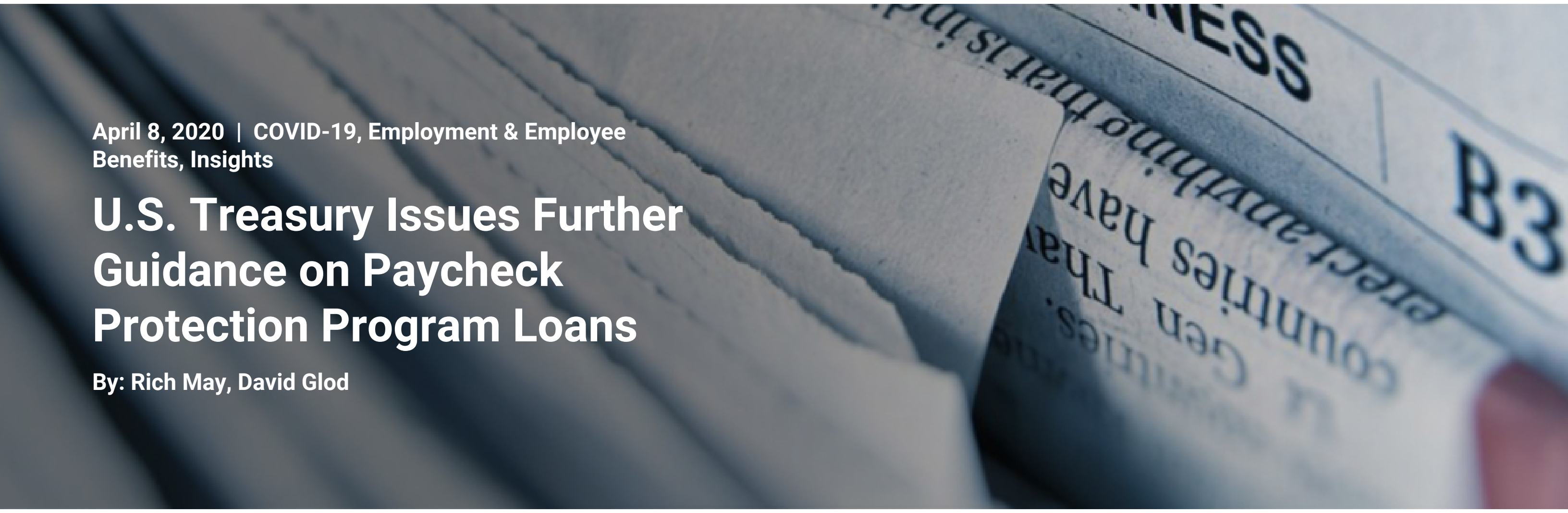

April 8, 2020 | COVID-19, Employment & Employee Benefits, Insights

# U.S. Treasury Issues Further Guidance on Paycheck Protection Program Loans

By: Rich May, David Glod

On April 6, 2020, the Department of the Treasury issued a set of answers to frequently asked questions, intending to clarify the operation of the Paycheck Protection Program (PPP). This is the forgivable small business loan program about which we hosted a webinar last week, and which is expected to be a primary source of economic relief for small businesses impacted by COVID-19.

Given the delays and logistical hurdles experienced by many borrowers seeking PPP loans from their banks, several answers in the FAQ appear to be intended to streamline the lending process. For example, the FAQ makes clear that the calculation of a borrower's payroll costs (on which the loan amount is based) is the borrower's responsibility and subject to only a "good faith review, in a reasonable time" by the lender. It also says the lender may rely upon the borrower's determination that it is eligible for a PPP loan based on the size of its business.

Determining the size of the borrower's business can be more complicated than it sounds, because the determination is subject to the SBA's affiliation rules. Those rules provide that for purposes of the size determination, a borrower must count its employees together with the employees of any other entity that is under common control with it. "Control" can mean ownership of more than 50% of an entity's voting stock, but it can also mean even a minority shareholder's right to direct or block certain corporate actions. If your business is owned or controlled by someone who also owns or controls other businesses, it may be advisable to work through the affiliation rule with an attorney to ensure that you are correctly handling potentially affiliated entities.

The FAQ also addresses matters that were unclear in earlier guidance and application materials, including that the $100,000 per employee cap on payroll costs applies only to cash compensation. It does not apply to employer contributions to retirement plans, payments for group healthcare coverage, or payments of state or local taxes. It also clarifies that borrowers may calculate their average payroll costs using data either from the previous 12 months or from calendar year 2019.

### Related Services

Employment & Employee Benefits

### Related Attorneys

David Glod

©2026 Rich May, P.C. All Rights Reserved

Importantly, because the guidance and materials have been rapidly changing since the CARES Act was passed, the FAQ clarifies that borrowers or lenders who have filed or approved applications based on prior guidance do not need to take any action to conform to this updated guidance. Borrowers and lenders may rely on the guidance available at the time of the relevant application.

The full FAQ can be found here.

*Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney David Glod.*