

**Legal Disclaimer:** All content and materials in this document is for general informational purposes only. **It does not provide and does not constitute legal or tax advice.** It is based on very recent and fast-changing information and it will be updated as new information becomes available but may not contain the most up-to-date information.

Important: consult an attorney, CPA, or other professional advisor familiar with applicable laws and your dealership's operations to obtain specific advice with respect to these matters. Note: since many state and local governments have instituted emergency COVID-19-related stimulus and employment law measures and may have stricter or different employment laws that apply to your operations, please consult the information you receive from your state and metro dealer associations and your outside counsel.

In addition, information about individual benefits such as unemployment insurance or retirement plans is provided to dealers to aid with overall business decisions and may not apply to specific individuals. This information should not be characterized or provided by dealers or others as advice or guidance to any employee or other individual.

## The CARES Act and Dealerships – Frequently Asked Questions

### As of 4/03/2020

The Coronavirus Aid, Relief and Economic Security Act (CARES Act), signed into law on March 27, 2020, is the most expansive economic stimulus package in American history. This FAQ provides an overview of the CARES Act's impact on dealerships and of important information regarding federal loans programs, tax credits and provisions, and enhanced unemployment benefits. For more information, see the specific sections below.

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### PAYCHECK PROTECTION PROGRAM (“PPP”)

#### PPP INTERIM FINAL RULE

Late 4/2/20, the SBA issued an interim final rule for the PPP. You can view that [here](#). Some of the information from that rule is incorporated below, but not all. While the rule seeks to clarify many of the issues below, it also raises several questions and concerns. Moreover, several of the clarifications in that document could be at odds with some of the information below which is largely based on the CARES Act itself. NADA is continuing to work with the Small Business Administration (SBA) and U.S. Department of Treasury (Treasury) to clarify issues and will continue to update this document as more information and clarification is received.

## Overview and Applicability

**What is the PPP?** The PPP is designed to provide a direct incentive for small businesses to keep workers on the payroll during the downturn caused by the coronavirus outbreak. Generally, the SBA will forgive loans if all employees are kept on the payroll for eight weeks and the money is used for payroll, rent, mortgage interest, or utilities. The PPP is available through June 30, 2020.

**When may I apply for a PPP loan?** Loans are available through participating lenders from April 3, 2020 through June 30, 2020.

**Where do I apply for a PPP loan?** Dealerships can apply through any existing SBA 7(a) lender or through any participating federally insured depository institution, federally insured credit union, and Farm Credit System institution. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. The CARES Act contains explicit authority to approve additional lenders and Treasury is working to do so. Additionally, it is possible that captive finance sources will seek approval to offer loans under this authority. Dealers should consult with lenders of their choice to determine if they are participating in the program.

NADA is working closely with several lender associations to help ensure that as many lenders as possible will participate in the program as soon as possible.

**Should I contact a lender now? And, what should I ask?** If you are interested in pursuing a PPP loan, then it will likely be to your advantage to reach out to your lender as soon as possible to see if they are participating and to discuss the loan application process. Seek advice on the:

- Timing of the application process;
- Lender's capacity to process loans and disburse funds; and
- Whether you can pre-file or reserve capacity with a lender?

**What dealerships are eligible?** Dealerships with 500 or fewer employees who were in operation on February 15, 2020, and either paid salaries and payroll taxes for employees or paid independent contractors are eligible for the program. Larger dealer groups may be able to participate (see discussion below). *NOTE: language in the Interim Final Rule (see above) appears to misstate the eligibility criteria. NADA is seeking further clarification from SBA.*

**Can I apply for more than one PPP loan?** No eligible borrower may receive more than one PPP loan. This means that if you apply for a PPP loan you should consider applying for the maximum amount. While the CARES Act does not expressly provide that each eligible borrower may only receive one PPP loan, SBA and Treasury have determined that because all PPP loans must be made on or before June 30, 2020, a one loan per borrower limitation is necessary to help ensure that as many eligible borrowers as possible may apply for a PPP loan.

**Can I use e-signatures or e-consents if a borrower has multiple owners?** Yes, e-signature or e-consents can be used regardless of the number of owners.

**Are the funds available in the PPP “first-come, first-served?”** Yes.

**What is the interest rate on a PPP loan?** The interest rate will be 100 basis points or one percent.

**What will be the maturity date on a PPP loan?** The maturity is two years.

**When will I have to begin paying principal and interest on my PPP loan?** You will not have to make any payments for six months following the date of disbursement of the loan. However, interest will continue to accrue during this six-month deferment. The CARES Act authorizes SBA to defer loan payments for up to one year.

**What is the eligibility date?** Eligible dealerships will be able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020. This program would be retroactive to February 15, 2020, in order to help bring workers who may have already been laid off back onto payrolls. Loans are available through June 30, 2020. According to the SBA, lenders may begin processing loan applications as soon as April 3, 2020.

**When is the lookback for the 500-employee threshold?** The term ‘employee’ includes individuals employed on a full-time, part-time, or other basis. SBA provides guidance on how to calculate size based on employee count in its [Affiliation guide for size standards](#) (p. 21). According to the SBA affiliation guide, a dealer would use the average number of employees for each pay period during the past 12 calendar months. SBA is expected to provide additional clarification.

**Are there territorial issues for eligibility (can dealers in Puerto Rico, American Samoa, etc. apply)?** No. The PPP to all of the United States. As used in the act, the term “United States” includes the States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

## [Affiliation Issues](#)

**NOTE: WE BELIEVE THAT THE INTERPRETATIONS BELOW ARE ACCURATE BASED ON THE LANGUAGE IN THE CARES ACT. HOWEVER, THE INTERIM FINAL RULE CREATES AMBIGUITIES WITH RESPECT TO THIS AND RELATED INTERPRETATIONS OF THE SIZE LIMIT AND THE APPLICATION OF THE SBA AFFILIATION RULES. DEALERS SHOULD CONSULT WITH THEIR ATTORNEYS ON THIS ISSUE, AND NADA IS STILL WORKING TO CLARIFY THE AFFILIATION ISSUES WITH SBA.**

**What is the typical application of the SBA affiliation rules to dealerships?** SBA programs typically focus on the size of the business, which for dealers is based on number of employees. Unless a waiver applies, a dealership must also identify and include the number of employees of each of its affiliated companies when determining its own size.

Without a waiver, the affiliation test would generally be applied as follows to dealerships: Does the group of business concerns (dealerships) that you control employ, in total, more than 500 people?

- If no, the dealership should be eligible for a loan
- If yes, the dealership will NOT be eligible for a loan

**When do the PPP affiliation waivers apply?** The CARES Act contains an affiliation rule waiver for the PPP. It is only applicable to *dealerships that control multiple business concerns, with over 500 total employees in total*. Dealers with under 500 employees do not need the PPP affiliation waiver as it only applies only to dealer groups with over 500 employees.

**What is the PPP affiliation rule waiver?** SBA issues Franchise Identifier Codes (FICs) to franchisors. Vehicle manufacturers are franchisors. So, for example, the FIC for Ford is S4155 and Lincoln is S4156. Under the PPP, the standard SBA affiliation rules are **WAIVED**, for franchises where the franchisor has been assigned an FIC.

Not all vehicle manufacturers have been issued FICs, but the majority of those that have not applied for one. Click here for a [list of manufacturers FICs](#). *Note: The list is subject to change as OEMs complete their FIC filings and SBA approves.*

In addition, SBA maintains a weekly updated [directory](#) that lists all franchisor FICs.

**How will the waiver work for dealerships?** First, determine how many separately organized business concerns are under common ownership and control. If any business concern in the group employs *more* than 500 people, it is NOT eligible to apply for a PPP loan, even if it has a FIC.

For stores in the group with 500 or fewer employees, determine which stores have a FIC. Each of those stores should be eligible for a PPP loan but will need to file a separate loan application.

**Do I need to sign any other special documents with my manufacturer to receive a loan?**

We are not aware of any requirement to sign special documents with your manufacturer except as may be required under the SBA's affiliation rules ( e.g., Form 2462). However, if your franchise has been issued a franchise identifier code (FIC) by the SBA, then the affiliation rules are waived for your business concern. So, in that instance, there should be no PPP-based source of a requirement to sign anything additional, including Form 2462. Of course, you should always contact your attorney before signing any forms that could modify a franchise agreement.

**I have specific questions about the structure of my dealership and employee count as it applies to the affiliation rules, how should I get them addressed?** Work with your attorney, CPA and [local SBA office](#) to address specific affiliation and waiver questions.

### **Borrowing Limitations and Compensation issues**

**How much can I borrow?** The lesser of either \$10 million or 2.5 times the borrower's average monthly payroll costs. The number of employees and total revenue of the dealership are not relevant to this limit.

**What is the relevant time period to determine average monthly payroll? Use** the 12 months prior to the date the loan is made. Quickly compute monthly payroll by taking total yearly compensation paid and dividing that number by 12. Note that compensation in excess of \$100,000 per year is excluded from this computation. Note that the following costs are NOT included when computing Payroll Costs for the initial loan application and Payroll Costs for the loan forgiveness:

*Federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, including the employee's and employer's share of FICA (Federal Insurance Contributions Act) and Railroad Retirement Act taxes, and income taxes required to be withheld from employees.*

*Bottom line: all of the federal taxes imposed or withheld during the 12-months prior to the loan may be included in Payroll Costs, except for the period shown above.*

**What if I was not in business for the past year?** Dealerships without payroll data from 2019 can calculate their average monthly payroll by using payroll data from January 1, 2020 to February 29, 2020.

**How are the limits applied? Is it by rooftop, EIN, or entire company?** The \$10 million and compensation-based limits apply to "business concerns" and is ultimately based on the facts and circumstances of the corporate structure of the dealership group and who is applying for a PPP loan. Generally, rooftops that are separate corporate entities are considered different business concerns and have separate limits. A business concern has not been adequately siloed from

related business concerns, may be considered one concern, even if the affiliation rules apply (SBA may “pierce the corporate veil” between legal entities).

## Forgiveness Issues

### **What portion of the loans are forgivable?**

The federal government will forgive qualifying loans for amounts spent on qualifying costs during the eight-week period following the origination of the loan. This means that the loan will not have to be paid back to the lender to the extent the proceeds are used to pay qualifying costs. SBA has indicated that at least 75% of the forgiven amount must have been used for payroll. The loan forgiveness cannot exceed the principal.

Qualifying costs include:

- Payroll costs except on wages over \$100,000/year (generally salary or wages and benefits using the same definition of payroll costs used to determine loan eligibility)
- Interest on the mortgage obligation on real or personal property incurred in the ordinary course of business, incurred before February 15, 2020
- Rent on a leasing agreement
- Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
- For borrowers with tipped employees, additional wages paid to those employees

Further guidance is needed on whether floor plan interest is included among these definitions. The statute defines each of these items above.

**What happens if the loan is spent on non-qualifying costs?** Loan proceeds spent on non-qualifying costs are not forgivable, only those spent on qualifying costs.

**Is there anything else that could jeopardize the ability to have the loan forgiven?** Yes. The amount of the loan eligible for forgiveness will be reduced proportionally by any reduction in employees as of June 30, 2020, compared to a prior period which can be either: (1) the period beginning on February 15, 2019 and ending on June 30, 2019, or (2) the period beginning on January 1, 2020 and ending on February 29, 2020. The time period chosen is at the borrower’s discretion. If the business concern has fewer average employees, that will reduce the amount of the PPP loan that can be forgiven. Therefore, decisions about the number of employees and when or if to terminate or furlough employees can impact the potential forgiveness of a PPP loan.

Substantially reducing employee compensation could also reduce the amount of loan forgiveness. Reducing an employee’s compensation by more than 25 percent of their standard pay will result in a corresponding decrease in loan forgiveness. Note that reducing high earners’ salaries to \$100,000 per year is not considered as reducing pay under this section.



**What if my employee levels change throughout the year? For example, what if I need to fire an employee for cause or an employee quits?** The amount of loan forgiveness calculated is reduced if there is a reduction in the number of employees. Generally, the determination of retention is made by looking at a business's average number of employees per month employed during the covered period. The statute provides three options for this calculation including a seasonal optional. Because the calculation of employees is made using averages, a change of one employee likely will not have a significant impact on these numbers, however dealerships should work with their CPA and lender to assess how employment retention can impact loan forgiveness.

It's also worth mentioning that nowhere in the statute is forgiveness tied to retaining *specific* employees. For example, if employee X leaves and they are replaced by new employee Y within the same calendar month, this would not impact a dealership's forgiveness.

**How will we determine what to pay commissioned and flat rate personnel with the substantial decrease in business?** Ultimately, what a dealership pays employees during this time is impacted by several factors that each dealership needs to consider such as, overall financial health of business, state/local business closure orders, number of employees, etc.

However, it is important to note that loan forgiveness under the PPP can be impacted by a decision to reduce wages. Specifically, the amount of the forgiveness for the loans will be reduced if the employer reduces the salary or wages paid to an employee by more than 25% during the 8-week period (compared to the most recent quarter). Dealerships should consider this when taking out these loans for payroll for all employees (including those paid commission) and considering pay cuts. Work with CPAs and lenders to assess specific business and loan forgiveness impacts related to compensation.

**What documentation do I need to have the loan forgiven?** Apply through their lender for loan forgiveness. The application must include documentation verifying the number of employees on payroll and payrates, including IRS payroll tax filings and state income, payroll and unemployment insurance filings. Additionally, other qualified expenses must be verified through documentation showing mortgage obligations.

**Is the forgiven loan counted as income under federal income taxes?** No. The statute specifically exempts loan forgiveness under the paycheck protection program from federal income.

**Do you know if the loan forgiveness will include floor plan financing expenses?** Possibly. According to the statute, a borrower is eligible for loan forgiveness on interest on the mortgage obligation on real or personal property incurred in the ordinary course of business, incurred before February 15, 2020. Guidance is needed on whether this includes floor plan interest. This answer depends on what the term "mortgage" means. Dealers should work with their lenders for clarification.

**How are dividend disbursements to ownership treated?** Only wages, limited to \$100,000/year, are eligible for forgiveness.

## ECONOMIC INJURY DISASTER LOANS AND LOAN ADVANCE

**What is the Economic Injury Disaster Loan (“EIDL”) Program?** The CARES Act also [expands the SBA’s existing EIDL Program](#) by relaxing the eligibility requirements under the program and increasing the funding available through December 31, 2020.

Prior to the CARES Act, the SBA offered EIDL loans of up to \$2 million for qualifying businesses (including qualifying dealers) to recover from temporary losses following a statewide economic injury declaration. EIDL Loans are not forgivable and EIDL Loan proceeds can only be used for certain purposes – that is for working capital necessary until resumption of normal operations and expenditures necessary to alleviate economic injury, but not beyond that which the business could have provided had the injury not occurred (fixed debts, payroll, accounts payable and other bills that cannot be otherwise paid.)

**What are the changes to the EIDL Program under the CARES Act?** Until December 31, 2020, the key provisions of the EIDL Program will be changed in the following ways:

**EIDL Eligibility:** The eligibility requirements will be relaxed. Specifically, in addition to small businesses, entities eligible for an EIDL loan will be expanded to include *any business with not more than 500 employees*,<sup>1</sup> as well as: private nonprofit organizations; small agricultural cooperatives; sole proprietorships, with or without employees, and; independent contractors.

In addition, the following requirements will be waived:

- the personal guarantee for loans over \$200,000;
- that the business be in operation for at least a year prior to the COVID-19 outbreak, and;
- that the business or its affiliates be unable to obtain credit elsewhere.

Eligible businesses will be permitted to apply for an EIDL if the business was in existence on January 31, 2020 and has suffered substantial economic injury as a direct result of COVID-19.

**How can a borrower use the EIDL Loan proceeds under the revised program?** The CARES Act expands the currently permitted uses of EIDL Loan proceeds to include:

- Paying sick leave to employees unable to work due to the direct effect of COVID-19;
- Maintaining payroll to retain employees;
- Meeting increased costs to obtain materials unavailable from the business’s original source because of supply chain issues

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<sup>1</sup> Note that this size limitation for EIDL Loans still applies under the CARES Act, and this limitation should not be confused with the discussion outlined in the PPP section about aggregation, franchises, and franchise codes.



- Rent or mortgage payments; and
- Repaying certain obligations that cannot be met due to revenue losses.

**What is the cost of borrowing under the EIDL Loan program?** The maximum interest rate for EIDL Loans is 4%. However, for small businesses impacted by COVID-19, the interest rate will be 3.75%.<sup>2</sup>

**Can I get any money while my EIDL application is pending?**

Yes, there are EIDL Grants available under the CARES Act. The CARES Act appropriates \$10 billion for emergency EIDL Grants. That is, while a business's application for an EIDL Loan is pending, the applicant may apply for a grant of up to \$10,000 (EIDL Grant), which shall be paid to the applicant within three days of application.

**Will EIDL Grants need to be repaid?** No. Awarded EIDL Grants *will not need to be repaid*, even if the business's application for an EIDL Loan is denied.

**Can I obtain a Paycheck Protection Program Loan and an EIDL Loan?** In limited circumstances, yes, but generally it is unclear. If a borrower has received an EIDL Loan *unrelated* to the current COVID-19 disaster declaration, it may apply for a PPP Loan under the CARES Act. NOTE HOWEVER, that it is unclear whether borrowers that have received an EIDL Loan in connection with the COVID-19 outbreak may receive a PPP Loan for the same purpose. Borrowers may refinance their existing EIDL Loan with a PPP Loan if they meet the eligibility requirements. NOTE ALSO that any EIDL Grants awarded under the EIDL Program *would be subtracted* from amounts ultimately forgiven under the PPP.

The interim final rule addressed this issue but did not clarify it entirely. *Under the section entitled "How can PPP loans be used?" It states:*

*"Proceeds of a PPP loan are to be used for... refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan."*

It is unclear at this time whether this is expressing a limitation or restriction on one borrower obtaining both a PPP and an EIDL loan for payments related to COVID-19. Clarification has been sought. In any event, dealerships considering both the PPP and EIDL loan and grant should work with closely their lender and CPA to ensure permitted uses for these loans do not overlap and they are taking proper advantage of each loan programs benefits.

**Are there territorial issues for eligibility (can dealers in Puerto Rico, American Samoa, etc. apply)?**

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<sup>2</sup> For nonprofit organizations impacted by COVID-19, the interest rate will be 2.75%.

Small businesses suffering substantial economic injury in all 50 states, DC, and the territories may apply for an EIDL.

## ADDITIONAL SMALL BUSINESS LENDING PROGRAMS

**Are there other programs available if a dealership does not qualify for EIDL or Paycheck Protection Program loans?** Yes. If a dealership does not qualify for these SBA programs, or seeking different relief, it might consider:

- *The Main Street Business Lending Program.* This is a separate program expected to be administered by the Federal Reserve that is aimed at helping small- and medium-sized business. The CARES Act mentions the program only to underscore that nothing in the CARES Act is meant to limit the discretion of the Federal Reserve to establish such a program, and that Treasury may or may not use funds from the CARES Act to fund the program. More information is expected from the Federal Reserve soon. Depending on the details of this program, this could be one of the more important programs for small- and medium-sized businesses.
- *SBA Section 504 Real Estate Loans.* Dealers should also be aware of the possible availability of an SBA [Section 504 real estate loan](#) or real estate refinancing. These real estate loans provide approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. 504 loans are made available through Certified Development Companies (CDCs), SBA's community-based partners for providing 504 Loans. A CDC is a nonprofit corporation that promotes economic development within its community through 504 Loans. 504 Loans are typically structured with SBA providing 40% of the total project costs, a participating lender covering up to 50% of the total project costs, and the borrower contributing 10% of the project costs. Under certain circumstances, a borrower may be required to contribute up to 20% of the total project costs. To find a CDC in your area, contact your [local SBA District Office](#).

Work with your CPA, attorney, and lender to explore and pursue the loan options that work best for your business situation.

## TAX CREDITS AND PROVISIONS

**What is the new employee retention tax credit?** CARES provides for a new employee retention tax credit. This credit is unavailable to employers who receive PPP loans.

The employee retention tax credit provides eligible employers with a refundable payroll tax credit for 50 percent of the qualified wages paid by the employer between March 13, 2020 and December 31, 2020. This credit is available to employers whose operations were fully or partially shut down by a government COVID-19 related shutdown order or whose gross receipts have

declined by more than 50 percent compared to the same quarter in 2019 and ends in the quarter where gross receipts are greater than 80% of gross receipts for the same quarter in 2019. The tax credit is provided for the first \$10,000 (including health benefits) of compensation.

For employers with more than 100 employees, qualified wages are only wages paid when an employee is not working. For employers with 100 employees or less, qualified wages are wages paid regardless of whether the worker is actively working or not.

These credits are applied to offset employment taxes not covered by other credits, including the payroll tax credits for required paid sick leave for family leave under the [Families First Coronavirus Relief Act \(FFCRA\)](#).

Dealers with cash flow concerns can request an advancement on their tax credits by filing [Form 7200](#) with the IRS. The IRS expects to process these forms within two weeks.

### **What changes were made to interest deductibility limitations?**

The Tax Cuts and Jobs Act of 2017 (TCJA) generally limited the deductibility of business interest to 30% of a dealership's adjusted taxable income, except for floor plan financing interest, which remained 100% deductible. The CARES Act allows dealers formed as corporations to deduct up to 50% of their adjusted taxable income for 2019 and 2020, and it allows dealers formed as partnerships to deduct up to 50% of their adjusted taxable income for 2020. Dealers should note that, coupled with the proposed IRS rules on the interplay between bonus depreciation and floor plan financing interest, if their total business interest, including floor plan financing interest, amounts to less than 50% of adjusted taxable income for these years, they may also be able to avail themselves of the 100% bonus depreciation provisions in the TCJA. Dealers formed as corporations that were unable to use full expensing in 2019 because their interest expenses were between 30% and 50% of their adjusted taxable income may be able to generate refunds by filing a superseded or an amended 2019 return. Dealers which are formed as partnerships will be allowed to deduct 50% of their 2019 disallowed excess business interest expense in 2020.

### **What changes were made to net operating losses (NOLs)?**

Dealers are permitted to offset losses in 2018, 2019, and 2020 against profits from the prior five years. NOL carryback was previously eliminated by the TCJA in 2017. This provision may provide dealers with losses in 2020 with substantial refunds. Losses that are used to offset pre-TCJA profits, which were taxed at a higher rate, will be refunded at pre-TCJA tax rates, providing an additional boost.

The TCJA also generally limited the amount of losses noncorporate taxpayers, including pass throughs, could claim to \$500,000. This limitation is suspended until the 2021 tax year, allowing dealers to utilize excess business losses along with the new NOL carryback provisions to access critical cashflow.

### **What are the new deadlines for payroll taxes?**

In order to assist employers with immediate cash-flow issues, the CARES Act also provides that employers may defer payment of their portion of Social Security taxes they would otherwise be obligated to pay. Any deferred payroll taxes would be required to be paid over the next two years – with half of the owed amount being required to be paid by December 31, 2021, and the remaining half by December 31, 2022.

This section does not apply to dealers who receive PPP loans. Dealers may, however, be able to delay the payment of certain payroll taxes under the Families First Coronavirus Relief Act (FFCRA). Please see NADA's FAQ on the FFCRA [here](#).

### **Did the CARES Act fix the “QIP Glitch” from the Tax Cuts and Jobs Act?**

Yes, the CARES Act made technical corrections to the TCJA allowing for qualified improvement property to utilize bonus depreciation. The TCJA originally intended for businesses to deduct improvements made to retail property immediately under the TCJA's bonus depreciation provisions, but due to a drafting error the depreciation lifespan was set at 39 years. The CARES Act corrects this error retroactive to 2018. Dealers with significant outlays on QIP in during this timeframe should consider amending their 2018 and 2019 returns to claim the deductions and receive a refund.

### **If we are a C Corp, what changes were made to corporate AMT credits?**

Under the TCJA, corporate AMT credits were refundable over a four-year period from tax years beginning in 2018-2021. The CARES Act makes any remaining corporate AMT credit fully refundable for the tax year beginning in 2019. Alternatively, an election may be made to make the tax credit fully refundable for the tax year beginning in 2018. The CARES Act directs Treasury to provide procedures where a taxpayer electing to make the credit refundable in 2018 can file for a tentative refund of the additional credit amount, which should be granted within 90 days.

## **UNEMPLOYMENT BENEFITS**

**Will additional unemployment protection be available under the CARES Act?** Yes. The CARES Act temporarily supplements unemployment insurance (UI) amounts and extends the duration of those benefits. It also provides an estimated \$260 billion in enhanced and expanded unemployment insurance to workers who are being furloughed, laid off, or finding themselves without work due to the public health crisis.

**What are the changes to unemployment insurance that we should be aware of?** The CARES Act creates three new UI programs: Pandemic Unemployment Compensation (“PUC”), Pandemic Emergency Unemployment Compensation (“PEUC”), and Pandemic Unemployment Assistance (“PUA”). All three programs are fully federally funded but require state action.

**What is Pandemic Unemployment Compensation (PUC)?** PUC would provide additional (\$600/week) UI benefits from the federal government through the state unemployment agencies. Any state may enter into an agreement with the Secretary of Labor that the state will make

payments of regular compensation to individuals in amounts and to the extent they would under state law with respect to any week for which the individual is otherwise entitled under state law to receive regular compensation, as if such state law had been modified in a manner such that the amount of regular compensation (including dependents' allowances) payable for any week shall be equal to the amount determined under state law plus an additional amount of \$600/week.

**When will the additional \$600/week be available and for how long?** The PUC will not be available until the date the employee's state enters into an agreement with the Secretary of Labor to provide these benefits and then will be available through July 31, 2020. Following July 31, an employee would need to exhaust state and federal unemployment benefits (without the extra \$600 a week), if the state or federal government provide additional weeks of unemployment benefits beyond that date. After exhausting all state and federal unemployment benefits, employees may become eligible for Pandemic Emergency Unemployment Benefits (described below).

From the date the bill is signed through July 31, 2020, all UI claimants (both regular claimants and Pandemic Unemployment Assistance described below) will receive the weekly benefit amount authorized under the unemployment compensation law of the state where the covered individual was employed their usual calculated benefit plus an additional \$600 per week in compensation.

To encourage states to waive the customary 7-day waiting period to receive benefits, the federal government will reimburse states for the full amount of unemployment benefits paid to individuals during their first week of unemployment. PUC may be paid either with the regular UI payment or at a separate time, but it must be paid on a weekly basis.

**Is there any extension of the time that UI is available?** Yes. The CARES Act also provides that an individual who has already exhausted their state unemployment benefits is eligible to receive an additional 13 weeks of Pandemic Emergency Unemployment Compensation (PEUC) through the end of December 2020. This means an individual may receive unemployment benefits for 39 weeks rather than the 26 weeks provided by most states.<sup>3</sup>

**What is the maximum number of weeks unemployment assistance is available to a covered individual?** Subject to the Dec. 31, 2020 expiration date, unemployment assistance may continue for as long as an individual's unemployment, partial unemployment, or inability to work is caused by COVID-19. However, the total number of weeks for which a covered individual may receive assistance shall not exceed 39 weeks, and such total shall include any week for which the covered individual receives regular compensation or extended benefits under any federal or state law. If the duration of extended benefits is extended after the enactment of the CARES Act, the 39-week period shall be extended by the applicable number of weeks.

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<sup>3</sup> During these 13 weeks, the recipient is eligible for their regular benefit amount under state law plus – until July 31, 2020 -- an additional \$600 per week. In order for individuals who previously exhausted their unemployment benefits to qualify for additional unemployment (including the \$600 supplement for the next four months), they must be otherwise eligible for benefits under state law, meaning they are able to work, available to work, and actively seeking work.



**Could this reduce the amount of state UI an applicant would have received?** It should not. There is a “non-reduction rule” in the Act, which means that as long as the states are participating in these programs, they may not do anything to decrease the maximum number of weeks of UI or the weekly benefits available under state law as of January 1, 2020.

**Is there any additional protection for workers who may not otherwise be eligible for UI benefits?**

Yes. Pandemic Unemployment Assistance (PUA) provides emergency unemployment assistance only to applicants who are not generally eligible for regular state UI or who have exhausted their state UI benefits (including any Extended Benefits that might become available in the future). Up to 39 weeks of PUA are available to workers who are immediately eligible to receive PUA. The program will expire on December 31, 2020, unless otherwise extended.

Those eligible for PUA include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long-enough work history to qualify for state UI benefits.

**What do applicants for this expanded (PUA) unemployment coverage need to provide?** Applicants for PUA will need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work because of one of the following circumstances:

- They have been diagnosed with COVID-19 or have symptoms of it and are seeking diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for someone diagnosed with COVID-19;
- They are providing care for a child or other household member who can’t attend school or work because it is closed due to COVID-19;
- They are quarantined or have been advised by a health care provider to self-quarantine;
- They were scheduled to start employment and do not have a job or cannot reach their place of employment as a result of a COVID-19 outbreak;
- They have become the breadwinner for a household because the head of household has died as a direct result of COVID-19;
- They had to quit their job as a direct result of COVID-19;
- Their place of employment is closed as a direct result of COVID-19; or
- They meet other criteria established by the Secretary of Labor.

Workers are not eligible for PUA if they can either telework with pay or are receiving paid sick days or paid leave.

The PUA program will run from January 27, 2020 through December 31, 2020. Applicants may receive retroactive benefits and can access benefits for a maximum of 39 weeks, including any weeks for which the person received regular UI. But eligibility will sunset on December 31, 2020 absent any extensions.



**Is there any relief for employees placed on part time schedules?** Yes. Short-time compensation (STC), also known as work-sharing, programs help employers avoid layoffs by putting workers on part-time schedules with partial unemployment benefits to help make up for some of the lost income. Under the CARES Act, the federal government will fully reimburse states for all STC programs already in place that conform with the certain requirements. The Act also provides \$100 million in grants to states to implement, improve, and promote STC programs. More information on STC programs can be found [here](#).

**What is the role of the states?** The CARES Act is funded with federal money, but the benefits will still be administered by state unemployment offices after entering into agreements with the Department of Labor (DOL). States currently are taking different approaches, with some beginning to administer benefits under the new law and some awaiting guidance from DOL. For states that enter into agreements with the DOL to provide benefits, the federal government will reimburse 100% of their extra benefits costs (that is, those costs above what they would have paid in regular state unemployment benefits), plus administrative expenses. Accordingly, it is expected that most, if not all, states will participate, but the timing of these state agreements is not immediately clear. The DOL has not yet issued guidance to states on how to enter into these agreements.

**Where can employees find information about potential unemployment benefits?** Employees should contact their [state unemployment insurance program](#) as soon as possible after becoming unemployed.

**Can an employee who would make more from UI simply quit in order to claim the benefits?** It is unclear, but unlikely. In some situations, employees who receive the extra \$600 a week payment will be entitled to more compensation than they would otherwise be entitled to if they remained employed. It is unclear whether employees will be able to simply quit because they think it will make sense for them financially to do so and then collect unemployment benefits. Ultimately, states may have some discretion in determining which claimants are eligible for benefits and the amount to which they are entitled. It is not clear what it means for an employee to quit as a result of COVID-19. For an employee to be eligible for Expanded Unemployment Benefits, for example, covered individuals must have “had to quit their job as a direct result of COVID-19,” which suggests they must have essentially been forced to quit for reasons directly related to COVID-19, and wasn’t intended to cover people who quit (or want to quit) because of a general fear of contracting COVID-19, but at this point there is no official guidance.

**What benefits will those applying for partial unemployment benefits receive?** It is unclear how the \$600 per week supplement will be incorporated into determining an individual’s eligibility for partial unemployment benefits (and how much they may receive). It appears that employees receiving only partial state unemployment benefits (e.g., reduced pay but still employed) could still receive the additional \$600 payments (Emergency Increase Benefits) on top of their partial state unemployment benefits. The DOL may issue guidance to clarify this point. State unemployment offices will need to make these determinations, as well as others, absent sufficient clarifying federal guidance.

## OTHER EMERGENCY OPTIONS FOR EMPLOYEES

**Are there any other emergency options in the CARES Act that are available to employees that we should be aware of?** The CARES Act allows individuals to make early withdrawals from their retirement accounts without penalty. Specifically, the 10 percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after Jan. 1, 2020 is waived. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.

**What qualifies as a coronavirus-related distribution?** A coronavirus-related distribution is a one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury secretary.

**Is there any other relief for individuals who need to withdraw funds from their retirement plans and IRAs?** Yes, there is a waiver for the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. The contribution plans and IRAS that qualify include: (1) employee annuity plans under 26 U.S.C. section 403(a) or 403(b); (2) certain deferred compensation plans under 26 U.S.C. section 457(b); and (3) individual retirement plans.