

Coronavirus Pandemic

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CARES ACT/FFCRA WEBINAR
4.6.2020
FOCUS ON NFP



BARNES DENNIG
Accounting • Tax • Business Insight

PRESENTERS



Paula L. Hume, CPA

Tax Director

Paula's career spans 25 years and has significant expertise on the tax code as it relates to not-profit organizations, a specialization that makes her a popular resource for local organizations and a decided asset to Barnes Dennig's clients. As laws and interpretations change regularly, Paula is adept at reviewing clients' tax returns and advising them on policies and procedures that ensure they maintain their exempt status. Her experience ranges from assisting clients with the initial start up of their organization to more complex issues such as unrelated business income.



Lisa M. Benzinger, CPA

Senior Manager

With 20 years of experience, Lisa is a key member of the Transaction Advisory Services team, lending her expertise to prepare financial data to take companies to market, negotiate deal terms, create and analyze financial structures, and helps source prospective buyers and sellers. In addition, Lisa analyzes companies to determine appropriateness and fit with client needs. In her prior experience, she has served in Executive Management as a CFO, Tax Advisory Services, and public company Internal Audit.

DISCLAIMER

- Please note that the CARES Act, estimated at over \$2.2 trillion, is the most expensive piece of legislation in U.S. history! To add context, it is more than double the cost of FDR's New Deal, even when adjusted for inflation. Given the size, the Act passed in lightning speed. As such, more guidance is needed and being published practically daily. The information presented today is subject to change!
- We encourage you to contact your Barnes Dennig service provider for more information.

YOUR GUIDE TO THE CARES ACT AND FFCRA



Review of the Paycheck Protection Program Loans – SBA 7(a)



Deep Dive into FFCRA Sick and Medical Leave



Individual and Large NFP CARE Act Provisions



Your questions answered

PAYCHECK PROTECTION PROGRAM (PPP)

- The purpose of the loan is to help your small business pay payroll and certain operating expenses, to help keep your business open and employees on your payroll.
- Allows forgiveness of loan if borrower maintains payroll, or restores by June 30, 2020, previous full-time employment and salary levels for changes made between February 15, 2020, and April 26, 2020 .
- Can't defer employer payroll taxes if you get PPP.
- No personal guaranties required for PPPL. However, if the proceeds are used for fraudulent purposes, the U.S. government will pursue criminal charges.

PAYCHECK PROTECTION PROGRAM (PPP)

- Paycheck Protection Program is a modification of the SBA's 7(a) loan program, banks make loans to businesses that are guaranteed by SBA
- **New guidance – PPPL interest rates 1.0%.**
- **Not more than 25% of the forgiven amount may be for non-payroll costs.**
- Unforgiven loan amount repayment term – 2 years

PAYCHECK PROTECTION PROGRAM (PPP) 500 EMPLOYEE LIMIT WAIVED FOR:

- Accommodation and food service businesses, with NAICS code 72 (unless the SBA has made a larger designation for a specific industry, see [SBA.gov](https://www.sba.gov))
- Franchises, where SBA assigns a franchise identifier code
- Business receiving financial assistance from a small business investment company (SBIC) licensed by SBA.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN DEFERMENT/FORGIVENESS

- The Cares Act states that a presumption of hardship will exist if the business applies for the SBA or PPP loan.
- The Act requires lenders to provide complete payment deferment relief for impacted borrowers with covered loans for 6 months following the date of disbursement of the loan, although interest will accrue

PAYCHECK PROTECTION PROGRAM (PPP) WHO IS ELIGIBLE?

- For-profit small businesses
- Non-profit businesses (specifically 501(c)(3))
- Veterans organizations
- Tribal business concerns

PAYCHECK PROTECTION PROGRAM (PPP) WHO IS ELIGIBLE?

- Sole proprietorships
- Independent contractors, eligible self-employed individuals – need to submit necessary documentation to establish that the individual is eligible, including payroll tax filings, other applicable tax forms (i.e., 1099-MISC), and income and expenses.

PAYCHECK PROTECTION PROGRAM (PPP)

- Maximum PPP Loan Amount: The maximum loan amount will be the lesser of:
 - the sum of 2.5 multiplied by the average total monthly payments for payroll costs incurred during 2019, **plus** previously closed EIDL loan (1/1/20-4/3/20) that was used for payroll costs;
 - or \$10M.

PAYCHECK PROTECTION PROGRAM (PPP) ALLOWABLE USES OF COVERED LOANS:

1. Payroll costs (defined)
2. Costs related to continuing group health care benefits - paid sick, medical, or family leave, and insurance premiums
 - Waiting on guidance for self-insured
3. Employee salaries, commissions, or similar compensations
4. Interest on mortgage obligation (excludes prepayment of or payment of & principal on a mortgage)
5. Rent (including under a lease agreement)
6. Utilities
7. Interest on any other debt obligations incurred before the covered period – waiting on further guidance.

PAYCHECK PROTECTION PROGRAM (PPP)

“PAYROLL COSTS” MEANS:

- Compensation payments to **employees** (salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation;
- Payment of state or local tax assessed on the compensation of employees;
- Payment of any retirement benefit;
- Payment required for group health care benefits, including insurance premiums);

PAYCHECK PROTECTION PROGRAM (PPP) “PAYROLL COSTS” MEANS:

- Compensation/income of a sole proprietor or independent contractor (wage, commission, income, net earnings from self-employment, or
- Similar compensation that is not more than \$100,000 per year, as prorated for the covered period.

PAYCHECK PROTECTION PROGRAM (PPP) “PAYROLL COSTS” EXCLUDES:

- Compensation in excess of \$100,000 annual salary (prorated for the covered period);
- Certain taxes imposed or withheld during the covered period; compensation of employee w/ principal residence outside of the US; qualified sick leave wages (for which credit is allowed under the Families First Coronavirus Response Act (FFCRA)); or qualified family leave wages (for which credit is allowed under section 7003 of the FFCRA).

PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

- Qualifying expenses eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after loan origination for:
 - Payroll costs,
 - Interest on any mortgage in place prior to Feb. 15, 2020,
 - Rent on any lease in force prior to Feb. 15, 2020,
 - Utility payments for which service began before Feb. 15, 2020.
- **The new SBA guidance indicates no more than 25% should be spent for non-payroll costs**

PAYCHECK PROTECTION PROGRAM (PPP) REDUCTION OF LOAN FORGIVENESS

- Loan recipients must maintain existing employment levels "to the extent practicable" during the loan term and cannot reduce salaries by more than 25% (for those paid under \$100k)
- Employers that maintain employment for the 8 weeks after origination of loan, **or restore employees by June 30, 2020** will have loans forgiven in whole or part, essentially turning the loan into a grant. Section 1106.

PAYCHECK PROTECTION PROGRAM (PPP) LOAN FORGIVENESS

- Loan forgiveness will not be included in taxable income
- Maximum forgiveness is principal amount of the loan and any accrued interest.
- Loan forgiveness or cancellation of debt - will not impact future borrowing capability.

SBA DISASTER LOAN AND PPP LOAN AFFILIATION RULES – 500 EMPLOYEE LIMIT

- Separate entities may be considered a single employer under the Act if they meet the “integrated employer” tests.
- Common management
- Interrelation between operations
- Centralized control of labor relations
- Degree of common ownership/**financial control-voting**
- Joint ventures; and
- Franchise and license agreements.
- Temporary employees who are jointly employed by the employer and another entity, are included.

SBA DISASTER LOAN

- The SBA Disaster - Economic Injury Disaster Loan (EIDL) Expands the businesses that are eligible for loans, modifies the loan terms,
- 500 employee limit.
- EIDL Max loan is lesser of: A) the average monthly payments for payroll, mortgage, rent, and other debt for the one-year period before the loan is made X 4, or B) \$2M
- Emergency advance is available of up to \$10,000

COMPARISON OF SBA DISASTER LOAN AND PPP LOAN

- EIDL Loan can be used for payroll support for sick pay and medical leave, employee salaries, mortgage payments, rent, utilities, certain debt obligations incurred before the covered period.
- Difference - 20% or more owners are generally required to personally guaranty the EIDL loan. SBA uses credit scores of business owners in their decisions for approval. Collateral is required.

COMPARISON OF SBA DISASTER LOAN AND PPP LOAN

Difference:

- EIDL loan maturity up to 30 years, initial 12-month deferral if due to COVID 19
- PPP loan maturity 2 years, 6-month deferral

ADDITIONAL LOANS

- SBA Express Bridge Loans – available to businesses who have had a temporary loss of revenue and can be a term loan or used to bridge gap while applying for an EIDL
 - Up to \$25,000
 - Fast turnaround
 - Will be repaid in full or in part by proceeds from EIDL

- SBA Debt Relief - SBA will automatically pay the principal, interest and fees of current 7(a), 504 and microloans for a period of 6 months. Interest accrues, there is no forgiveness

LIQUIDITY



- Develop a rolling 13-week cash flow plan
- Call banker for 30-90 day deferment
- Unemployment, workman's compensation, insurance
- Prioritize critical vendors
- Decelerate accounts payable
- Eliminate expenses
- Cancel/limit capital expenditures
- Develop a What if plan timeline

SBA –COVID-19 WEBSITE

- The SBA just announced 4/1/20 a new Coronavirus (COVID-19) website: <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>
- This includes information and online applications for:
- Economic Injury Disaster Loans (streamlined application):
- <https://covid19relief.sba.gov/#/>
- Low-Interest Disaster Loans (awaiting further guidance)
- Express Bridge Loan Pilot Program (loans up to \$25,000)

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FFCRA – DIVING DEEP IN THE DETAILS

*Visit our COVID-19 Resource Center at
[barnesdennig.com](https://www.barnesdennig.com)*

FFCRA



➤ Which Employers Are Covered?

- FFCRA applies to Employers with < 500 employees (DOL New Release March 26, 2020)
 - Required to pay sick leave.
 - Qualify for tax credits.

FFCRA



- IR -2020-57
- Employers get 100% reimbursement
 - Employers have no payroll tax liability
 - Health insurance costs are included in the reimbursement
- Self employed individuals receive a similar credit

FFCRA



- Tax credits are related directly to sick pay and family leave pay
 - An organization only gets tax credits if sick pay/family leave are required to be paid under DOL rules
 - Act § 7001(c) and 7003(c).

FFCRA



➤ IR-2020-57

- Today the U.S. Treasury Department, Internal Revenue Service (IRS), and the U.S. Department of Labor (Labor) announced that small and midsize employers can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. This relief to employees and small and midsize businesses is provided under the Families First Coronavirus Response Act (Act), signed by President Trump on March 18, 2020.
- The Act is effective for dates beginning **April 1, 2020 through December 31, 2020.**

FFCRA – *When Sick Leave Must Be Paid*

Unable to work or telework due to a need for leave because:

1. The employee is subject to a Federal, State, or local quarantine or isolation order related to COVID–19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID– 19.
3. The employee is experiencing symptoms of COVID– 19 and seeking a medical diagnosis.
4. The employee is caring for an individual who is subject to an order as described in subparagraph (1) or has been advised as described in paragraph (2).
5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the childcare provider of such son or daughter is unavailable, due to COVID–19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

FFCRA – *When Sick Leave Must Be Paid*

➤ When **Emergency Family Medical** Leave Must Be Paid

“. . . means the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

FFCRA – *When Sick Leave Must Be Paid*

➤ Category 5 –

- For Category (5): A full-time employee is eligible for up to 12 weeks of leave (two weeks of paid sick leave followed by up to 10 weeks of paid expanded family & medical leave) at 40 hours a week. . . .”
- DOL Families First: Employee Paid Leave Rights (see copy attached in handouts).

FFCRA – Credits

	Basic Rate	Limitation	Maximum Days	Maximum Credit
Category 1 – Quarantine Order	Regular pay	\$511/day	10	\$5,110
Category 2 – HC Provider advises employee to Self Quarantine	Regular pay	\$511/day	10	\$5,110
Category 3 – COVID-19 Symptoms, seeking Diagnosis	Regular Pay	\$511/day	10	\$5,110
Category 4 – Caring for Category 1 or 2 individual	2/3's of regular pay	\$200/day	10	\$2,000
Category 5 – Caring for son or daughter – closed school/daycare	2/3's of regular pay	\$200/day	60*	\$12,000 (\$2,000 sick leave +\$10,000 FML)
Category 6 – Substantially similar condition specified by HHS	2/3's of regular pay	\$200/day	10	\$2,000
* Combines 1) Paid Sick Leave, and 2) Family Medical Leave				

FFCRA – *The Mechanics*

➤ What is Required Pay?

	Required Family/Medical Leave Pay	Required Sick Pay
Full Time	80 hours *	80 hours *
Part Time	Number of hours normally scheduled to work **	Average # hours over 2-week period **

* DOL Employee Paid Leave Rights (in handouts)

** DOL Employer Paid Leave Requirements (in handouts)

FFCRA – The Mechanics

➤ Employer Tax Benefits

1. Payroll tax credit
2. Health insurance portion credit
3. ***No employer's portion of OASDI tax (6.2%) on required sick/family leave pay.***
4. Credit for employer's portion of Medicare tax on required sick/family leave pay (1.45%).

FFCRA – Examples

➤ Assumptions for the examples:

1. Employed at least 30 days (affects Category 5)
 - a) Other categories apply to all employees (don't need 30 days). DOL Employer Paid Leave Requirements
2. “Regular pay” based on 260 days/year (same as SE credit) (52 weeks x 8 hours)
3. Don't qualify for any other exemptions available

FFCRA – Examples

- Bob is employed by a local NFP
 - Health care provider advises self-quarantine for 14 days (Category 2)
 - He self-quarantines from April 2-15 and is unable to work or telework
- Regular pay = \$136,500
 - Regular pay = \$525/day
 - \$511/day limit (Category 2)
 - Affected 14 days
 - 10 days limit
- Employer **pays** sick leave of \$5,110
- **Employer credit** = \$5,110 (\$511/day x 10 days) + prorated health insurance

FFCRA – Examples

- John is employed by a local NFP.
 - Experiences coronavirus symptoms Apr 3 (**Category 3**)
 - Sees doctor April 4 is cleared (unable to work or telework April 3 or 4)

- Regular pay = \$104,000
 - His average regular pay: \$400/day ($\$104,000/260$)
 - Limit for **Category 3**: \$511/day limit
 - Only affected 2 days (10 days limit)

- Employer is required to **pay** sick leave of \$800
- **Employer credit** = \$800 ($\$400/\text{day} \times 2 \text{ days}$) + prorated health insurance

FFCRA – Examples

- Keesha is employed by a Local NFP
 - 8-year old daughter's school closed 70 days (**Category 5**)
 - She stays home with daughter because no childcare
 - She is unable to work or telework (caring for daughter)
- Regular pay = \$62,400
 - Her regular pay: \$240/day
 - 2/3's = \$160.00/day (**Category 5**)
 - Affected 70 days but limited to 60 days (10 days paid sick leave + 50 days family medical)
- Employer **pays** sick leave of \$9,600 (\$160 x 60 days)
- **Employer credit** = \$9,600 + pro rated health insurance

FFCRA – Qualified Sick Leave Wages

- FAQ #20:
- Qualified sick leave wages are wages as defined in section 3121(a) of the Internal Revenue Code for social security and Medicare tax purposes.

FFCRA – Health Insurance Portion of the Credit

1. Qualified health plan expenses” paid by employer count. Act §§7001(d) and 7003(d).
 - **Defined under §5000(b)(1).**
 - Very broad, includes self-insured plans.
 - Includes pre-tax salary contributions (Cafeteria Plan) (after-tax contributions don't count). FAQ 31.
2. Amounts must be excludible by recipient under §106.
3. Allocation:
 - **Portion properly allocated → sick/family leave wages for which credit is allowed.**
 - **Methods to allocate:**
 - Any reasonable method. FAQ #33
4. This would **not** include Eligible Employer contributions to HSA.
5. The amount of Qualified Health Plan Expenses may include contributions to an HRA (including an individual coverage HRA).

FFCRA – How to Get the Credit

- IRS wants to get the money to you **QUICKLY!**
- 1. Use against all Form 941 payroll taxes that would otherwise be deposited.
- 2. If paid leave > p/r taxes, employers may file **Form 7200.**
 - <https://www.irs.gov/forms-pubs/about-form-7200>

FAQ #42 –

- An eligible employer may fax its completed form to **855-248-0552.**

FFCRA – Employer Substantiation

Employer Substantiation

- Employer will substantiate eligibility for sick/family leave if receive a written request for such leave from employee which provides:
 1. The employee's name;
 2. The date or dates for which leave is requested;
 3. A statement of the COVID-19 related reason the employee is requesting leave and written support for such reason; and
 4. A statement that the employee is unable to work, including by means of telework, for such reason. FAQ #44.

FFCRA – Employer Substantiation

Other Substantiation – Quarantine

- Quarantine order/self-quarantine advice, employee stmt should include:
 1. Name of the governmental entity ordering quarantine or
 2. Name of the health care professional advising self-quarantine, and,
 3. If person subject to quarantine or advised to self-quarantine is not the employee, that person's name and relation to the employee. FAQ #44

FFCRA – Employer Substantiation

Other Substantiation – School Closing/Childcare

- School closing/childcare provider unavailable employee statement should include:
 1. Name and age of the child (or children) to be cared for,
 2. Name of the school that has closed or place of care that is unavailable, and
 3. Representation that no other person will be providing care for the child during the period for which the employee is receiving family medical leave and, with respect to the employee's inability to work or telework because of a need to provide care for a child older than fourteen during daylight hours, a statement that special circumstances exist requiring the employee to provide care. FAQ #44
- New Rules under the 826.100 that IRS needs to update FAQ for

FFCRA – Employer Substantiation

Additional Employer Records

Employer will substantiate eligibility for the sick/family leave in addition creates and maintains records that include the following information:

1. Documentation to show how employer determined amount of qualified sick and family leave wages paid to employees , including records of work, telework and qualified sick leave and qualified family leave.
2. Documentation to show how the employer determined the amount of qualified health plan expenses that the employer allocated to wages. Copies of any completed Forms 7200, Advance of Employer Credits Due To COVID-19, that the employer submitted to the IRS.
3. Copies of the completed Forms 941, Employer's Quarterly Federal Tax Return, that the employer submitted to the IRS (or, for employers that use third party payers to meet their employment tax obligations, records of information provided to the third party payer regarding the employer's entitlement to the credit claimed on Form 941). FAQ #45

FFCRA – Key Points

- Employee Treatment of sick/family leave payments:
 1. Employees are taxable on the required sick/family leave.
FAQ #57
 2. Employers should withhold employee tax withholding.
FAQ #55

FFCRA – Key Points

Key Considerations

➤ Notice 2020-21

- Leave taken for school closure days, illness, etc. before April 1 (for which sick leave is paid) don't qualify for credit. FAQ #48
- DOL used the same date (leave taken beginning April 1)
 - Technically sick leave and family leave weren't required to be paid before April 1.

FFCRA – Key Points

Gross Income Add Back

- Employer includes the credit amount in income.
 - But also deducts sick/family leave paid.
 - Even though might not have written check because received F 941 credit.

RESOURCES ON FFCRA

FAQ on IRS website (very helpful):

<https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>

Department of Labor:

<https://www.dol.gov/agencies/whd/ffcra>

Federal Register:

<https://www.federalregister.gov/documents/2020/04/06/2020-07237/paid-leave-under-the-families-first-coronavirus-response-act>

OTHER NFP PROVISIONS – CARES ACT

- Above the line deduction for 2020 charitable contributions up to \$300 and relaxation of other limitations (get the word to your Development people)
- Increasing the Individual Adjusted Gross Income cap from 50% to 65% (for itemized deductions)
- Increasing the Corporate limitation to 25% of taxable income
- Pension plan funding relief
- Student Loan Relief (can be an added nontaxable benefit)

INDIVIDUAL TAX PROVISIONS- CARES ACT

➤ Enhanced Unemployment Benefits

- Three new programs
 - Pandemic Unemployment Assistance
 - Pandemic Unemployment Compensation
 - Pandemic Emergency Unemployment Compensation
- Available for partial employment
- Federal "kicker" of \$600 / week
- Expanded to include self-employed, independent contractors

<http://jfs.ohio.gov/ouio/CoronavirusAndUI.stm>

<http://www.kewes.ky.gov/>

<https://www.in.gov/dwd/3474.htm>

INDIVIDUAL TAX PROVISIONS- CARES ACT

- Rebates – advanced payment of 2020 tax credit
 - \$1,200 for single or \$2,400 for married filing jointly plus \$500 for qualifying child under age 17
 - AGI phase out begins at \$75,000 if single, \$112,500 for head of household and \$150,000 if married
 - Phase-out is \$5 for every \$100 that AGI exceeds threshold
 - Credit is an advance on 2020 tax return
 - No pay-back due if 2020 income is higher
 - Will receive short-fall if 2020 income is lower

INDIVIDUAL TAX PROVISIONS- CARES ACT

➤ Retirement Plan Relief

- Waives the 10% early distribution penalty on withdrawals up to \$100,000 from qualified retirement accounts for COVID-19 related purposes
 - Income subject to tax over 3 years or you can recontribute over 3 years without regard to income caps
- Suspend Required Minimum Distributions (RMDs) for 2020

INDIVIDUAL TAX PROVISIONS- CARES ACT

➤ Student Loan Relief

- All payments of principal and interest are suspended
- Employers can provide a student loan repayment benefit tax free to employees. Employers can contribute up to \$5,250 toward an employee's student loans tax free to the employee. The cap is counted against any educational assistance currently provided by the employer. Payments should be made after Feb 27, 2020 and before Jan 1, 2021

➤ Above the line deduction for 2020 charitable contributions up to \$300 and relaxation of other limitations

LARGE NFP TAX PROVISIONS – CARES ACT

- Employee Retention Payroll Tax Credit
 - Eligibility Requirement 1: operations fully or partially suspended due to shut-down order
 - Eligibility Requirement 2: gross receipts decline by more than 50% compared to same quarter in 2019 (Not required for NFP)
 - Credit is against 6.2% (ER share) of Soc Sec taxes
 - Credit is 50% of qualified wages paid
 - Up to \$10,000 of wages (\$5,000 credit) paid from 3/13-12/31/20
 - If more than 100 employees only wages paid to employees not performing services qualifies
 - Credit **NOT** available if utilizing paycheck protection loan or FFCRA credits (wages used for this credit)

LARGE NFP TAX PROVISIONS – CARES ACT

➤ Delay of Payment – Employer Payroll Taxes

- Employers and self-employed individuals can defer making deposits of the employer share of Social Security taxes for remainder of year
- Medicare tax excluded
- 50% of deferred amount due 12/31/21
- 50% balance due 12/31/22
- Think of it as an interest free loan (and not much else)
- Delay **NOT** available if employer has paycheck protection loan forgiven

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