "Loan Forgiveness," below.	No	Yes.[18] During loan term and for one year after the loan is no longer outstanding, • officers and employees whose total 2019 compensation exceeded $425,000 are subject to compensation caps and any severance pay and benefits may not exceed 2 times the maximum total 2019 compensation. • officers and employees making greater than $3 million are subject to compensation reductions.[19]	No	No	No

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Permitted Uses	• Payroll costs.[20] • Interest on mortgage obligation incurred prior to February 15, 2020. • Rent under leases dated prior to February 15, 2020. • Utilities for service agreements dated prior to February 15, 2020. At least 60% of PPP loan proceeds must be used for payroll costs.[21] Misuse of PPP funds may result in additional liability such as fraud charges.	EIDL and grants may be used to: • Provide paid sick leave to employees. • Maintain payroll. • Meet increased costs due to supply chain disruptions. • Make rent and mortgage payments. • Repay obligations that cannot be met due to revenue loss.	Funds must be used to retain 90% of workforce at full compensation and benefits through September 30, 2020.	Credit in the full amount of the qualified sick leave wages and qualified family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax.	Deferred deposit and payment of employer's portion of Social Security taxes that are otherwise due during the period beginning March 27, 2020 and ending December 31, 2020.	Credit against Form 941 deposits, excess refundable.
Limits	PPP loan amount is limited to lesser of • 2.5x average monthly payroll costs from the last year,[22] or • $10 million Only one PPP loan permissible, so businesses should consider applying for the maximum amount.[23]	The grant is limited to $10,000. An EIDL is limited to $2 million.	Loan amount determined by Treasury. The employer is prohibited from making stock buybacks and paying dividends (unless contractually obligated) during the term of the loan plus one year after the	100% credit for required qualified sick leave wages and qualified family leave wages paid under FFCRA, subject to caps. Amounts paid in excess of required amounts not	No, other than the normal Social Security wage base (which caps wages subject to Social Security tax for 2020 at $137,700).	Credit of 50% of "qualifying wages" (which varies based on number of employees)[25] paid up to $10,000 total per employee (maximum credit of $5,000 per employee). No ERTC for employees for which employer receives a

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			date the loan is no longer outstanding. Not in bankruptcy. No outsourcing or offshoring of jobs during loan term and two years thereafter. Receipt will not abrogate CBAs for term of loan and two years thereafter. Must remain neutral in union organizing efforts for term of loan. Compensation limits.	subject to credit.[24] Sick leave credit capped at employer obligation – up to $511 per day ($5,110 total) or up to $200 per day ($2,000 total) for up to 10 days depending on the reason for leave. Family leave credit capped at employer obligation – 2/3 of employee's regular pay capped at $200 per day ($10,000 total) for up to 10 days. Additional credit for costs to maintain health		Work Opportunity Tax Credit. No ERTC with respect to wages for which employer received FFCRA tax credit or under the existing tax credit for paid family medical leave.

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				insurance during leave obligation.		
Loan Forgiveness	Yes, if used to cover qualified payroll costs, mortgage interest, rent, and utilities payments over the period beginning on the PPP loan origination date and ending on the earlier of (i) the date that is 24 weeks after such origination date; or (ii) December 31, 2020 (the "**covered period**"). Borrowers with loans obtained prior to June 5, 2020 can retain the original 8-week covered period or elect to use the 24-week covered period in (i) above. Employers have 10 months after the end of the "covered period" to apply for loan forgiveness.[26] Loan forgiveness amount is reduced upon certain conditions relating to employment and compensation levels.[27]	No. An eligible employer may refinance its EIDLs (taken between January 1, 2020 and April 3, 2020) under the PPP to take advantage of the PPP's loan forgiveness provisions. The grant does not have to be repaid, even if the loan application is denied.	No	N/A	N/A	N/A

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Refundable Credit	N/A	N/A	N/A	Yes, to the extent the credit exceeds the employer portion of the federal employment taxes. Advanced credit refund available by filing Form 7200.	N/A	Yes, to the extent the credit exceeds the employer's Social Security payroll tax liability for the calendar quarter. Immediate reimbursement by reducing Form 941 deposit[28] or obtain refund of excess. Advanced credit refund available by filing Form 7200.
Due Date	Loan payments are deferred to the earlier of the date that the forgiveness amount is remitted to the lender by the SBA or the 10-month deadline to apply for loan forgiveness.[29] 5-year maturity date (2-year maturity date on PPP loans originated prior to June 5, 2020, unless borrower and lender agree to 5-year maturity date).[30]	The first loan payment is due 12 months after loan issued. Terms of up to 30 years are available.	Loan payments are automatically deferred for at least 6 months (or longer at the discretion of the Treasury). 5 year maximum term.	N/A	50% of the liability is due by December 31, 2021, and the remaining 50% is due by December 31, 2022.	N/A
Form to File	Applicant submits SBA Form 2483 with payroll documentation.	Application available on the SBA's website here.	The Treasury Secretary will release regulations and	Form 941 series – reduce deposit for credits.	Form 941 series.[33] No special election required to defer	Form 941 series – reduce deposit for credits.

The material in this publication was created as of 7/6/2020 and is based on laws, court decisions, administrative rulings and congressional materials that existed at that time, and should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, a lawyer-client relationship.

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	Lender submits SBA Form 2484. Borrower submits Form 3508 for PPP loan forgiveness. SBA Form 3508EZ can be used in certain circumstances.[31]		procedures describing the application process.	If requesting advanced refund, file Form 7200.[32]	deposits and payments.	If requesting advanced refund, file Form 7200.
Considerations	Applicant must certify in good faith that PPP loan is necessary.[34] Household employers and certain employers with 20% owners incarcerated or involved in certain crimes are ineligible for a PPP loan.[35] Obtaining PPP loan disqualifies the business from ERTC, unless PPP loan fully repaid by May 18, 2020. Per IRS, expenses paid with proceeds of a PPP loan that is forgiven are not deductible to employer.[36]	Not eligible for an EIDL for the same costs that are covered by a PPP loan.	If considering furloughs or layoffs, employee retention and compensation requirements may make this relief unattractive.	Cannot be used for the same wages under the ERTC.	Prior to the PPPFA, an employer was precluded from deferring its portion of Social Security taxes if it had received PPP loan forgiveness. The PPPFA makes this exclusion applicable only for deposit deadlines before June 5, 2020, that were on or after the date the employer received the lender's decision that the PPP loan was forgiven.[38]	Not eligible if employer obtained PPP Loan. Cannot claim the same employee for this credit and the Work Opportunity Tax Credit, employer credit in Section 45S for FMLA, tax credit for Sick and Family Leave under the FFCRA, or if a related person as defined in Section 51 of the Code for the same period.

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	Employers who received a PPP loan cannot use an EIDL for the same purposes as the PPP loan.[37]					

How to Determine Which Program is Best for Your Business

Businesses should carefully consider the eligibility requirements, limitations and potential value of each program to determine which relief is the most beneficial for the business' own circumstances. Seeking relief under certain of the programs may disqualify the employer for other programs. For example, a small business employer that obtains a PPP loan is not eligible for the ERTC, and an employer who has a PPP loan forgiven is not eligible for deferred payment of employer payroll taxes.

Depending upon the level of salaries, a forgivable PPP loan may be more lucrative. For example, a small business employer employs 75 employees with an average annual salary of $60,000 ($5,000 average monthly salary). The employer could obtain a PPP loan in a maximum amount of $937,500 (2.5 times monthly payroll of $375,000 ($5,000 average monthly salary x 75 employees)). If the employer maintains employment and compensation levels, the $937,500 PPP loan can be forgiven (to the extent the funds are used for permitted expenses during the covered period). If the business chose the ERTC instead of the PPP loan, it would be entitled to a refundable payroll tax credit of $375,000 (50% of wages, with wages capped at $10,000 per employee). PPP loans contain stipulations on the use of the funds, including a requirement that at least 75% of the funds be used for payroll costs and the remaining for other permitted costs.

Conversely, a small business employer with lower salaries may be better off with the ERTC instead of a PPP loan. For example, an employer employs 75 employees with an average annual salary of $20,000 ($1,666 average monthly salary). The employer could obtain a PPP loan in a maximum amount of $312,500 (2.5 times monthly payroll of $125,000 ($1,667 average monthly salary x 75 employees)). If the employer maintains employment and compensation levels, the $312,500 PPP loan can be forgiven (to the extend the funds are used for permitted expenses during the covered period). If the employer chose the ERTC instead of the PPP, it would be entitled to a refundable payroll tax credit of $375,000.

It may be advantageous to certain employers who received payroll tax credits for emergency sick and family leave or an ERTC due to COVID-19 to request an advance of their employer credits. The following examples illustrate how this advance would work:

> Example 1: Assume an employer is entitled to a tax credit of $5,000 for qualified sick leave wages, certain related health plan expenses, and the employer's share of Medicare tax on the leave wages due to COVID-19. If the employer is required to deposit $8,000 in employment taxes, the employer

could offset its federal employment tax deposits by $5,000. The employer would then only be required to deposit the remaining $3,000 on its next regular deposit date.

Example 2: Assume an employer is entitled to an ERTC of $10,000 and is required to deposit $8,000 in employment taxes. Under the CARES Act, the employer could retain the entire $8,000 of taxes as a portion of the refundable tax credit it is entitled to and file a request for an advance payment for the remaining $2,000 using Form 7200.

Other considerations include requirements to maintain employee and compensation levels, which may not be feasible over the long term, depending upon the business' circumstances.

Please contact any member of the Troutman Pepper Employee Benefits, Labor & Employment, or Tax practice groups to discuss how we can help you determine which relief is best for the unique circumstances of your business.

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[1] Although not addressed in this chart, the CARES Act provides for certain other relief, including direct loans to certain businesses that are critical to maintaining national security and certain small business debt relief for non-disaster loans. This chart provides a high level summary as of July 6, 2020 and is not intended to cover all intricacies of the CARES Act, FFCRA and related guidance or constitute legal advice. The state of the law is changing at a rapid pace, and government agencies are expected to continue issuing guidance in the near future, so businesses should seek advice of counsel prior to seeking relief.

[2] The Paycheck Protection Program Flexibility Act of 2020 (PPPFA) was signed into law on June 5, 2020. As reflected in the chart above, the PPPFA:

(i) extends the repayment term for the unforgiven portion of PPP loans to 5 years for loans obtained on and after June 5, 2020; existing PPP loans retain their 2-year term, but lenders and borrowers may negotiate a longer term up to 5 years;
(ii) extends the loan disbursement period from June 30, 3030 to December 31, 2020;
(iii) extends the covered period for which the loan proceeds must be used for purposes of loan forgiveness from 8 weeks after the loan disbursement date to the earlier of (i) 24 weeks after the loan disbursement and (ii) December 31, 2020;
(iv) reduces the minimum percentage of PPP funds that must be used for payroll costs from 75% to 60% for purposes of qualifying for loan forgiveness;
(v) expands the exemption to full forgiveness tied to reductions of full-time equivalent employees based on employee availability (see note 27 below);
(vi) requires borrows to apply for loan forgiveness within 10 months after the end of the time period set forth in (iii) above, if loan forgiveness if desired;
(vii) allows businesses that obtain PPP loans access to the delay of payment of employer payroll taxes for businesses;
(viii) extends the rehiring and restoration of salary and wage reductions deadline from June 30, 2020 to December 31, 2020; and
(ix) extends payment deferrals to the date that forgiveness is remitted to the lender by the SBA or 10 months after the time period in (iii) above.

See Troutman Pepper Alert here for more information on the PPPFA. Updated PPP loan forgiveness application and instructions incorporating recent program changes are available here (see "For Borrowers"). Future guidance is anticipated. For up-to-date guidance on the PPP, including revised borrower application forms, FAQs, interim final rules, and other information, visit the Treasury's Small Business Paycheck Protection Program website available here.

[3] PPP loans carry a 1% interest rate and 5-year term (2-year term for loans issued prior to June 5, 2020, unless the borrower and lender mutually agree to extend the term to 5 years) and do not require personal guarantees or collateral.

[4] EIDLs carry a 3.75% interest rate for small businesses and 2.75% interest rate for nonprofits and up to a 30-year term.

[5] This grant serves as an advance while the SBA is processing the employer's EIDL application.

[6] Loans to mid-sized businesses carry a maximum interest rate of not higher than 2% per year. For further information on the Main Street Lending Program, see Troutman Pepper Alert here.

[7] See IRS FAQs here for special issues for employers regarding taxation, deductibility and interaction of FFCRA tax credits with other tax credits.

[8] Includes corporations, partnerships, limited liability companies, nonprofits, veterans' organizations, tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors. SBA FAQs clarify that small agricultural cooperatives and other cooperatives are included if all PPP loan requirements are met. See SBA FAQ 35. Certain small businesses are ineligible, for example, businesses owned or controlled by the business or its owners that have ever obtained a direct or guaranteed loan from SBA or any other federal agency that is delinquent or has defaulted within the last seven years and caused a loss to the government. See SBA Interim Final Rule (April 15, 2020).

[9] For an analysis of the SBA affiliation regulations and the impact on PPP Section 7(a), see Troutman Pepper Alert here and Interim Final Rule on Affiliation here. The eligibility and affiliation rules for a PPP loan are complex and care should be taken before applying.

[10] The CARES Act expands eligibility to include businesses, sole proprietorships, independent contractors, cooperatives, employee stock ownership plans, and tribal business concerns in each case with fewer than 500 employees. The SBA has instructed that it will begin accepting EIDL loan applications from agricultural business on a limited basis. For more details, see SBA Notice of Agricultural Business Eligibility for EIDL. Private nonprofits are also eligible.

[11] The CARES Act expands the declared disaster area to include each State and subdivision.

[12] For more information, please see Troutman Pepper Alert here.

[13] In determining whether the 500-employee threshold is met, employers must consider the total number of employees at the time a particular employee seeks to take FFCRA leave. As a result, employers may be subject to the FFCRA at one moment in time but not subject to it at a different time. Complex rules apply for determining whether the 500 employee threshold is met. See Troutman Pepper Alert here, and Department of Labor Temporary Regulations here and FAQs here Department of Labor Temporary Regulations provide that small employers with fewer than 50 employees may qualify for an exemption from the requirement to provide paid leave due to school, place of care, or child care provider closings or unavailability, if the leave payments would jeopardize the viability of their business as a going concern.

[14] For-profit and non-profits are eligible.

[15] Under the second scenario, once gross receipts exceed 80% of the comparable calendar quarter in 2019, the employer is no longer eligible for ERTC as of the end of that quarter.

[16] Applications must be submitted with required documentation to an approved lender before the August 8, 2020 extended deadline. Loans are granted on a first come, first serve basis, so interested businesses are encouraged to apply quickly because there is a funding cap.

[17] Also applies to one-half of SECA tax for self-employed individuals.

[18] The CARES Act contains certain internal inconsistencies which call into question whether the compensation limits described in Section 4004 apply to the mid-sized business lending program. Section 4004 expressly applies the compensation restrictions to the lending programs under Sections 4003(b)(1), (b)(2) and (b)(3), but notably does not mention Section 4003(b)(4). Section 4003(c)(3)(D) which provides for the implementation of the mid-sized business lending program also does not mention any compensation restrictions. However, the restrictions set forth in Section 4003(c)(3)(A)(ii)(III), which include the compensation restrictions, arguably apply to all lending programs established under Section 4003(b)(4), including the mid-sized business lending program. As such, until further guidance is issued that provides otherwise, the conservative approach is for eligible businesses to proceed on the basis that the compensation restrictions will apply.

[19] Officers and employees whose total 2019 compensation exceeded $425,000 may not receive total compensation during any 12 consecutive months in excess of the total compensation received in 2019 (other than an employee whose compensation is determined through a collective bargaining agreement entered into prior to March 1, 2020). Officers and employees whose total 2019 compensation exceeded $3 million may not receive total compensation during any 12 consecutive months in excess of the sum of $3 million plus 50% of the 2019 compensation that exceeded $3 million.

[20] Payroll costs include compensation to employees (whose principal place of residence is in the US) in the following forms: salary, wages commissions, cash tips or the equivalent (the sum of which is capped at $100,000 annualized per employee, i.e., for a 24-week covered period a maximum of $46,154, or for a 8-week covered period a maximum of $15,385 per employee); employee (but not owners) benefits including, vacation payments, 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. An employer does not include amounts paid to independent contractors as payroll costs. For a sole proprietor or independent contractor, payroll costs include wages, commissions, income, or net earnings from self-employment, are capped at $100,000 on an annualized basis for each employee. The following are excluded from payroll costs: (i) any compensation of an employee whose principal place of residence is outside the United States; (ii) compensation of an employee in excess of annual salary of $100,000 (prorated as necessary); (iii) Federal employment taxes imposed or withheld between February 15 and December 31, 2020; and (iv) qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the FFCRA. See SBA Interim Final Rule (June 16, 2020) for more information.

Forgiveness of owner compensation is limited to either 8 weeks of their 2019 compensation (up to $15,385) for an 8-week covered period or 2.5 months of their 2019 compensation (up to $20,833) for a 24-week covered period per owner in total across all businesses. For more details on the calculations for C-corporation and S-corporation owner-employees and general partners, see Interim Rule SBA-2020-0038.

[21] See SBA Interim Final Rule (April 15, 2020) and Troutman Pepper Alert here.

[22] Compensation paid to an employee in excess of $100,000 annualized is not included in the calculation of the average monthly payroll. For step-by-step instructions for calculating the maximum loan amount (including calculation of the average monthly payroll costs), see the SBA Interim Final Rule (April 15, 2020). After calculating the average monthly payroll costs, the outstanding amount of an EIDL made between January 31, 2020 less the amount of any EIDL emergency grant (because it does not have to be repaid) is added to total the maximum loan amount.

[23] See SBA Interim Final Rule (April 15, 2020).

[24] The FFCRA exempts qualified sick-leave wages and qualified family-leave wages from the employer's portion of Social Security tax. However, the payment of these qualified wages can be counted towards an employee's 2020 compensation for purposes of the Social Security wage base. The Social Security taxable wage base for 2020 is $137,700.

[25] The definition of "qualifying wages" varies depending on whether the employer averaged more than 100 full-time employees during 2019. For this determination, the CARES Act refers to "full-time employee" "within the meaning of Internal Revenue Code Section 4980H." There is some uncertainty and inconsistency among informal guidance as to whether full-time equivalent employees are counted as full-time employees for this purpose. Compare IRS FAQ 49 (providing that a full-time employee is an employee who works at least 30 hours per week or 130 hours in the month (which is treated as equivalent to 30 hours per week), which is the method for determining assessable penalties under Code Section 4980H) with the Joint Committee on Taxation Description of Tax Provisions in CARES Act at page 40 (referring to full-time employees and "full-time equivalent employees," as defined in Code Section 4980H(c)(2)(E), for purposes of determining applicable large employer status under the Affordable Care Act). Employers should contact legal counsel before making this determination.

> 100 or Fewer. If the employer's average number of full-time employees in 2019 was 100 or fewer, qualified wages will include (1) wages paid during a shutdown; or (2) wages paid during a significant decline in gross receipts, ***without regard to whether the employee provided services*** to the employer during the calendar quarter. IRS FAQs [available here] which are informal, non-binding guidance that indicates the IRS's likely position on an issue, provide that a large employer may use any reasonable method in determining the hours for which an employee is not providing services. The IRS FAQs provide examples of reasonable methods for making this determination, which vary depending on whether the employee in question is an hourly or a salaried employee. Although there is some uncertainty as to exempt salaried employees and part-time employees. Employers are encouraged to seek advice from legal counsel to determine whether wages constitute "qualified wages" for purposes of the ERTC.

> Greater than 100. If the employer's average number of full-time employees in 2019 was greater than 100, qualified wages will include (1) wages paid during a shutdown; or (2) wages paid during a significant decline in gross receipts, but only for wages paid while the employee ***was not providing services*** to the employer during the calendar quarter in either circumstance.

"Qualified wages" are wages (as defined in section 3121(a) of the Code) and compensation (as defined in section 3231(e) of the Code), and, according to IRS FAQs are determined without regard to the contribution and wage base (as determined under section 230 of the Social Security Act), paid by an Eligible Employer to some or all of its employees after March 12, 2020, and before January 1, 2021. Qualified wages also include the employer's qualified health plan expenses (e.g., employer cost of providing health care) that are properly allocable to the wages, but there is some uncertainty as to whether such expenses qualify if no wages are paid to the employee. Qualified wages do not include paid sick or family leave for which the employer is reimbursed under the Families First Coronavirus Response Act. Further, qualified wages paid to an employee are limited to what the employee would have been paid for working an equivalent duration during the 30 days immediately preceding the commencement of the full or partial suspension of the operation of the trade or business due to a governmental order limiting commerce, travel or group meeting due to the coronavirus or the first day of the calendar quarter in which the employer experienced a significant decline in gross receipts.

[26] Eligible employers may apply for loan forgiveness up to 10 months after their "covered period" ends. The "covered period" is either: (i) 24 weeks after the PPP loan proceeds are received from the lender or December 31, 2020 if the employer elects to use the new "covered period" under the PPPFA; or (ii) the original 8-week "covered period" if the employer who received a PPP loan prior to the enactment of the PPPFA and elects to keep the same 8-week "covered period" they had before enactment of the PPPFA. If the employer fails to apply for forgiveness before the end of the 10-month loan forgiveness application deadline, the employer will be required to make payments of principal, interest, and fees on the full amount of the PPP loan. For more information see Troutman Pepper Alert here.

[27] Under the original PPP loan program, the forgivable amount of the loan is reduced if the employer: (i) decreases the average monthly full-time equivalent employee headcount during the covered period as compared to one of two lookback periods (lookback period chosen at the election of the borrower) or (ii) decreases salaries and wages by more than 25% for any employee who made less than $100,000 annualized in 2019. The PPPFA extends the deadline for rehiring and restoring wages and salaries of full-time employees for

any reductions made between February 15, 2020 and April 26, 2020 from June 30, 2020 to December 31, 2020. An employer may treat unfilled positions as filled by rehired employees or as if they were filled by the deadline if the employer can in good faith establish and document that (i) it was unable to rehire individuals who were employees of the employer on February 15, 2020, (ii) it was unable to hire similarly qualified employees for the unfilled positions on or before December 31, 2020, or (iii) it was unable to return to the same level of business activity that the employer had before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of Health and Human Services (HHS), the Director of the Centers for Disease Control and Prevention (CDC), or the Occupational Safety and Health Administration (OSHA) during the period beginning on March 1, 2020 and ending 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. For more information see Troutman Pepper Alert here. A borrower's loan forgiveness amount will not be reduced if an employee's hours are reduced, the employer offers to restore the reduction in hour but the employee declines the offer. For more details see Interim Rule SBA-2020-0038.

See note 20 for limitations of loan forgiveness amounts for owner-employees and general partners.

[28] The IRS instructed that the ERTC should be included on the second quarter 2020 Form 941 series and should not be included on the first quarter return. See IRS - ERTC.

[29] An eligible recipient that received a PPP loan prior to June 5, 2020 may elect for the covered period applicable to such PPP loan to end on the date that is 8 weeks after the loan disbursement date. See Troutman Pepper Alert here.

[30] For loans originated prior to June 5, 2020, the maturity date remains 2 years unless the lender and borrower mutually agree to modify the maturity terms of an existing PPP loan. For more information see Troutman Pepper Alert here.

[31] SBA Form 3508EZ can be used if the employer did not reduce the annual compensation of any of its employees (other than for employees who made more than $100,000 annualized in 2019) by more than 25% when comparing its period covered by a PPP loan to the period from January 1 to March 31, 2020, and the borrower also either: (i) did not reduce its number of employees or the average paid hours of its employees from January 1, 2020, to the end of the period covered by its loan; or (ii) they were unable to return to the same level of business activity that the employer had before February 15, 2020, due to compliance with requirements established or guidance issued by the Secretary of the HHS, the Director of the CDC, or OSHA during the period beginning on March 1, 2020 and ending 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.

[32] For more information see Form 7200.

[33] The IRS has indicated that it will issue further information about how to reflect the deferred payments and deposits.

[34] SBA FAQs clarify that a borrower must certify that "[c]urrent economic uncertainty makes [the PPP] loan request necessary to support the ongoing operations of the Applicant." A borrower must make this certification in good faith, taking into account its current business activity and ability to obtain other sources of funding to support its ongoing operations in a manner that is not significantly detrimental to its business. The SBA noted that "it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith." The SBA will deem PPP loans in an original principal amount under $2 million to be in good faith; whereas, it will review all loan applications in amounts in excess of $2 million. SBA FAQ 46. A borrower that applied for a PPP loan prior to April 23, 2020 and repays the loan in full by May 18, 2020, will be deemed to have made the certification in good faith. SBA FAQ 47. The SBA noted that it will amend its interim guidance.

[35] A business is ineligible for a PPP loan due to an owner's criminal history only if an owner of 20 percent or more of the equity of the applicant:

- is presently incarcerated or, for any felony, is presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or

• has been convicted of, pleaded guilty or nolo contendere to, or commenced any form of parole or probation (including probation before judgment) for, a felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance within the last five years or any other felony within the last year.

SBA FAQ 12.

[36] IRS Notice 2020-32; see also Troutman Pepper Alert here.

[37] For example, if an employer used its EIDL to cover payroll for certain employees in March, the employer could not use a PPP loan for those same workers in March, although it could use it for payroll in April or for different workers in March.

[38] Under the PPPFA, an employer may now continue to defer the payroll tax for the entire period from March 27, 2020 through December 31, 2020, regardless of whether it has a PPP loan forgiven during this period. For more information see Troutman Pepper Alert here.