



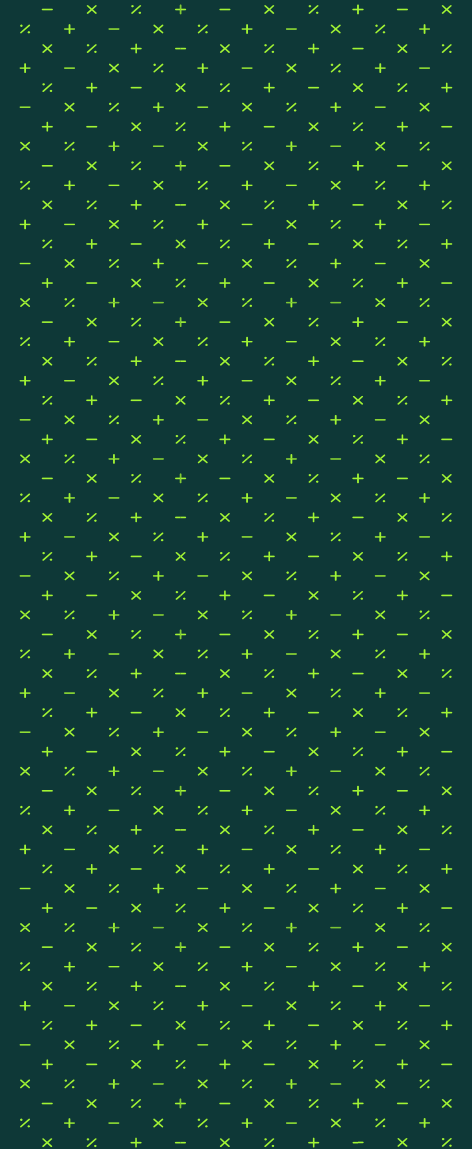
MOSSADAMS

# PPP Flexibility Act

## Moss Adams

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# Presenters

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# About Moss Adams

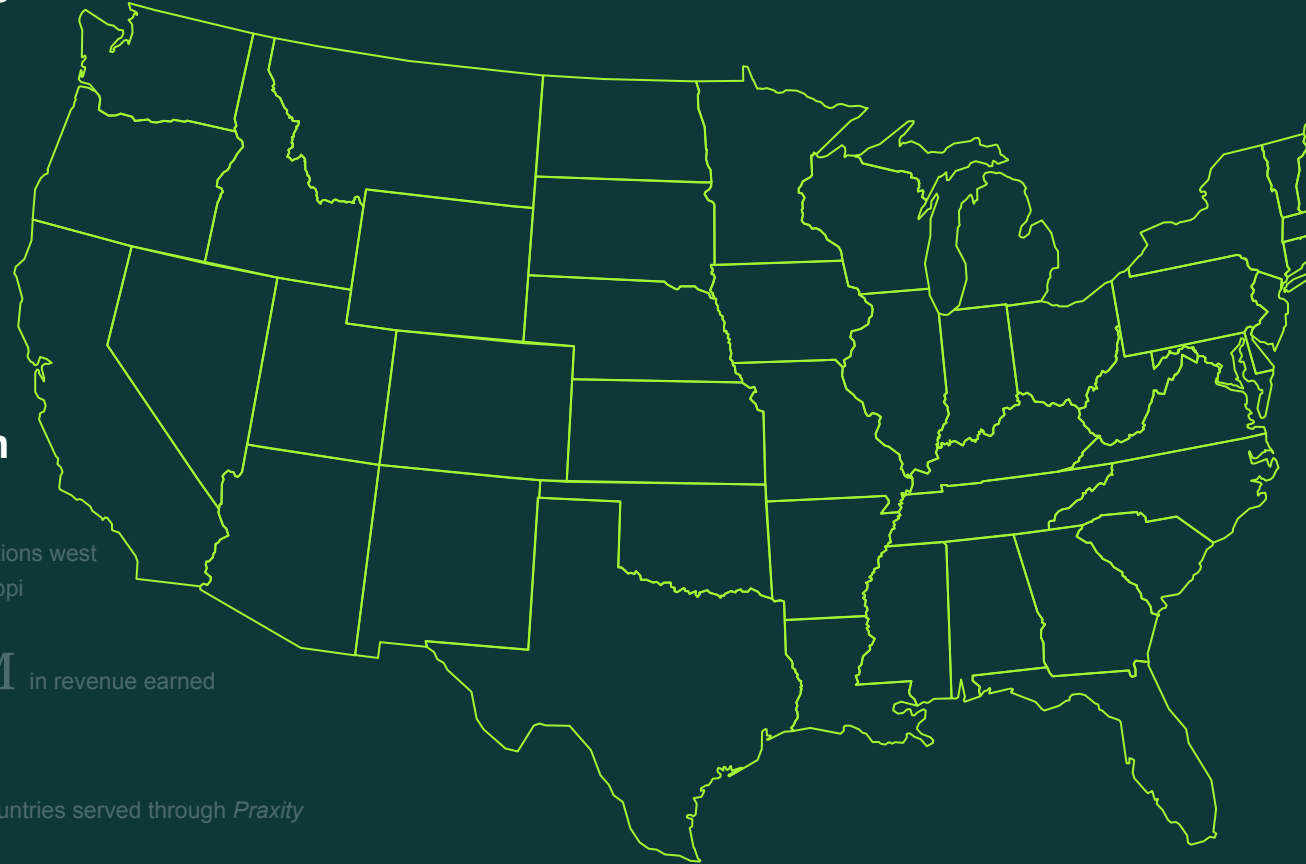
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# Today's Topics

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CARES Act and PPP Prior Law

PPP Flexibility Act Changes

Unanswered Questions

Open Q&A



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# CARES Act

## PPP Prior Law

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# PPP Sources of Guidance

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Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748)– Enacted March 27, 2020

Paycheck Protection Program and Health Care Enhancement Act (H.R. 266)– Enacted April 24, 2020

**Paycheck Protection Program Flexibility Act (H.R. 7010)– Enacted June 5, 2020**

SBA Existing Loan Regulations (Title 13 of the Code of Federal Regulations)

SBA PPP “Interim Final Rules” (IFR’s) and “Frequently Asked Questions” (FAQ’s)

SBA PPP Forgiveness Application (Released May 15, 2020)



# Paycheck Protection Program History

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## \$350B distributed pursuant to CARES Act

- Forgivable loans up to \$10M for businesses with <500 employees
- Maximum loan based upon 2.5 months of payroll
- 75% to be used for on-going payroll, 25% for mortgage, rent, utilities
- Limitations on forgiveness based on employee headcount, wage cuts, etc.
- Unforgiven portion repaid in 2-years at 1% interest rate

## \$310B added to program in PPP HCE Act





# CARES Act (Prior Law) – Covered Period

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## 8-Week Covered Period

- Starts on date of disbursement, or
- By Election – “Alternative Covered Payroll Period”
  - Borrowers may choose to start their 8-week covered period (solely with respect to payroll costs) on the date of their first payroll period occurring after PPP loan receipt
  - Non-payroll costs still use standard 8-week covered period



# CARES Act (Prior Law) – Payroll Costs

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75%+ of Forgiven Amount must be spent on Payroll Costs

- Employee Compensation
  - Up to \$15,385 (\$100,000 annualized) per employee
- Owner Compensation
  - Up to lesser of \$15,385 or 8/52 of 2019 actual compensation per owner
  - Sch C Owners – based solely on 2019 Sch C net income
  - Includes compensation paid to “general partners”
- Group health care benefits
  - Employer portion only
- Retirement Benefits
- State and Local Employer taxes on compensation



# CARES Act (Prior Law) – Non-Payroll Costs

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25% of Forgiven Amount may be spent on Non-Payroll Costs

- Interest on real or personal business property
  - In force before 2/15/20
- Rent on real or personal business property
  - In force before 2/15/20
- Utilities
  - Electricity
  - Water
  - “Transportation”
  - Telephone
  - Internet Access



# CARES Act (Prior Law) – FTEE's

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Forgiveness will be reduced pro-rata for reductions in headcount as compared to 'reference period'

- Step 1 – Calculate full-time equivalent employees for covered period
- Step 2 – Calculate full-time equivalent employees for reference period
  - 2/15/2019 – 6/30/2019 or 1/1/2020 – 2/29/2020
- Step 3 – Calculate ratio of Step 1 to Step 2
  - For example, if employed 40 FTEE's during covered period and 50 FTEE's during chosen reference period, forgiveness is limited to 80% of PPP loan
- Full-time equivalent employees = 40-hour average workweek
  - For example, an employee with a 30-hour average workweek counts as 0.75 of a full-time employee equivalent
  - Optional Simplified FTE calculation election (<40 hours = ½ of an employee)



# CARES Act (Prior Law) – FTEE's (cont.)

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- Opportunities to include non-active employees in covered period headcount if properly documented:
  - Employees who refused an offer for rehire
  - Employees fired for cause
  - Employees who voluntarily resigned
  - Employees who voluntarily requested and received a reduction of hours
- Safe Harbor for rehiring employees to restore forgiveness
  - FTE's as of 6/30/2020 must be equal to or greater than headcount at 2/15/2020



# CARES Act (Prior Law) – Pay Reduction

Salary/Hourly Wage Reductions >25% reduce forgiveness

- Reduction is based upon changes to pay rates only (not triggered by reduction in worked hours)
  - As compared to average pay rates in 1/1/20 – 3/31/20 period
- Safe Harbor to restore forgiveness if employee pay rates restored by June 30<sup>th</sup>



# PPP Flexibility Act

## New Changes

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# PPP Flexibility Act – Time Extensions

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- Covered period increased from 8 weeks to 24 weeks
  - Applies to both existing and new PPP loans
    - Existing PPP loans may elect to use original 8 week covered period
- Extended program end date (December 31<sup>st</sup>)
  - Allows for continued usage of existing PPP funds after June 30<sup>th</sup>
  - Congressional Intent Letter
    - No new loans should be issued after June 30<sup>th</sup>, 2020
  - Date for FTEE and Pay Rate reduction restoration safe harbors has also been extended from June 30<sup>th</sup> to December 31<sup>st</sup>





# PPP Flexibility Act – Payroll Costs

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- Employee Compensation
  - 8 week period - up to \$15,385 (\$100,000 annualized) per employee
  - 24 week period – up to \$46,154 (\$100,000 annualized) per employee
- Owner Compensation
  - 8 week period - up to lesser of \$15,385 or 8/52 of 2019 actual compensation per owner
  - 24 week period – up to lesser of \$20,833 (2.5 month equivalent of \$100,000 per year) or the 2.5 month equivalent of 2019 actual compensation per owner



# PPP Flexibility Act – Minimum Payroll %

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- Decreased requirement for payroll spend (60% instead of 75%)
- The SBA clarified the 60% requirement will not apply on a “cliff” basis
  - Borrowers will continue to be eligible for partial forgiveness



# PPP Flexibility Act – Employee Availability

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New Exemption for Employee Availability clause (to avoid FTEE forgiveness reduction)

- For lack of opportunity to hire:
  - Unable to rehire individuals who were employees on February 15, 2020, **and**
  - Unable to hire similarly qualified employees on or before December 31, 2020
- For restrictions on ability to re-open
  - Employer is unable to return to the same level of business activity as such the business was operating at before February 15, 2020 to, due to compliance with requirements established or guidance issued by:
    - The US Department of Health and Human Services
    - Centers for Disease Control and Prevention, or the
    - Occupational Safety and Health Administration.
  - This applies to the maintenance of standards issued during the period of March 1, 2020–December 31, 2020, related to social distancing, sanitation, or any other worker- or customer-safety requirement resulting from the COVID-19 pandemic



# PPP Flexibility Act – Loan Modifications

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- Extended maturity date on **new** PPP loans
  - Extended from 2 years to 5 years
  - Lenders and Borrowers may also mutually agree to extend existing loan maturities
- Increased deferral of principal and interest payments
  - Extended from 6-months from loan funding to earlier of:
    - Date forgiveness decision is received, or
    - 10 months from end of the covered period



# PPP Flexibility Act – Other Benefits

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- Increased eligibility for payroll tax deferral options
  - PPP recipients now remain eligible to defer employer payroll taxes (6.2% FICA only) through the end of 2020, regardless of whether they eventually receive PPP forgiveness
- Deferred amounts will be due:
  - 50% on 12/31/2021
  - 50% on 12/31/2022



# Reminder – Limits on Tax Deductions

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## **IRS Notice 2020-32**

- Expenses related to PPP forgiveness will not be deductible (to extent of amount forgiven)
- Back-door = PPP forgiveness essentially becomes taxable!
- NOTE – Multiple members of Congress have stated intention to fix this in next COVID-19 legislation package



# What Else is Being Considered?

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## Other Miscellaneous Proposals

- “Paycheck Protection Program Second Chance Act”
  - Would provide eligibility for PPP loans for small business owners with criminal records (currently ineligible)
- Congressional Request for SBA to publish data on
  - Names and addresses of PPP recipients, including amount received
  - General demographics of all PPP recipients



# Unanswered Questions

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# New Questions Raised by PPP Flexibility Act

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- Will banks allow existing PPP loans to be modified to the allowable 5-year longer maturity?
  - Some may choose to enforce the original grandfathered 2-year maturity
- How strictly will the new “exemption for employee availability” clause be regulated?
  - What additional documentation will be required to support a good faith certification of relevant business limitations?



# Lingering Questions from CARES Act

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- What is a “Transportation” utility?
- Are self-rental payments considered ‘rent’?
- What about owner compensation for LLC’s?



# Open Q&A

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# Questions? Contact us.

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