



Simplifying PPP loan forgiveness

Presenters: Lou Miller, Veena Murthy

August 3, 2020





Lou Miller
Managing Partner
National Tax Office

330 East Jefferson Boulevard
South Bend, Indiana 46601

Direct +1 574 236 8661
Fax +1 574 236 8692
lou.miller@crowe.com

Experience

Lou Miller has more than 25 years of professional tax experience and is the Managing Partner of Crowe's National Tax office. Mr. Miller leads a group of highly experienced tax professionals who are dedicated to providing expert tax services to clients, including research credit studies, various tax accounting services, and assistance in dealing with tax controversies, including IRS examinations and appeals as well as litigation support. His client base ranges from medium-sized companies to large publicly traded multinational corporations.

Professional Affiliations

- American Institute of Certified Public Accountants
- Indiana CPA Society

Education & Certifications

- Bachelor of Science, Economics/Accounting, College of the Holy Cross
- Certified Public Accountant (CPA)

Client Services Focus

- Research and Experimentation Credit
- Tax Accounting Methods
- Practice before the IRS

Industries

- Manufacturing and Distribution
- Consumer Products
- Automotive
- Medical Device



Veena Murthy
Principal
Washington National Tax

1455 Pennsylvania Avenue, N.W.
Suite 700
Washington, D.C. 20004-1008

Direct +1 202 552 8015
Fax +1 202 624 8858
Mobile +1 571 329 8471
veena.murthy@crowe.com

Experience

Ms. Murthy is a Principal in Crowe's Washington National Tax Office and its Compensation and Benefits Tax Services Leader. With over 22 years' experience in compensation and benefits tax matters impacting employees and employers, she advises clients on executive compensation, fringe benefits, Affordable Care Act and health benefit taxation, partnership compensation and benefit taxation, M&A compensation and benefit tax issues, deductions under sections 162(m), 280G, 404(a)(5), and 83(h), payroll income/FICA/SECA taxation, qualified retirement plan tax compliance/deductions, and US taxation and treaty issues specific to cross-border compensation and benefits delivery.

Prior to becoming a Principal at Crowe, Veena was a Legislation Counsel at the Joint Committee on Taxation, U.S. Congress, where she provided tax technical and policy advice to the House Ways and Means Committee and the Senate Finance Committee on, among other things, the SECURE Act, and 2017 tax reform (known as the "Tax Cuts and Jobs Act") in the areas of executive compensation (sections 162(m), 4960 and 83(i)), fringe benefits (274 parking, transportation, entertainment, meals), the new paid family and medical leave employer credit, health, and retirement. Prior to her government role, Veena spent many years in the private sector – including two Big Four accounting firms, Big Law, and as in-house benefits tax counsel at IBM Corporation. She is also a former Adjunct Professor of Law at Georgetown Law Center's LL.M Taxation Program.

Professional Affiliations

- New York Bar
- American Bar Association – member of Tax Section and Joint Committee on Employee Benefits (JCEB)

Education & Certifications

- B.A., Barnard College, Columbia University, New York, NY
- J.D., Benjamin N. Cardozo School of Law, New York, NY
- LL.M Taxation, New York University School of Law, New York, NY

Client Services Focus

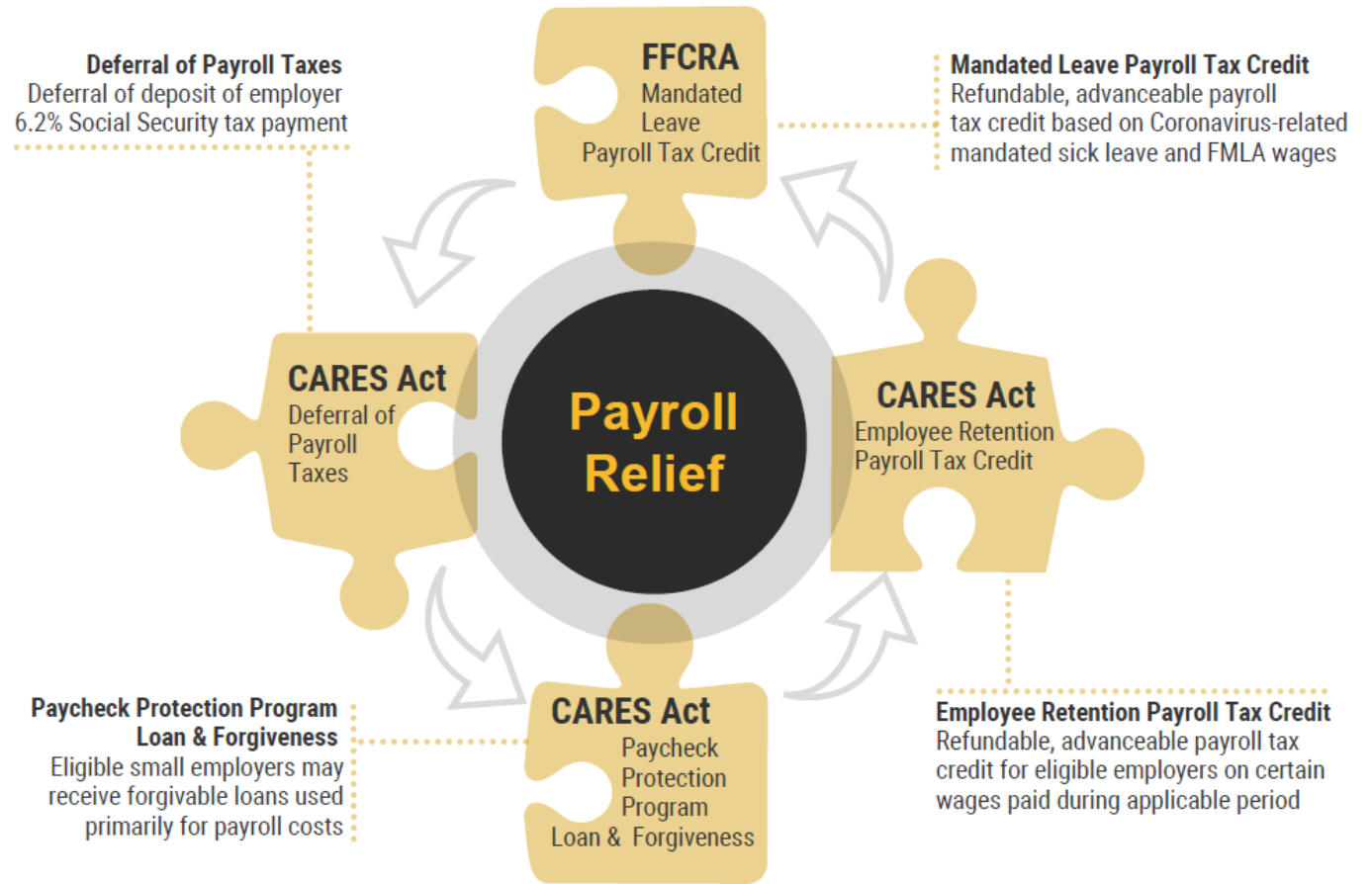
- Executive compensation (sections 83, 409A, 457(f), 4960) taxation
- Fringe benefit & health/ACA taxation
- Compensation tax deductions
- Partnership compensation and benefit taxation
- M&A compensation and benefit tax issues
- Payroll income/FICA/SECA taxation
- Cross-border compensation and benefits taxation

Publications and Speaking Engagements Veena is a frequent speaker and author, including:

- ABA Tax Section meetings (2014-present)
- ABA JCEB Executive Compensation National Institute (2014-present)
- ABA JCEB Health and Welfare Benefit Plans National Institute (2018-2019)
- ABA JCEB Employee Benefits Spring Update (2018-present)
- Tax Executives Institute national and local venues (including virtual 70th Midyear Conference)
- Bloomberg/BNA Compensation Planning Journal: "The SECURE Act: A Tax Policy and Technical Perspective"; "Selected Cross-Border Equity and Deferred Compensation Issues with Funded Foreign Plans"
- WGL Corporate Taxation: "Why Paying Severance Has Become Like Walking a Tax Law Minefield"
- Tax Notes International: "Employee Stock Options and Tax Treaties: Will the Netherlands and the U.S. Set the Standard?"
- Frequently quoted in Tax Notes Today and Bloomberg/BNA Tax Notes Daily

► Crowe Tax Payroll Relief Consulting

Coronavirus legislation provides significant payroll relief to businesses and not-for-profit organizations facing liquidity challenges in the wake of the pandemic. There are complex requirements and interactions among the pieces of relief. The solution isn't necessarily all or nothing. Crowe can assist employers with navigating how the pieces of the puzzle fit together to optimize relief opportunities.



Paycheck Protection Program (PPP) Background

- March 27, 2020 - CARES Act establishes program under Small Business Administration (SBA) with \$349B funding
- Eligible borrower may receive 2.5 months of “payroll costs” (max. \$10M) “loan” and obtain forgiveness based on satisfaction of three parameters over “covered period”
- Developments to date:
 - Numerous FAQs and Interim Final Rules
 - April 24 – PPP and Health Care Enhancement Act adds \$310B funding
 - May 15 – SBA releases loan forgiveness application/instructions
 - June 5 – PPP Flexibility Act of 2020 amends
 - June 16 – SBA releases revised loan forgiveness application/instructions
 - July 4 – Congress extends loan application deadline to August 8
 - July 23 – SBA announces lender submissions (to SBA) may begin on Aug. 10

June 5 Law Amending PPP

- Paycheck Protection Program Flexibility Act of 2020
 - Extends 8-week covered period to 24 weeks
 - Permits borrower with loan before June 5 to keep 8-week covered period
 - Reduces 75% payroll cost requirement (per subregulatory guidance) to 60%
 - Extends rehire safe harbor date from June 30, 2020 to Dec. 31, 2020
 - Adds expanded rehire safe harbor
 - Extends 2-year loan term to 5-year minimum for new loans
 - Amends deferred payment/interest start date to date SBA remits amount of loan forgiveness to lender (10 months after last day of covered period if borrower does not apply for forgiveness)
 - Permits employer Social Security tax deposit deferral regardless of loan forgiveness

PPP Loan Forgiveness Determination

- Three separate requirements determine loan forgiveness amount, and generally must satisfy over covered period:
 - Use of funds (“payroll costs” versus “nonpayroll costs”)
 - Maintenance of headcount (average full-time equivalent employees)
 - No reduction beyond 25% in average wages of “protected” employees (those earning up to \$100,000 annualized in 2019)
- Those with weekly or biweekly payroll may use an “alternative” covered period based on the first day of the first payroll period after the loan disbursement date
 - Applies to everything excepted permitted nonpayroll costs

PPP Loan Forgiveness Determination

- Most of the rules are based on compensation and benefit tax (payroll, health, retirement) concepts
- For example, “payroll costs” definitions are extremely specific, complicated
 - Difference in “use of funds” versus reduction in protected employee average wages
 - Cannot include FFCRA paid leave, employer FICA taxes
 - Questions on retirement and healthcare costs, allocations

General PPP Loan Forgiveness Process

- Borrower must complete application and submit documentation
- Lender has 60 days from receipt of a complete application to issue decision to SBA
- Lender must request payment from SBA at time it issues decision (to forgive all or a portion of the loan)
- Subject to review, SBA remits loan forgiveness amount to lender (plus any interest accrued) within 90 days after lender issues decision (and will deduct EIDL advance amounts if any)
- Above applies for loan forgiveness applications not reviewed by SBA prior to the lender's decision

Borrower responsibility

- Interim rules state:

Providing an accurate calculation of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness....The borrower shall not receive forgiveness without submitting all required documentation to the lender.

...If the lender identifies errors in the borrower's application or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.

SBA Review

- Interim rules state: *For a PPP loan of any size, SBA may undertake a review at any time in SBA's discretion.*
- SBA is authorized to review:
 - *Borrower eligibility* – based on rules and guidance available at the time of the borrower's application and the terms of borrower's application
 - *Loan amounts and use of proceeds* – whether a borrower calculated the loan amount correctly and used loan proceeds for allowable uses
 - *Loan forgiveness amounts* – whether a borrower is entitled to forgiveness in the amount claimed on the borrower's loan forgiveness application
- Borrower must retain PPP documentation in its files for 6 years after the date the loan is forgiven or repaid in full

Borrower application

- Loan forgiveness application – two versions
 - EZ form – one page, must be eligible to use (Form 3508EZ)
 - “Long” form – two pages (PPP Loan Forgiveness Calculation Form and PPP Schedule A)
- Instructions *for each application type* also require:
 - Borrower certifications
 - Numerous documents that borrower must submit with application
 - Numerous documents borrower must maintain but not required to submit
- There are reports in the press that analysts have estimated that filling out the forms and sourcing the data required for the current forgiveness process requires between 20 to 100 hours

Paycheck Protection Program (PPP) Tool

Demonstration

Features of Crowe's PPP Tool 3.0

- **Tabs that mirror the two versions of the loan application forms**
 - EZ form or “long form”
 - Same line entries as the actual application and auto-population of numbers
- **Loan forgiveness results among eligible covered periods**
 - Default or alternative covered period
 - 24 weeks / 8 weeks / or early application
- **FTE headcount results based on rounding method 1 or 2**
- **Guides borrower on FTE safe harbors and election periods**
 - Permits borrower to determine whether meets original safe harbor and can avoid more complex FTE determinations

Features of Crowe's PPP Tool 3.0

- **To minimize the borrower's need to decipher complex rules, the tool is designed based on what the borrower knows:**
 - Wages paid to its employees
 - Hours worked by its employees
 - Which employees have been laid off and rehired
- **Guides borrowers to help determine which calculations are not required**

Loan Forgiveness Taxation Issues

- Forgiven amounts treated as canceled indebtedness by SBA lender, but “for purposes of IRC,” if otherwise includible in gross income “shall be” excluded from gross income
- Notice 2020-32 – disallows deduction for an otherwise deductible expense if payment of the expense results in loan forgiveness and income associated with the forgiveness is excluded from gross income

Legislative Outlook

- Proposals related to PPP include:
 - Permitting deduction of otherwise deductible expense paid with forgiven PPP loan amounts excluded from gross income
 - Permitting eligibility for employee retention payroll tax credit even if borrower has PPP loan (prohibited under CARES Act)

Crowe Tax: PPP Tool and PPP Consulting

For more information, please visit:

www.crowe.com/PPPTool

www.crowe.com/services/tax/payroll-relief-consulting