# The CARES Act – Common Issues and Considerations for International Mission Agencies

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## Agenda

- Economic Injury Disaster Loans
- PPP: Principal Place of Residence
- PPP: Accounting for PPP Loan
- PPP: Loan Forgiveness
  - Overview
  - Qualifying Expenses
  - Documenting Your Expenses
  - Factors Reducing Your Forgiveness Amount

## Does organization size matter?

- < 50 employees
- <= 500 employees

## Economic Injury Disaster Loans (EIDL)

- Administered by the SBA, not your local lender
- A summary of the program is available on the SBA website
- The application is available on the SBA website
- Requires “substantial economic harm,” which means:
  - An economic harm that results in the inability:
    - to meet obligations as they mature;
    - to pay ordinary and necessary operating expenses; or
    - to market, produce, or provide a product or service ordinarily marketed, produced, or provided

## Economic Injury Disaster Loans (EIDL)

- COVID-19 EIDL loans have the following features:
  - Available to:
    - Employers, including nonprofits with not more than 500 employees
    - Sole proprietors and independent contractors
    - A cooperative with not more than 500 employees

## Economic Injury Disaster Loans (EIDL)

- COVID-19 EIDL loans have the following features: (continued)
  - Maximum loan amount = $2,000,000
    - Larger loans may require collateral and/or personal guarantees
  - Interest rate
    - 2.75% for nonprofits
    - 3.75% for for-profits
  - Loan term
    - Up to 30 years
    - Determined on a case-by-case basis

## Economic Injury Disaster Loans (EIDL)

- COVID-19 EIDL loans have the following features: (continued)
  - Other terms
    - For loans less than $200,000, no requirement to obtain personal guarantees
    - Approval may be based solely on credit score without a requirement to provide a tax return; or the lender may use an alternative, appropriate method to determine the borrower's ability to repay
    - Entity only must have been in operation on 01/31/2020
      - Standard rule is that the business must have been in operation for 12 months
    - No requirement to be unable to obtain credit elsewhere

## Economic Injury Disaster Loans (EIDL)

- COVID-19 EIDL loans have the following features: (continued)
  - Advance opportunity
    - An advance of up to $10,000 per applicant is permitted
      - Appears that this is being allowed at the rate of $1,000 per employee
    - Advance is allowed upon application and self-certification of eligibility
    - May be used for broader purposes than the PPP loan
    - No requirement to repay the advance, even if the loan is denied
    - Advance amount reduces PPP loan forgiveness amount

## Application of FFCRA to International Workers

- Employees who work outside the U.S. are not covered by FMLA 29 C.F.R. 825.105(b)
  - Therefore, **the expanded FMLA paid leave benefit** created by the FFCRA does not apply to international workers
- Employees eligible for **emergency paid sick leave** must be employees subject to the FLSA
  - The FLSA does not apply to employees exclusively employed in foreign countries even though they may be American citizens and employees of an American employer. DOL Field Operations Handbook, Chapter 10, FLSA Coverage, para. 10e02

## PPP: Principal Place of Residence

- The definition of payroll costs for both PPP loan application and PPP loan forgiveness exclude from payroll costs:
  - “any compensation of an employee whose principal place of residence is outside of the United States”
    - This doesn’t address citizenship or visa status of the employee
  - No guidance yet on how to determine principal place of residence (PPR)
    - But read on . . .

## PPP: Principal Place of Residence (continued)

- CapinCrouse suggestions:
  - The PPR of employees **eligible** for the **foreign earned income exclusion** is **outside** the U.S.
    - Physical presence test
    - Bona fide residence test
  - Three possible tests to determine location of an employee's PPR
    - The 180 day test the SBA uses for HubZone residency
    - The 183 day "substantial presence" test the tax code used to determine whether a non-resident alien must file a U.S. income tax return
    - Sec. 121 test for sale of principal residence

## PPP: Accounting for PPP Loan Proceeds

***Important Note:*** The following guidance on the proper accounting for the PPP loan proceeds under existing US GAAP is based on current information received. Clarification on the determination of the amount of the forgiveness amount continues to be released and we are monitoring hourly!

Applying for, receiving, and using these PPP loan funds is an enterprise risk factor that each organization needs to consider with respect to potential loan vs. grant determination as guidance continues to be released.

## PPP: Accounting for PPP Loan Proceeds

PPP general objective/parameters:

- A direct incentive for small businesses (including NFPs) to keep their workers on the payroll
- Intended to provide liquidity to meet key operating expenses
- A portion (or all) of the loan may be forgiven if specific qualifying expenses are met over an eight-week period starting when the funds are received
- The SBA/Lender has 60 days to verify the loan forgiveness amount

## PPP: Accounting for PPP Loan Proceeds

- Accounting for the forgiveness of the PPP loan is provided for in Accounting Standards Update (ASU) 2018-08, *Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made (Topic 958):*
  - *Applicable for NFPs (non public business entity/conduit debt obligor) resource recipients with 12/31/19 FYE and later*
  - *Not considered to be a reciprocal transaction (no direct commensurate value in return)*

## PPP: Accounting for PPP Loan Proceeds

- The PPP loan appears to be a conditional grant (thus reflected as a liability)
  - *There is a right of return*
  - *There are barriers to be overcome (requirement to incur only qualifying expenses based on specific criteria – **more on this on next slide**)*
- Once the conditions have been met, the forgiven amount can be recorded as contribution. There appears to be a related restriction on this grant/contribution (to be used for very specific purposes). **More on this in a few slides, too…**

## PPP: Accounting for PPP Loan Proceeds

All barriers need to be overcome before the conditional grant can be recognized. These barriers include:

- Qualifying expenses
  - 75% incurred and spent on payroll costs
  - Utilities
  - Interest on mortgage debt
  - Rent
- Time period – need to be incurred and paid in an 8 week period

# # 2: Conditional vs. Unconditional Contributions: Barriers

Indicators that a barrier may exist (continued)

**Measurable Barrier**
- Specified level of service
- Specified outcome
- Matching
- Outside event or occurrence
- May be achieved in milestone (step-wise) fashion

**Limited Discretion**
- More specific than the general activity being conducted and/or restricted time-frame
- Requirement to incur only qualifying expenses based on specific criteria
- Requirement to hire specific individuals
- Requirement to adhere to specific protocol(s)

**Related to Purpose of the Agreement**
- Stipulations that relate directly to the mission purpose of the agreement
  - Report on research study findings
  - LEED certification for new building
- Excludes trivial or administrative stipulations and requirements
  - Report on grant expenditures
  - Annual audit

# Example

Facts:

- ABC Org has a June 30, 2020 fiscal year-end
- $1,000,000 ABC receives proceeds from a PPP loan on April 15, 2020
- On June 10, 2020, ABC calculates its qualifying expenses over the eight-week period, determines it incurred and paid $800,000 of qualifying costs, and submits to its lender/SBA for loan forgiveness
- On July 20, 2020 (40 days after submitting), ABC is notified that $750,000 of the loan will be forgiven after the verification process

## Entry to Book PPP Loan Proceeds

On April 15, 2020:

| | | | |
|---|---|---|---|
| Cash | | $1,000,000 | |
| | Loan (note) payable | | $1,000,000 |
| | | | |
| To record PPP loan payable | | | |

## Entry to Book PPP Loan Proceeds

On April 30, 2020:

| | | | |
|---|---|---|---|
| Interest expense | | $411 | |
| | Interest payable | | $411 |
| | | | |
| To record interest payable on PPP loan payable at 1% | | | |

## Entry to Book PPP Loan Proceeds

On May 31, 2020:

| | | | |
|---|---|---|---|
| Interest expense | | $849 | |
| | Interest payable | | $849 |
| | | | |
| To record interest payable on PPP loan payable at 1% | | | |

## Entry to Book PPP Loan Proceeds

On June 10, 2020:

| | | | | |
|---|---|---|---|---|
| Loan payable | | $800,000 | | |
| | Restricted contribution/grant | | $800,000 | |
| | | | | |
| Interest payable | | $1,008 | | |
| | Interest expense | | $1,008 | |
| | | | | |
| To record estimated forgiveness of loan and related interest payable | | | | |

## Entry to Book PPP Loan Proceeds

On June 10, 2020 (part 2)**:

| | | | |
|---|---|---|---|
| Release of restrictions (WDR) | | $800,000 | |
| | Released restriction (WODR) | | $800,000 |
| | | | |
| To record release of restriction related to PPP forgiveness | | | |

## ** Alternative Treatment Under ASU 2018-08

- FASB decided to amend the current requirements under GAAP to allow NFPs to elect the simultaneous release policy for donor-restricted contributions that were initially conditional contributions independent of any election for other donor-restricted contributions. ***FASB noted that, in many instances, the condition could be met and the restriction satisfied at precisely the same time; thus, there essentially would be no separate restriction that needs to be tracked by the NFP for resources to which it is already entitled.***

## ** Alternative Treatment Under ASU 2018-08

- This is especially true with many governmental grants for which the recipient must incur qualifying expenses. The decision to change the simultaneous release accounting option for donor-restricted contributions that were initially conditional contributions gives entities additional flexibility in avoiding what some may perceive as non-intuitive and potentially complicated reporting of such transactions that may be difficult for users to understand.

## ** Alternative Treatment Under ASU 2018-08

- If this alternative treatment is elected, this policy needs to be disclosed in the footnotes to the financial statements and the policy needs to be followed for all conditional grants where the condition and the restriction are met at the same time
- This would result in the contributions being reflected as without donor restrictions
- Other sources of restricted contributions would continue to be recorded as with donor restrictions and released when the restriction is met

## Entry to Book PPP Loan Proceeds

On July 20, 2020 (after FYE – adjust 6/30/20):

| | | | | |
|---|---|---|---|---|
| Restricted contribution/grant | | $50,000 | | |
| | Loan payable | | $50,000 | |
| | | | | |
| Released restriction (WODR) | | $50,000 | | |
| | Release of restriction (WDR) | | $50,000 | |
| | | | | |
| To adjust estimated forgiveness of loan and related release | | | | |

## Verification of Loan Forgiveness Amount

In this example, the verification process is not considered a barrier. Thus the organization can recognize the revenue when it self-determines the amount. The timing of the verification received does make it a subsequent event (type 1) which would result in an adjustment to the year-end balances/estimates if the financial statements are issued after receiving the verification.

## Other PPP Proceeds Considerations

- As a best practice, a number of organizations are depositing the PPP funds into a separate bank account to avoid comingling with other funds (not required)
- However, it does allow the organization to track qualifying expenses and make transfers to their main operating account to replenish that
- After the eight-week period, this gives the organization the option to quickly identify the approximate residual loan amount and return this amount if they prefer to not carry the loan and make P&I payments

## Other PPP Proceeds Considerations

- For mission agencies that employ a deputized fundraising model and reflect missionary support as contributions with donor restrictions, continuing to pay payroll and benefits from these support accounts during this eight-week period is satisfying donor intent and allowing them to release these restrictions
- These donor restrictions and their release should not be confused with the restrictions and simultaneous release of the PPP loan forgiven

## Other PPP Proceeds Considerations

- From a cash management perspective, if the mission agency has been able to pay its missionary payroll and other qualifying expenses from other cash reserves, there does not appear to any obligation to replenish these missionary support accounts
- Mission agency leadership should have the discretion to use these funds for various purposes

## PPP Loan Forgiveness Overview

- Your lender may be the point party on loan forgiveness
  - But PPP loans may be sold
- You will not be able to apply for loan forgiveness until at least eight weeks after the loan disburses
- Forgiveness is available based on qualifying expenses
- The lender has 60 days to process your forgiveness application
- Amount forgiven is **not** subject to income tax, including UBTI

## PPP Loan Forgiveness Basics

- First things first: What is the **covered period**?
  - An eight-week period that commences on the date the lender makes the first disbursement
    - Includes the date of disbursement
  - This is the period during which you need to track qualifying expenses
- What are qualifying expenses?
  - Payroll costs
  - Mortgage interest
  - Rent
  - Utilities

## PPP Loan Forgiveness: Payroll Costs

- Salary, wages, commissions, and other similar compensation
  - Start with **gross pay**
  - Don't include the employer's share of FICA/Medicare or FUTA
    - But include the employee's share and income tax withheld
  - Don't include amounts in excess of an annualized $100,000 per employee
    - This limit does not apply to health insurance, retirement benefits, and state taxes (more on these in a minute)
    - On a semi-monthly payroll, $100,000 ÷ 24 = $4,166.67
    - On a bi-weekly payroll, $100,000 ÷ 26 = $3,846.15

## PPP Loan Forgiveness: Payroll Costs (continued)

- Salary, wages, commissions, and other similar compensation (continued)
  - Don't include wages of employees whose principal place of residence is outside the U.S.
    - See Mission Agencies and Paycheck Protection Program Loans for more on this
  - Don't include wages for which you received credits under the FFCRA for paid FMLA benefits or paid sick leave benefits
  - Don't include amounts paid to independent contractors (i.e., 1099 employees)

## PPP Loan Forgiveness: Payroll Costs (continued)

- Salary, wages, commissions, and other similar compensation (continued)
  - **What about the minister's housing allowance?**
    - No clear guidance and no clear path to guidance
    - Much confusion among lenders
      - Lenders who rely on Form 941 to substantiate the reasonableness of average monthly payroll costs appear to be the most likely to exclude
      - Form 941 excludes the minister's housing allowance

## PPP Loan Forgiveness: Payroll Costs (continued)

- Cash tips or their equivalent
- Payments for vacation, parental, family, medical, or sick leave
  - But not wages for which you received credits under the FFCRA for paid FMLA benefits or paid sick leave benefits
- Severance payments

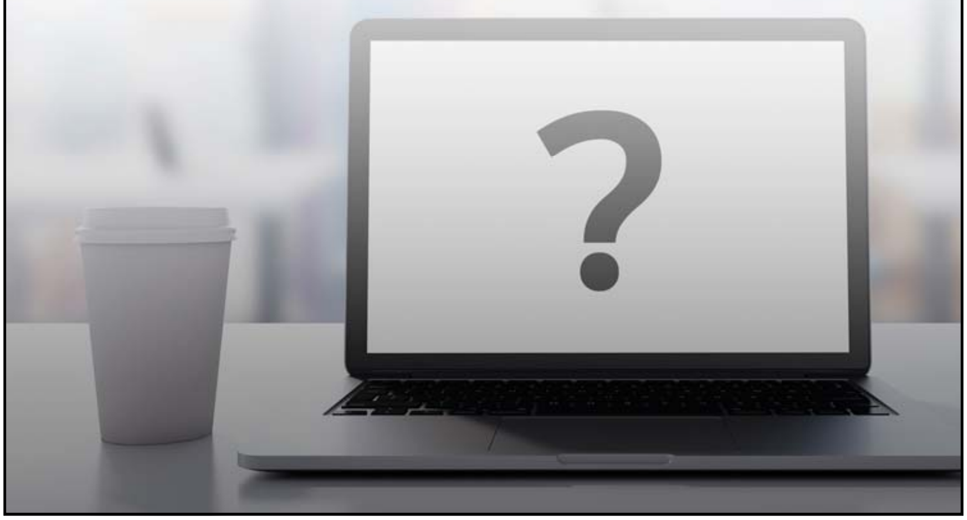
## PPP Loan Forgiveness: Payroll Costs (continued)

- **Employer** payments for group health care benefits, including insurance premiums
  - We don’t have guidance regarding employer contributions to:
    - A QSEHRA
    - An ICHRA
    - An EBHRA
    - HSA coupled with a HDHP
  - We don’t have guidance regarding computing the includible costs of a self-insured group health plan

## PPP Loan Forgiveness: Payroll Costs (continued)

- **Employer** contributions to retirement plans
  - Seems clear that contributions to a 403(b) or 401(k) plan qualify for a defined benefit pension plan
  - Less clear about 457(b) plans, 457(f) plans, profit-sharing plans
- Payments of state and local taxes assessed on employee compensation
  - Probably doesn't include workers comp
  - Probably doesn't include payments to the state unemployment agency by reimbursing employers

## Questions?



## Additional COVID-19 Resources

Things are changing fast! Visit capincrouse.com and click on the home page banner below for the latest updates.


## Thank you!

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## PPP Loan Forgiveness: Mortgage Interest

- Mortgage interest is included
  - Mortgage must have been in place on February 15, 2020
  - Do not include mortgage principal, including pre-payment of principal
  - Construction loan interest should qualify if the loan is secured by the property and construction in progress
  - Interest on loans secured by equipment and other types of tangible personal property is included
    - Company car

## PPP Loan Forgiveness: Rent

- Rent is included
  - Lease agreement must have been in place on February 15, 2020
  - Lease payment on both real property (i.e., your building) and equipment and other types of tangible personal property is included
    - Company car
    - Copier lease

## PPP Loan Forgiveness: Utilities

- Utilities include payments for:
  - Electricity
  - Gas
  - Water
  - Transportation
    - We don’t have guidance as to what is included here
  - Telephone
    - We don’t know if this includes allowances for BYOD
  - Internet access
    - We don’t know if this includes allowances for an employee’s home Internet service

## PPP Loan Forgiveness: Incurred and Paid Dilemma

- CARES Act section 1106(b) states that forgiveness is available for

  “costs incurred and payments made during the covered period”

## PPP Loan Forgiveness: Potential 8-Week Trap

- Covered period is eight weeks beginning on the date the PPP loan is disbursed
  - An employer that pays semi-monthly that receives a PPP loan on April 16 – April 20 will only have 3 payroll periods during the eight-week period
    - April 16, 2020 – June 10, 2020
    - April 17, 2020 – June 11, 2020
    - April 18, 2020 – June 12, 2020
    - April 19, 2020 – June 13, 2020
    - April 20, 2020 – June 14, 2020

## PPP Loan Forgiveness: Documentation

- Payroll documentation
  - Number of employees
  - Hours worked by part-time employees (for FTE computations)
  - Rates of pay
  - Form 941
  - Income, payroll, and unemployment tax filings with state authorities
  - Payroll registers from your payroll service
  - Health insurance premium invoices
  - Evidence of retirement plan contributions

## PPP Loan Forgiveness: Documentation (continued)

- Mortgage interest
  - Canceled checks
  - Payment coupons
  - Payment receipts
  - Mortgage statement, account transcript, or amortization schedule showing interest portion of payments
- Rent
  - Invoice
  - Lease agreement
  - Canceled check or electronic payment confirmation

## PPP Loan Forgiveness: Documentation (continued)

- Utilities
  - Invoices
  - Canceled check or electronic payment confirmation
  - Account statement
- These documentation requirements are mandatory

## 5 Paths to Incomplete Forgiveness

- Economic Injury Disaster Loan (EIDL) Advance
  - Up to a $10,000 advance upon application for an EIDL
  - Is not required to be repaid, even if the EIDL loan denied
  - Must be subtracted from the loan forgiveness amount

## 5 Paths to Incomplete Forgiveness (continued)

- 75% Rule
  - The First Interim Rule requires that at least 75% of the PPP loan proceeds be used for payroll costs
  - Forgiveness will be denied to the extent this isn't the case
    - Assume you borrowed $100,000 but only spent $70,000 on payroll costs
    - $70,000 is 75% of what number?
      - $70,000 ÷ 75% = $93,333.33
    - Assuming mortgage interest, rent, and utility payments of at least $23,333.33, the loan forgiveness amount is $93,333.33

## 5 Paths to Incomplete Forgiveness (continued)

- Paid FMLA leave/Emergency Paid Sick Leave
  - Wages paid for FMLA leave or paid sick leave *for which you receive the credits provided by the FFCRA* must be excluded from the loan forgiveness computation
    - Make sure to reserve this amount to repay if you don’t want a loan balance

## 5 Paths to Incomplete Forgiveness (continued)

- Headcount reduction factor
  - A fraction
  - This computation looks at your change in employment numbers since the onset of the pandemic versus:
    - A similar period during 2019; or
    - The first two months of 2020

## 5 Paths to Incomplete Forgiveness (continued)

- Headcount reduction factor (continued)
  - Compute the numerator
    - Relevant date range: the eight-week period
    - Relevant employees: full and part-time employees on each payday
    - Method: Compute FTEs at each payday within the eight-week period
      - If there are 4 paydays, then there will be 4 FTE computations
      - Compute the average of the 4 FTE computations
      - This is the numerator

## 5 Paths to Incomplete Forgiveness (continued)

- Headcount reduction factor (continued)
  - Compute the denominator
    - Relevant date range:
      - February 15, 2019, and June 30, 2019; or
      - January 1, 2020, and February 29, 2020
      - Whichever gives you the best answer
    - Relevant employees: full and part-time employees on each payday

## 5 Paths to Incomplete Forgiveness (continued)

- Headcount reduction factor (continued)
  - Compute the denominator (continued)
    - Method: Compute average number of FTEs per month for each month or partial month in the measurement period
      - If there are 2 paydays in a month, then there will be 2 FTE computations for that month
      - Compute the average of the 2 FTE computations
      - Now compute the average of the monthly FTE computations
      - This is the denominator
  - Compute the factor
    - One minus (numerator ÷ denominator)

## 5 Paths to Incomplete Forgiveness (continued)

- Headcount reduction factor (continued)
  - Example
    - Assume your loan forgiveness amount (the sum of all qualifying expenses) is $100,000
    - Assume your FTE headcount for the eight-week period is 27 (the numerator)
    - Assume your lowest FTE headcount for the two permissible periods for the denominator is 30
    - Reduction factor = 1 – (27 ÷ 30) = .1 or 10%
    - Reduction amount = $100,000 × 10% = $10,000
    - Loan forgiveness amount = $90,000

## 5 Paths to Incomplete Forgiveness (continued)

- Salary and Wage Reduction Amount
  - Amount, not a fraction
  - Sum of salary and wage reductions greater than 25%
  - Only looks at employees employed in the most recent full (calendar?) quarter before the eight-week period
  - Excludes employees whose annualized pay in 2019 was greater than $100,000
  - No guidance as to how to compare salary and wages paid in the preceding quarter with the eight-week period

## 5 Paths to Incomplete Forgiveness (continued)

- Salary and Wage Reduction Amount (continued)
  - Example:
    - Assume an employee was paid $18,750 in Q1 2020, or $72,750 per year
    - Assume that this employee’s rate of pay during the eight-week period is $13,125
    - This is a 30% drop
      - Stated differently, it is a greater than 25% decrease
    - If we convert the before and after rates of pay to weekly rates of pay and then compare 75% of the prior quarter rate of pay to actual pay during the eight-week period, we get a difference of $576.92
    - This is the reduction amount relative to that one employee

## Exception to the Reduction Rules

- There is an exception to the headcount and salary and wage loan forgiveness where headcount/salary and wage reductions are restored by June 30, 2020
  - Compare your FTE headcount at February 15, 2020 to your FTE headcount between February 15, 2020 and April 26, 2020
  - If there was reduction in headcount during this period, then eliminate the reduction by June 30, 2020
    - There is no guidance for organizations with preschools or private schools that have a natural drop-off in employment coincident with the end of the school year

## Exception to the Reduction Rules (continued)

- Compare the salary and wages of employees on February 15, 2020 with their salary and wages between February 15, 2020 and April 26, 2020
- If there was reduction in salary and wages during this period, then eliminate the reduction by June 30, 2020

## PPP Loan Forgiveness: Separate Account?

- Neither the CARES Act nor the Interim Final Rule require a separate account
- Reasons to use a separate account
  - Improved accountability for loan forgiveness documentation
    - Only release funds against documented qualifying expenses
  - Unused funds are available for repayment

## PPP Loan: Deferral Options

- Interest and principal payments are deferred for the first six months
  - Interest accrues, but is forgiven if the principal is forgiven
  - We don’t know what will happen if the loan is only partially forgiven
- After six months, the balance continues on at 1% interest for the remainder of the two-year term

## Potpourri

- Impact of other federal aid programs
- Uniform guidance audits (single-audit)
- Using PPP loan funds for back-pay
- Interaction of PPP loan with deferral of employer payroll taxes
- Interaction of PPP loan with employee retention credits