



**KLEHR HARRISON  
HARVEY BRANZBURG<sub>LLP</sub>**

**Coronavirus (COVID-19) Task Force**

# **PPP Loans: Preparing for What's Next**

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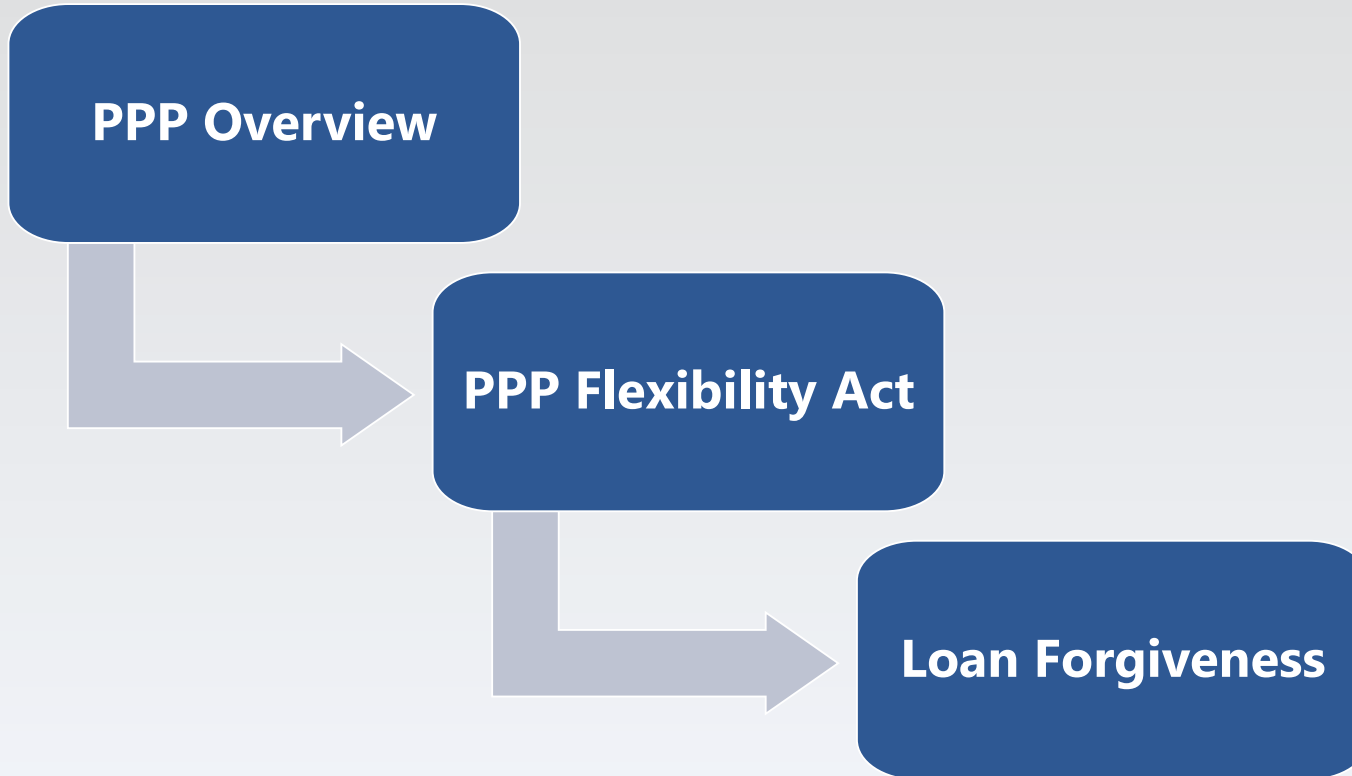
June 11, 2020

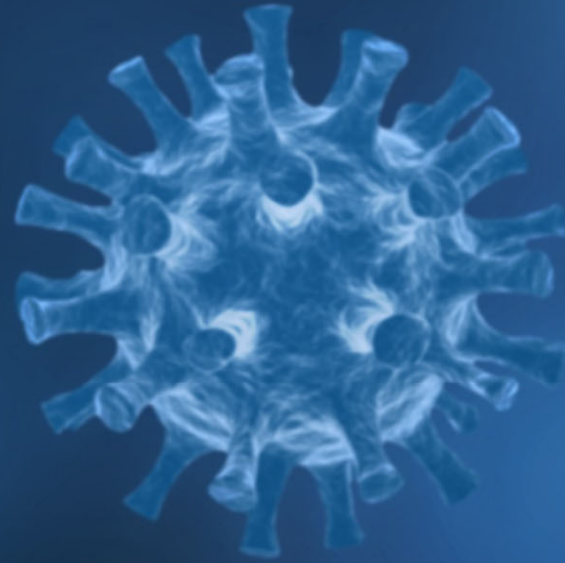
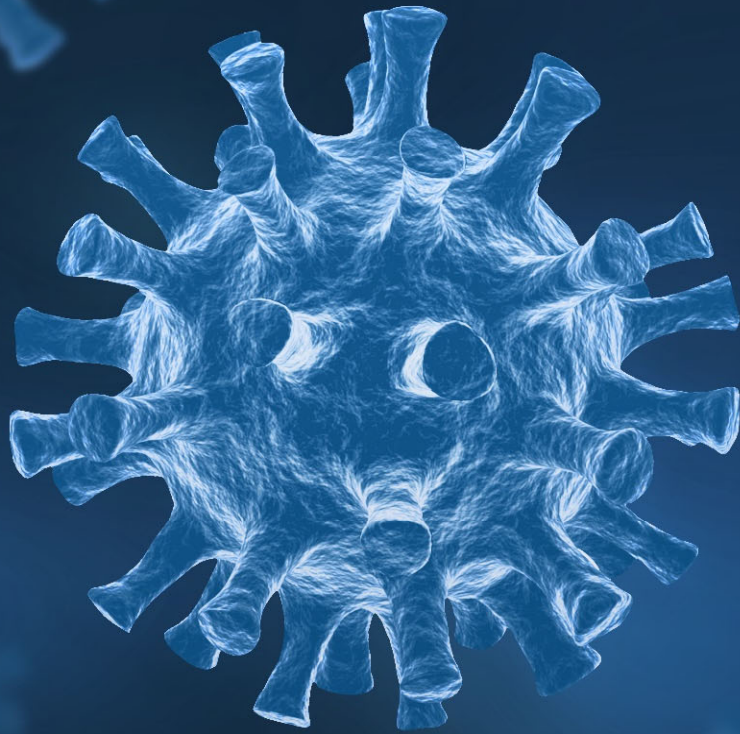
# Disclaimer

Nothing in this presentation should be interpreted as legal advice. This presentation is intended to be informational only and to help you identify certain legal issues that may arise due to COVID-19. You should consult with your attorney to understand the specific legal issues and potential solutions for your circumstances.



# Agenda





# PPP OVERVIEW

# The CARES Act and PPP



The Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, was signed into law on March 27, 2020



Included a \$349 billion small business loan program known as the Paycheck Protection Program (PPP)



The PPP provides for forgivable loans to eligible small businesses to fund payroll and other qualifying expenses



# The CARES Act – Loan Eligibility

Business concerns either located in the United States or that operate primarily within the United States, including 501(c)(3) nonprofit organizations, that satisfy the employee size restrictions



Eligible employers must employ no more than the greater of (i) 500 employees or (ii) the number of employees in the industry size standard designation



Must have been in operation on February 15, 2020, with employees on payroll or independent contractors being paid



# Requirements Waived

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Forgivable and payments deferred

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Low interest and no fees

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"Credit elsewhere" requirements not applicable

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Nonrecourse and personal guarantee requirement waived

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Affiliation requirements waived for certain industries



# Requirements Evolve

Interim final rules and FAQs began adding conditions and requirements not included in CARES Act:



At least 75% of loan (and forgiveness) for payroll costs



No bankruptcy debtors



Other ineligible businesses (13 CFR §120.110)



FAQ #31 and "Necessary" Certification





# Program Expands

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Program commences April 3, 2020 and 1.67 million loans are processed

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PPP program runs out of money on April 16, 2020

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Additional \$310 billion in funds approved on April 24, 2020, bringing total funds to \$659 billion

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Approximately \$511 billion in loans issued as of June 6, 2020



# Questions Remain

As more and more borrowers received funds and entered the eight-week forgiveness period, a number of questions remained unanswered:



How do businesses that are closed or operating with reduced headcount use funds?



What types of rental and utility payments qualify for forgiveness?

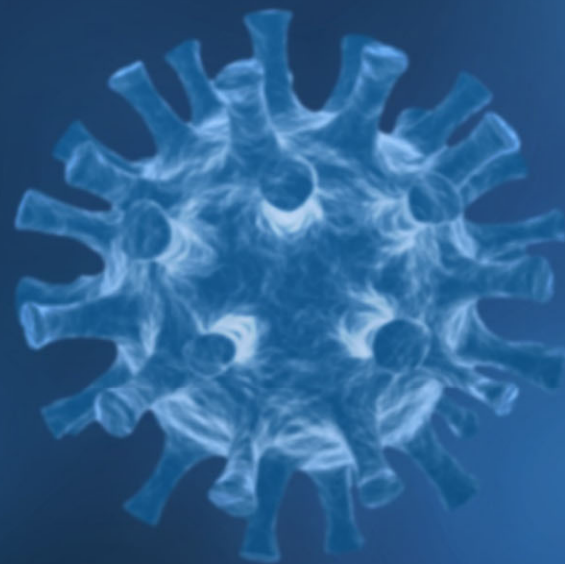
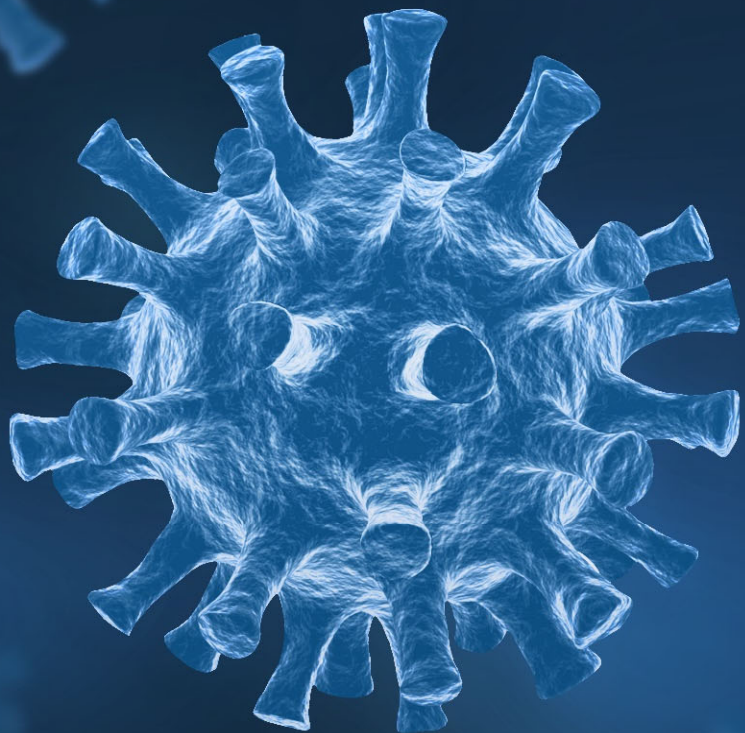


What if employees refuse to return to work or are unavailable?



How will the forgiveness process work?





**PPP FLEXIBILITY ACT**

# The PPP Flexibility Act



On May 28, 2020, the U.S. House of Representatives overwhelmingly passed the PPP Flexibility Act



On June 4, 2020, the U.S. Senate approved the same bill, which was signed into law by President Trump on June 5



The PPP Flexibility Act amends the CARES Act to allow PPP borrowers greater options in using PPP funds



# Extension of Covered Period

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The CARES Act allowed borrowers eight weeks after the initial loan disbursement to spend funds on eligible costs and have loans forgiven

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The PPP Flexibility Act extends this period to the earlier of 24 weeks after loan disbursal or December 31, 2020

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Borrowers who have already received PPP loans may elect to use the original eight-week period if they prefer

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Loan payments deferred until ten months after end of covered period if forgiveness has not been applied for



# Use of Funds



SBA guidance limited non-payroll costs to 25% of total loan



PPP Flexibility Act increases allowable non-payroll costs to 40% of total



Codifies concept of usage limitations, which had been questioned as beyond authority of SBA



Payroll costs may exceed 60% of the loan proceeds and still be eligible for forgiveness



# Loan Maturity

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The CARES Act initially included a maximum maturity limit of ten years, but had no mandated minimum maturity

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The SBA set a uniform maturity of two years via its rulemaking authority

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The PPP Flexibility Act adds a minimum maturity of five years for all new loans

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Borrowers with existing loans will need to contact their lender to discuss amending the terms of the existing loan to extend maturity



# Employee Headcount

The safe harbor to reverse headcount reductions is extended through December 31, 2020, with exemptions for:

1

Inability to rehire former employees or similarly qualified employees

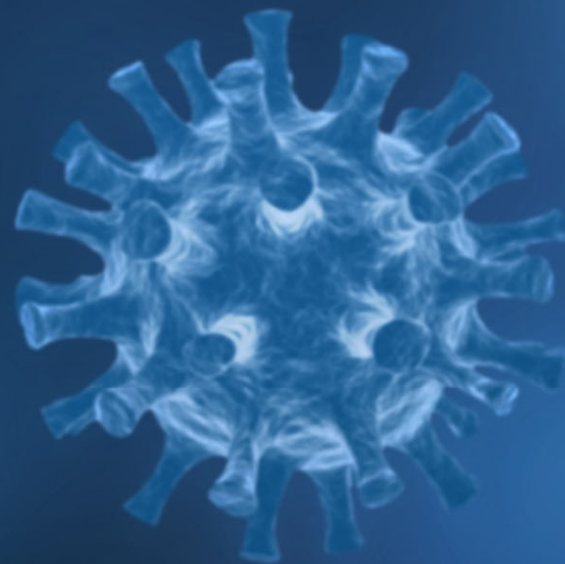
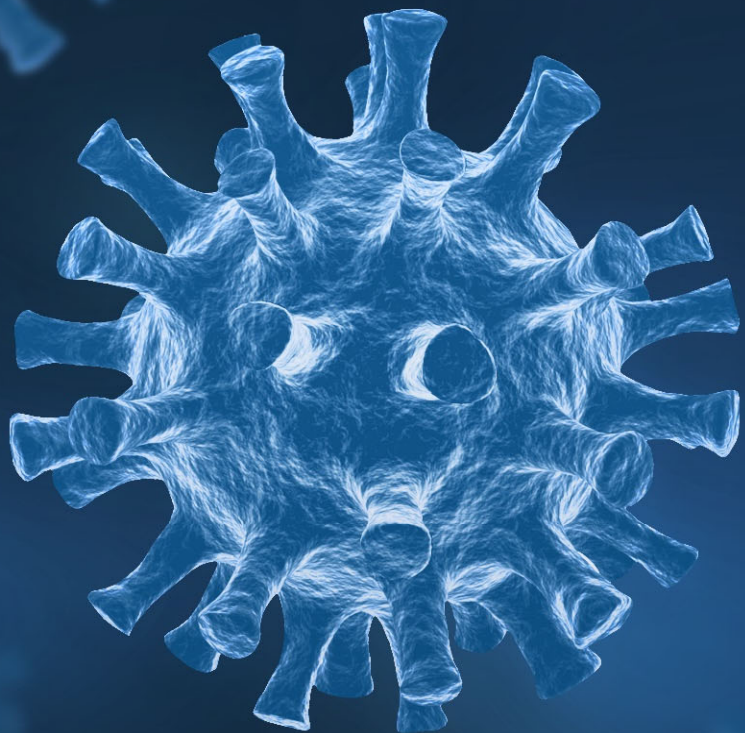
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Inability to return to same level of business activity as before February 15, 2020 due to compliance with requirements relating to social distancing, sanitation or other COVID-19 safety requirements

We would expect existing SBA guidance regarding headcount calculations to be revised and expanded







**LOAN FORGIVENESS**

# Application and Interim Rules



On May 15, 2020, the SBA released a form of application for loan forgiveness



On May 22, 2020, the SBA issued Interim Final Rules addressing loan forgiveness and loan review procedures



The forgiveness application and Interim Final Rules were issued before the PPP Flexibility Act was signed, so they do not address the extension of the covered period



# Eligible Payroll Costs

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Employer contributions for health insurance, but excluding any pre-tax or after-tax contributions by employees

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Employer contributions to employee retirement plans, excluding any pre-tax or after-tax contributions by employees

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Total amount paid for employer state and local taxes on employee compensation, such as unemployment insurance

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Bonuses and "hazard pay," subject to \$100,000 annualized cap on cash compensation

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Includes payments made during the covered period (including alternative covered period that coincides with payroll dates) or that are incurred during the covered period and paid at the next regular payroll date



# Eligible Non-Payroll Costs



Interest on mortgages in place prior to February 15, 2020



Rental payments for real or personal property pursuant to leases in place prior to February 15, 2020



Utilities, including electricity, gas, water, electric, transportation, telephone or internet access for which service began before February 15, 2020



Non-payroll costs must either be paid during the covered period or incurred within the covered period and paid on or before the next regular billing date



# Calculating FTEs

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Loan forgiveness is subject to reduction based on reductions in average monthly FTEs during the covered period as compared to average monthly FTEs in early 2019 or early 2020

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FTEs are calculated by dividing the average number of hours paid to each employee each week by 40, capping the result at 1.0.

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For employees who work less than 40 hours a week, the borrower may either calculate the precise amount for each employee or use an alternative equivalency number of 0.5 for each such employee

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The same calculation method must be used for all employees who work less than 40 hours a week (i.e., you can't mix and match)



# Restoring Employee Headcount

A borrower's loan forgiveness will not be subject to reduction due to decreases in headcount if:

1

The borrower offered to rehire the same individual for the same salary and number of hours, but the employee declined

2

The borrower has records documenting the offer and rejection and reported the rejected offer to the applicable state unemployment office

Employers are also not penalized for employees that are fired for cause, voluntarily resign or voluntary request schedule reductions



# Forgiveness Timing



Once forgiveness application is submitted, lender has 60 days to issue a decision to the SBA regarding forgiveness



SBA will remit the forgiveness amount plus interest accrued through the payment date within 90 days

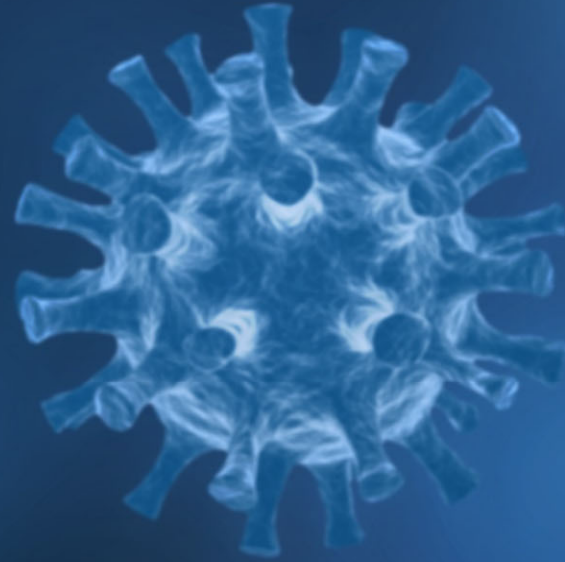
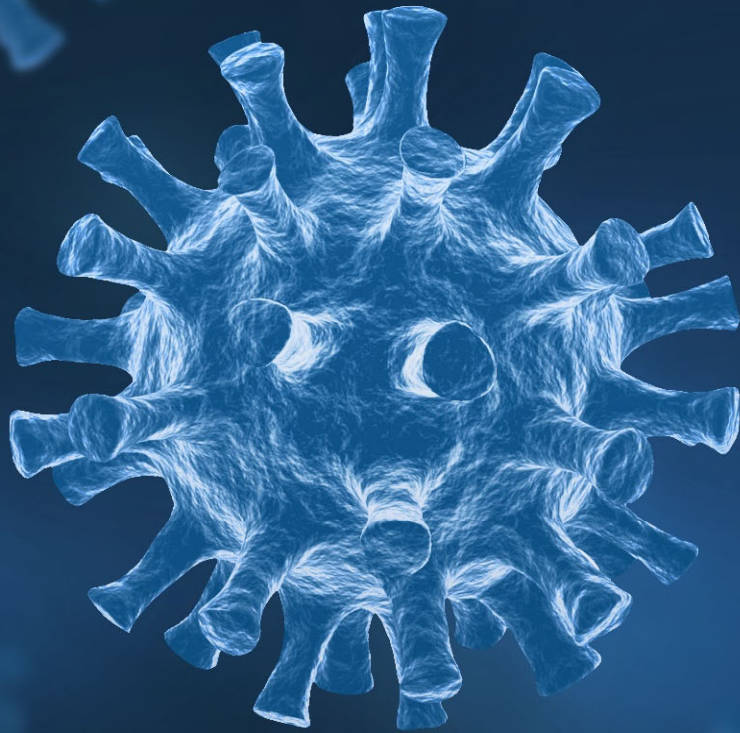


SBA may undertake a review of a PPP loan at any time, and borrowers must retain records for six years after the loan is forgiven or repaid



If the SBA undertakes a review of a loan, the payment timing noted above will not apply





# QUESTIONS & ANSWERS



# Thank You!

## Questions? Contact:

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