

McGUIRE WOODS

April 24, 2020*

SUMMARY OF KEY FORMS OF RELIEF FOR HEALTHCARE COMPANIES

	Program	Agency Administering Program	Form of Relief	Aggregate Available Funds	Individual Maximum	Loan Forgiveness?	Federal Tax Relief	Program Application Available?	Interaction with Other Programs
1.	Accelerated and Advanced Payment Program	Centers for Medicare & Medicaid (CMS)	Advance/acceleration of Medicare payment amounts	No specific amount	Most providers and suppliers can request up to three months of their Medicare reimbursements, and certain providers — such as inpatient acute care hospitals, children’s hospitals, certain cancer hospitals and critical access hospitals — can request up to six months of their Medicare reimbursements.	No	None	Available for application now	<p>Generally none; however, other programs generally require that borrowers may not have multiple finance streams pay for the same expenses.</p> <p>Providers can receive funding through both the CMS Accelerated and Advanced Payment Program and the CARES Act Public Health and Social Services Emergency Fund.</p> <p>Borrowers should be aware that repayment and recoupment will cause a temporary decrease in Medicare revenues after 120 days after issuance of the payment.</p> <p>Borrowers should consider how any advance payments received might affect existing or anticipated debt financing prior to seeking such additional funding outside of these programs.</p>
2.	SBA Paycheck Protection Program (PPP) Loan	U.S. Small Business Administration (SBA)	Paycheck protection loans to cover certain eligible payroll costs and overhead costs	Up to \$349 billion	<p>Generally, the loan amount under the PPP can be up to 2.5 times a borrower’s average monthly payroll costs, subject to a \$10 million loan cap.</p> <p>Borrowers with an EIDL loan received between Jan. 31, 2020, and April 3, 2020, add the outstanding amount of such loan, less the amount of any advance under</p>	Yes, if borrower satisfies certain forgiveness requirements	Loans that are forgiven are excluded from gross income for federal taxation purposes	Applications opened on April 3, 2020, for small businesses and sole proprietorships and opened April 10, 2020, for independent contractors and self-employed individuals	<p>A borrower that receives a PPP loan is not eligible to claim the refundable employee retention credit discussed in the Federal Tax Relief program below.</p> <p>An eligible employer may receive both the tax credits for qualified leave wages under the Families First Coronavirus Response Act (FFCRA) and a PPP loan under the CARES Act, but those wages are not eligible as “payroll costs” for purposes of loan forgiveness under the CARES Act.</p> <p>Employers who have received a PPP loan that has not yet been forgiven may defer deposit and payment of the employer’s share of social security tax, discussed below. However, once the loan is forgiven, the employer is no longer eligible to defer such taxes after that date. For payments deferred through the forgiveness date, an employer may continue deferral until the end of 2021 and 2022 without incurring penalties for failure to deposit and failure to pay.</p>

* Chart prepared by and excerpted from an April 24, 2020 alert available at www.mcguirewoods.com/hc-financial-opportunities authored by Amber McGraw Walsh, Geoff Cockrell, Holly Buckley, Melissa Szabad, Gerald Thomas, Tim Fry, Kayla McCann Marty, and Alexis Reynolds

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					<p>an EIDL loan, to determine their maximum amount.</p> <p>The CARES Act provides more details on how to calculate payroll costs.</p> <p>Seasonal and new businesses use a different time period for the average monthly payroll calculation.</p>				<p>A borrower that first obtained an EIDL between Jan. 31, 2020, and April 3, 2020, is not prohibited from also obtaining a later PPP loan, but the loans must be for different purposes. In addition, a borrower that obtained an EIDL prior to a PPP loan may refinance the outstanding amount of their EIDL as part of the PPP loan if the eligibility requirements are met. If the prior EIDL loan was used for payroll costs, the PPP loan must be used to refinance the prior EIDL loan.</p> <p>A borrower may qualify for both a PPP loan (or refinance an EIDL into a PPP loan) and an SBA EIDL advance; however, the amount forgiven in the PPP loan will be decreased by the amount of the EIDL advance.</p> <p>Borrowers that have taken advantage of the PPP loans may also take out Main Street loans.</p> <p>Borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.” Applicants must take into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.</p>
3.	SBA Economic Injury Disaster Loans (EIDL) and Emergency Advances	SBA	Economic injury loans and emergency advances of up to \$10,000	Approximately \$10 billion	<p>EIDL maximum loan amount is \$2 million</p> <p>EIDL advance is up to \$10,000</p>	<p>No loan forgiveness program</p> <p>EIDL advance will not have to be repaid</p>	None	<p>Available for application now in each state that has made an economic injury declaration to the SBA</p>	<p>Applicants with an existing SBA disaster loan may still qualify for an EIDL for COVID-19, but the loans cannot be consolidated.</p> <p>A borrower that first obtained an EIDL after Jan. 31, 2020, is not prohibited from also obtaining a later PPP loan, but the loans must be for different purposes. In addition, a borrower that obtained an EIDL prior to a PPP loan may refinance the outstanding amount of their EIDL as part of the PPP loan if the eligibility requirements are met.</p> <p>A borrower may qualify for both a PPP loan (or refinance an EIDL into a PPP loan) and an SBA EIDL advance; however, the amount forgiven in the PPP loan will be decreased by the amount of the EIDL advance.</p>
4.	Main Street Business Lending Program	Department of Treasury, Federal Reserve	Lending to eligible small and medium-sized businesses	Up to \$600 billion in new financing for businesses	It depends on the elected facility.	No	Additional guidance likely forthcoming	Additional guidance likely forthcoming	It prohibits refinancing of pre-existing loans and several other financial covenants and restrictions.

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					<p>MSNLF: Lesser of (i) \$25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 EBITDA</p> <p>MSELF: Lesser of (i) \$150 million; (ii) 30 percent of the borrower's existing outstanding and committed but undrawn bank debt; or (iii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times the borrower's 2019 EBITDA</p>				<p>Borrowers that have taken advantage of the PPP loans may also take out Main Street loans.</p> <p>Borrowers may not participate in both the MSNLF and the MSELF.</p> <p>Additional guidance is likely forthcoming.</p>
5.	Public Health and Social Services Emergency Fund	Secretary of Health and Human Services (HHS)	Funding or other mechanisms to reimburse healthcare-related expenses or lost revenues attributable to COVID-19	\$100 billion	<p>For the first \$30 billion, providers can estimate their payments by multiplying 2019 Medicare fee-for-service payments (not including Medicare Advantage payments) by 0.06198.</p> <p>The second \$20 billion is allocated to</p>	Payments do not need to be repaid so long as the terms and conditions are met	Additional guidance likely forthcoming	Additional guidance likely forthcoming	<p>Providers can receive funding through both the CMS Accelerated and Advanced Payment Program and the CARES Act Public Health and Social Services Emergency Fund.</p> <p>There are terms and conditions that must be met to receive and retain the funds. Recipients must submit sufficient documentation to ensure funds are used for healthcare-related expenses or lost revenue attributable to COVID-19.</p> <p>Further, the CARES Act provides that such funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse.</p> <p>Additional guidance is likely forthcoming.</p>

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					providers based on eligible providers' 2018 net patient revenue. Additional guidance on these distributions and the other buckets in the fund is likely forthcoming.				
6.	Hospital Preparedness Program	Secretary of HHS	Grants and cooperative agreements	\$250 million	Additional guidance likely forthcoming	Additional guidance likely forthcoming	Additional guidance likely forthcoming	Additional guidance likely forthcoming	Additional guidance is likely forthcoming.
7.	Suspension of Medicare Sequestration	CMS	Temporary suspension of the Medicare sequester from May 1, 2020, through Dec. 31, 2020, and extension of the mandatory sequester for one additional year	No specific amount	Not applicable	Not applicable	Not applicable	Not applicable, automatic program	Generally none, automatic program
8.	Medicare Hospital Inpatient Prospective Payment System Add-On Payment for COVID-19 Patients During Emergency Period	Secretary of HHS	Hospitals will receive a payment increase of 20 percent for patients diagnosed with COVID-19 and later discharged during the emergency period	No specific amount	Not applicable	Not applicable	Not applicable	Not applicable, automatic program	Generally none, automatic program
9.	Medicaid Payment For Home- and Community-Based Attendant Services	State Medicaid programs	State Medicaid programs are permitted to pay for home- and community-based attendant services rendered in an acute-care hospital provided certain requirements for services are met	No specific amount	Not applicable	Not applicable	Not applicable	Not applicable, automatic program	Generally none, automatic program expanding state and community-based services guidelines
10.	Additional Medicare	CMS	Halting scheduled Medicare payment	No specific amount	Not applicable	Not applicable	Not applicable	Not applicable,	

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	Payment Adjustments		<p>reductions for durable medical equipment</p> <p>Preventing scheduled reductions in Medicare reimbursement for clinical diagnostic laboratory tests furnished to beneficiaries in 2021</p> <p>Delays reporting private payer data for one year</p>					automatic program	Generally none, automatic program
11.	Expansion of Telehealth Reimbursement	CMS	Expanded coverage and reimbursement for telehealth services rendered on or after March 6, 2020	No specific amount	Not applicable	Not applicable	Not applicable	Not applicable, automatic program	Includes a number of temporary policy changes relating to telehealth services
12.	Federal Tax Relief	Treasury Department and Internal Revenue Service	<p>(i) a new refundable employee retention tax credit</p> <p>(ii) deferral of payment of the employer's share of the Social Security employment tax for the remainder of 2020</p> <p>(iii) changes to net operating loss (NOL) limitations</p> <p>(iv) changes to "excess business loss" limitations</p> <p>(v) acceleration of corporate AMT credits</p> <p>(vi) modifications of business interest limitations</p> <p>(vii) increased charitable contribution limitations for 2020</p>	No specific amount	<p>Refundable payroll tax credit is 50 percent of eligible wages paid to employees during each calendar-year quarter for the period from March 13, 2020, through Dec. 31, 2020, with a credit maximum for 2020 of \$5,000 per employee</p> <p>Additional credit and contribution limitations outlined in tax and relief programs</p>	Not applicable	As outlined in tax and relief programs	As outlined in tax and relief programs	<p>A borrower that receives a PPP loan is not eligible to claim the refundable employee retention credit.</p> <p>An employer may receive both tax credits for the qualified leave wages under the FFCRA and the employee retention tax credit under the CARES Act, but not for the same wages. The qualified wages for the employee retention credit do not include the amount of qualified leave wages for which the employer received tax credits under the FFCRA.</p> <p>An eligible employer may receive both the tax credits for qualified leave wages under the FFCRA and a PPP loan under the CARES Act, but those qualified leave wages are not eligible as "payroll costs" for purposes of loan forgiveness under the CARES Act.</p> <p>Employers who have received a PPP loan that has not yet been forgiven may defer deposit and payment of the employer's share of social security tax.</p> <p>However, once the loan is forgiven, the employer is no longer eligible to defer such taxes after that date. For payments deferred through the forgiveness date, an employer may continue deferral until the end of 2021 and 2022 without incurring penalties for failure to deposit and failure to pay.</p> <p>Taxpayers who have had a loan forgiven under the U.S. Treasury Program Management Authority</p>

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			(viii) expensing for qualified improvement property						<p>established in Section 1109 of the CARES Act are ineligible to defer payment of social security taxes.</p> <p>Employers may not receive credits under both section 45S of the Internal Revenue Code and tax credits for qualified leave wages under the FFCRA.</p>
13.	Enhanced Medicaid Funding	CMS	Provides for a possible 6.2 percent increase in the federal match (FMAP) for each state and territory retroactive to Jan. 1, 2020, for qualifying expenditures	No specific amount	Not applicable	Not applicable	Not applicable	Not applicable	If a state increased premiums between the FFCRA and the date of enactment of the CARES Act, a state would still be eligible for the 6.2 percent FMAP increase.