

NLA Presentation Talking Points

Overview:

- Congress passed and the President signed a massive omnibus appropriations and COVID-19 relief bill just before the new year.
- The bill funds the entire government and includes thousands of pages and a few trillion dollars worth of projects and programs. The items most directly relevant to NLA include: updates to the PPP, second draw loans, streamlined forgiveness for loans under \$150k, and the status of the Coronavirus Economic Relief for Transportation Services (CERTS) Act
 - The biggest impact for the industry will likely be second-draw PPP loans.
 - CERTS is still being worked out by the agencies. Unless you don't qualify for PPP, you should pursue first and second PPP loans and consider CERTS to be a secondary form of relief since it is on a longer timeline
- Biggest immediate impact for the limo industry is the second-draw PPP loan. Many banks that handled initial PPP loans are reaching out to recipients to initiate the process for second loans, under the same terms as the first loan. Your best bet is to work with the same lender since they have all the necessary information.
- There have been some questions over whether first PPP loans must have already gone through forgiveness or be in the process of forgiveness before you can apply for a second PPP loan.
 - Not necessarily. In order to apply for a second draw loan, you should just have to certify that you have used or will use all of the proceeds from the first loan. There is a chance the agencies issue tighter regulations.
- The omnibus also retroactively expands forgivable PPP expenses, and includes a provision allowing you to request an increase in the amount of your original PPP loan if you did not accept the maximum amount. You should pursue this option if you have expenses that are eligible now but weren't under the original PPP.

Expanded PPP Uses:

1. Covered operations expenditures – payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales & billing functions, or accounting or tracking of supplies, inventory, records, & expenses;
2. Covered property damage costs – a cost related to property damage and vandalism or looting due to public disturbances that occurred during 2020 that was not covered by insurance or other compensation;
3. Covered supplier costs – an expenditure made by an entity for the supply of goods that (1) are essential to the operations of the entity at the time the expenditure is made; and (2) is made pursuant to a contract or order in effect any time before the covered period with respect to the applicable loan or (for perishable goods) in effect before or at any time during the covered period with respect to the applicable covered loan;
4. Covered worker protection expenditures – operating or capital expenditures to facilitate the adaptation of the business activities to comply with requirements or guidance issued by HHS, CDC, OSHA, or any state or local requirements/guidance from March 1, 2020 until the end of the declared Presidential emergency on COVID. Includes:
 - purchase/maintenance/renovation of assets to create or expand:
 - (1) drive through window;

- (2) indoor, outdoor, or combined air or air pressure ventilation or filtration system;
 - (3) physical barriers (like sneeze guards);
 - (4) expansion of additional indoor/outdoor/combined business space;
 - (5) onsite or offsite health screening capability;
 - (6) other assets to comply with guidance/requirements as determined by SBA/HHS/DoL
 - purchase of
 - (1) Surgical N95 filtering facepiece respirators; PPE surgical masks; and PPE nitrile gloves (exam gloves and surgical gloves); and Level 3 and 4 Surgical Gowns and Surgical Isolation Gowns (must meet certain requirements);
 - Particulate filtering face-piece respirators approved by the National Institute for Occupational Safety & Health (at CDC), including those approved only for emergency use authorization;
 - Other kinds of PPE as determined by SBA in consultation with HHS and DoL.
 - Does not include residential real property or intangible property
- 5. All of those changes on expanded use of funds have an effective date of enactment of the CARES Act and applies to any SBA loan made before, on, or after the date of this COVID supplemental, including forgiveness of such loan except for loans that have already been forgiven.

Second draw PPP loans:

Available to any business concern, non-profit organization, [housing cooperative](#), veterans organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that:

1. Has less than 300 employees **AND** have at least a 25% reduction in gross receipts in a calendar quarter in 2020 as compared to same calendar quarter in 2019
 - Exception 1: If the entity wasn't in business during the 1st or 2nd quarter of 2019 but was in business during the 3rd and 4th quarter of 2019, entity must have had gross receipts during the 1st, 2nd, 3rd, or (if application submitted on or after 1/1/2021) 4th quarter of 2020 that demonstrate at least a 25% reduction in gross receipts from the entity during the 3rd or 4th quarter of 2019
 - Exception 2: If the entity wasn't in business during the 1st, 2nd or 3rd quarter of 2019 but was in business during the 4th quarter of 2019, entity must have had gross receipts during the 1st, 2nd, 3rd, or (if application submitted on or after 1/1/2021) 4th quarter of 2020 that demonstrates at least a 25% reduction from the gross receipts from the entity during the 4th quarter of 2019
 - Exception 3: If the entity was not in business in 2019 but was in operation on February 15, 2020, had gross receipts during the 2nd, 3rd, or (if application is submitted on or after 1/1/2021) 4th quarter of 2020 that demonstrates at least a 25% reduction from the gross receipts of the entity during the 1st quarter of 2020

Maximum Loan Amounts

- The maximum loan amount is the lesser of:
 - \$2 million or
 - At the employer's choice, the average monthly payroll incurred/paid during the 1 year period prior to the date the loan is made multiplied by 2.5 or the average monthly payroll incurred/paid in 2019 multiplied by 2.5
- **For seasonal employers**, the maximum loan amount is the lesser of:

- The product of the average total monthly payment for payroll costs incurred/paid for any 12-week period between Feb. 15, 2019 and Feb. 15, 2020 multiplied by 2.5 or
- \$2 million
- For “new entities” (those that did not exist during the 1 year period preceding Feb, 15, 2020), the maximum loan amount is the less of:
 - The product of the sum of total monthly payments by the entity for payroll costs paid/incurred as of the date of loan application divided by the number of months those payroll costs were incurred multiplied by 2.5. { TOTAL PAYROLL COSTS INCURRED/PAID SINCE BUSINESS INCEPTION ÷ NUMBER OF MONTHS PAYROLL HAS BEEN INCURRED = SUM. TAKE SUM AND MULTIPLY BY 2.5}

Loan Number Limitation:

- An eligible entity may only receive 1 covered loan*
 - **likely means ensure covered period for first loan is concluded prior to application for a second loan.*

Exception from Certain Certification Requirements:

- There were 4 certifications required under original PPP loans but only the first 2 need to be certified this time: (1) uncertain economic conditions make the loan necessary to support ongoing operations; (2) loan proceeds will be used to retain workers and maintain payroll or make mortgage/lease/utility payments. Do **NOT** need to certify that (3) the recipient doesn’t have an application pending for a loan for the same purpose and duplicative amounts applied for or received under a covered loan; and (4) from 2/15/2020 through 12/31/2020 the recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

Loan Forgiveness

- Generally, loan forgiveness will work the same way as it did under the original PPP program – entities will choose an 8 or 24 week period over which they incur expenses.* Forgiveness will apply to expenses actually incurred during the covered period. In addition to payroll costs, interest on mortgage obligations, rent obligations, and utility obligations, recipients can have expenses forgiven for expenditures on covered operations expenditures, covered property damage cost, covered supplier costs, and covered worker protection expenditures.
 - **Covered worker protection expenses can have been incurred at any time since March 1, 2020*

Updated Covered Period

Allows recipients to choose covered period of either 8 weeks or 24 weeks after the date of origination of the loan.

Simplified Forgiveness Application:

1. For loans up to \$150,000 – loan shall be forgiven if the recipient signs and submits a certification (established by SBA no later than 24 days after enactment) to the lender. The recipient must also attest that s/he accurately provided required certification, complied with PPP law and rules; and (3) will keep records to prove compliance for 3 years (4 years for employment records). The certification can only be 1 page and can only require the recipient to provide:
 - a. A description of the number of employees the recipient was able to retain because of the covered loan;
 - b. The estimated amount of the covered loan spent by the recipient on payroll costs; and
 - c. The total loan value

*A recipient of a loan less than \$150,000 can't be required to submit any documentation other than the certification and information required to substantiate forgiveness (but if a lender needs documentation to satisfy some state/federal/regulatory requirement or for an audit, more documentation can be forced to be provided).

*SBA can include a means to allow recipients to voluntarily provide demographic info.

*SBA has audit authority and can access recipient records as needed to complete audit and can modify loan amount or loan forgiveness amount based on audit findings.

2. For loans more than \$150,000 – subject to original forgiveness terms as provided by CARES Act.
 - a. SBA can include a means to allow recipients to voluntarily provide demographic info.
 - b. SBA must submit to House & Senate Small Business Committees an audit plan for conducting forgiveness reviews and audits and metrics SBA will use to determine which loans will be audited. 30 days after submission of audit plan, and monthly thereafter, SBA must submit a report on forgiveness review and audit detailing (1) the number of active reviews and audits; (2) the number of reviews and audits ongoing for more than 60 days; (3) any substantial changes to the audit plan.

The changes on simplified forgiveness applications will have an effective date of passage of the CARES Act and apply to any loan already made or to be made.

Increased Ability for PPP Borrowers to Request an Increase in Loan Amount

- Applies to loans that have been applied for but not yet forgiven
- SBA has 17 days to issue rules or guidance to ensure recipients that return amounts disbursed under the included covered loan or don't accept the full amount of the included covered loan for which they were approved:
 - For recipients that returned all or part of an included covered loan, can reapply for a loan in the amount equal to the difference between the amount retained and the maximum amount applicable; and
 - For recipients that didn't accept the full amount of an included covered loan, the recipient can request a modification to increase the amount of the covered loan to the maximum amount applicable.

**NOTE: if you don't qualify for a second draw loan, you can likely apply to recoup the amount of your initial PPP loan that was returned or unforgiven, or if you didn't apply for the maximum amount available because you would not receive forgiveness for all of it. Proceeds can be used for expanded uses and forgiven.*

Clarification on what counts as payroll costs:

- Retroactive to date of enactment of CARES Act, the employer share of group life, disability, vision, or dental insurance benefits included in payroll costs

Clarification on Limitations on Eligibility

- Businesses/organizations not in operation on 2/15/2020 are not eligible for PPP. Effective date retroactive to enactment of CARES Act for loans made and forgiven.
- Entities receiving a Shuttered Venue Operator Grant are not eligible for PPP loans.

Definition of Seasonal Employer

- New definition of seasonal employer for PPP is a recipient that (1) doesn't operate for more than 7 months in any calendar year OR (2) during the preceding calendar year had gross receipts

for 6 months of that year that weren't more than 33.33% of the gross receipts for the other 6 months of that year.

*Retroactive effective date to passage of the CARES Act applicable to any loan made or forgiven.

PPP Business Activity Safe Harbor:

The business activity safe harbor provision was added by the PPP Flexibility Act in June 2020. It states that a borrower is exempt from full-time equivalent employee (FTE) reductions if the borrower is unable to return to the same level of business activity during that the borrower was operating at before February 15, 2020 due to compliance with requirements established or guidance issued by HHS, the CDC, or OSHA between March 1, 2020 and December 31, 2020. The SBA has stated that this COVID-19 Guidance can be direct or indirect. According to the SBA, indirect guidance means "state and local shutdown orders that are based in part on guidance from the three federal agencies."

To rely on the business activity safe harbor, a borrower must demonstrate two things:

1. First, there must be a shutdown order or operating restriction issued by a federal, state or local government based on COVID-19 Guidance that the borrower was required to comply with.
2. Second, the borrower must be able to demonstrate a reduction in business activity through their covered period.

With travel nearly coming to a halt, private transportation companies have also seen sharp declines in revenue. However, these declines were often not the result of the businesses' compliance with COVID-19 Guidance. Rather, it was the customers of these businesses that were subject to compliance. While, for example, bus companies servicing school districts may have an argument that the school closings extended to the school bus companies that are retained by the schools, other private transportation providers may have a more difficult time making the connection to compliance with specific COVID-19 Guidance. This is especially relevant in jurisdictions where transportation providers were considered essential businesses and allowed to stay in operation, even though demand was near zero.

At this moment, we recommend using other paths for forgiveness, including meeting standard rehiring requirements, in case lenders and the SBA interpret safe harbors narrowly.

CERTS

- CERTS was initially introduced and championed by the bus industry for \$10 billion.
 - It was negotiated down from \$10b to \$8b to 6b to \$2b during the final talks over the FY21 COVID/Omni bill. It is a huge win that the industry was included at all, since right now congress is trying to avoid industry specific relief and instead pass broad programs.
 - In order to get it passed, CERTS was expanded to include motorcoach, school bus, ferry boat, and the major catch-all "any other passenger transportation provider regulated by DOT"
 - That last catch-all could mean any number of things, in general we think it can/should include the following categories, which are subject to regulation by DOT
 - Operating for-hire passenger vehicles in interstate commerce
 - are above 10,000lbs gvw
 - is designed to transport 9or more passengers for compensation

- is designed to transport 16 or more passengers regardless of whether it is for compensation
 - whether the vehicle meets CDL requirements
 - It's also not clear whether they will only hand out grants for the parts of your business that fit one of the categories, or whether having DOT regulated vehicles, period, will qualify you based on a revenue or expense formula or something similar.
 - So there is a much broader group of applicants, and smaller pool of money than the industry originally envisioned. We need to wait to see what the DOT determines for eligibility and Treasury ultimately says about funding.
 - The statute says that the money can come in the form of grants, loans, and loan guarantees, and at least half of it has to be grants.
 - the statutory language sets a hard cap that CERTS funding, combined with every other form of federal funding you received, cannot exceed your 2019 revenue. However, there is language directing Treasury to consider what other forms of federal relief applicants have received when determining award amounts. This could mean that CERTS funding is reduced in some way proportional to PPP funding, but nothing is settled yet.
 - **Due to the transition, we expect it will be a few weeks or months before CERTS is fully stood up.**
 - If we had to guess, we would bet that CERTS funding will be based on some revenue calculation similar to PPP. Rather than writing brand new regulations, the agencies will want to rely upon existing frameworks like SBA did when they were writing rules for PPP back last April.
 - Big takeaway: The vast majority of limousine operators are small enough to qualify for PPP loans. A few of the large motorcoach operators were too big to qualify for PPP, hence the CERTS Act. Smaller operators should think PPP first, CERTS second.
- **Eligible uses include:**
 - Payroll Costs, including salaries, wages, commissions, tips, paid leave, health insurance, retirement benefits, state and local employment taxes, and payments to sole proprietors and independent contractors. (excluding compensation above \$100,000 prorated for a calendar year, employees based outside the US, and bonuses/raises above inflation)
 - Acquisition of services, equipment, and measures to protect workers and customers from COVID-19
 - Operation and maintenance costs during the covered period, including rent, leases, insurance, and debt interest
 - Compensation of returning employees for lost pay and benefits
 - **Conditions of Receipt:**
 - Funds must be used on a priority basis for payroll costs for all employees on payroll on the date of enactment, adjusting for retirement and voluntary separation
 - Must use at least 60% of funds on payroll costs, unless all employees are rehired with 100% of their previous salary and benefits
 - No furloughs, reductions in pay rates or benefits for nonexecutive employees during the covered period

- Must spend all funds within 1 year of receipt
- Must recall or rehire any employees laid off, furloughed, or terminated because of reduced service levels resulting from COVID-19, to the extent warranted by increased services levels
- Must examine anticipated expenditures at least every 90 days, and return funds not anticipated to be spent by the deadline

Employee Retention Tax Credit

- CARES Act passed refundable tax credit against the employer portion of social security payroll tax equal to 50% of qualified wages, up to \$5,000 per employee
- Under the terms of the CARES Act, if an employer received a covered loan under the PPP, the employer was not eligible to claim the ERC.
- CAA 2021 amended the CARES Act to allow employers that received a PPP loan to retroactively claim the ERC for wages paid after March 12, 2020, but not for the wages used to obtain PPP loan forgiveness. However, it is unclear how the reporting of wages as payroll costs on a previously filed PPP loan forgiveness application affects an employer's ability to claim the ERC for wages that were included on a loan forgiveness application but did not affect the amount of loan forgiveness.