



RELIEF FOR SMALL BUSINESSES UNDER THE \$2 TRILLION CARES ACT

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The CARES Act — the *Coronavirus Aid, Relief, and Economic Security Act* — was passed by the U.S. Congress on March 27, 2020, and signed into law by President Trump the same day. This \$2 trillion relief package aims to alleviate some of the economic disruptions many Americans are currently facing as a result of the coronavirus pandemic.

A key area of focus in the CARES Act (and the focus of this article) is relief for small businesses and their employees, which is set forth in Title I of the CARES Act, dubbed the *Keeping American Workers Paid and Employed Act*. With a record 3.28 million Americans having filed for unemployment benefits last week alone, lawmakers hope that Title I will make it possible for employers to keep employees on their payrolls (and even encourage employers to re-hire any furloughed employees) as the coronavirus pandemic continues. Below is a summary of some of the key provisions in Title I of the CARES Act.

1. Paycheck Protection Program Loans

The CARES Act establishes the Paycheck Protection Program (the “PPP”), a new Small Business Administration (“SBA”) loan program which authorizes \$349 billion worth of 100% SBA-guaranteed loans (“PPP Loans”) covering various operational expenses, including payroll costs, paid sick or medical leave, mortgage, rent, and utilities, of eligible businesses during the period beginning February 15, 2020, and ending on June 30, 2020.

Who is eligible for a PPP Loan?

The PPP expands the types of businesses which would be available to receive PPP Loans beyond the businesses which would otherwise qualify for standard SBA loans under Section 7(a) of the Small Business Act ("*Traditional SBA Loans*"). Accordingly, PPP Loans are available to any business which constitutes one of the business types listed below, provided that such business (i) was operational on February 15, 2020, (ii) had employees and paid salaries and payroll taxes, or paid independent contractors, and (iii) was substantially impacted by the public health restrictions related to COVID-19 (an "*Eligible Business*"):

a. a business which already constitutes a "small business concern" under the Small Business Act, which is a for-profit business that (x) has a place of business in the U.S., (y) either (i) operates primarily in the U.S. or (ii) makes a significant contribution to the U.S. economy by paying taxes or using American products, materials, or labor, **and** (z) falls within the particular SBA size standard applicable to such business, which standards are determined in accordance with the North American Industrial Classification System ("*NAICS*");

b. any business, nonprofit organization, veterans' organization, or Tribal business concern which employs 500 or fewer employees (or the applicable employee-based size standard established by the SBA for the industry in which the business operates, if greater);

c. an individual who (i) operates under a sole proprietorship or as an independent contractor, or (ii) is an "eligible self-employed individual" under the Families First Coronavirus Response Act enacted on March 18, 2020 (the U.S.'s second phase of coronavirus legislation);

d. any lodging and/or food service business (and has an NAICS Code starting with 72) that employs 500 or fewer employees per location of such business (a "*Hospitality Business*").

Importantly, unless an exception applies, a business must identify and include its affiliates in determining whether such business is within the 500-employee limit or is otherwise within the SBA size standard applicable to such business, if greater. These size eligibility requirements and affiliation rules may eliminate the availability of the new SBA loan programs to a business that is deemed to be too large because of its affiliates. Please refer to our follow-up discussion regarding the application of such size eligibility requirements and affiliation rules by clicking [here](#).

Lenders may begin processing applications from (i) small businesses and sole proprietors as soon as Friday, April 3, 2020, and (ii) independent contractors and self-employed individuals as soon as April 10, 2020. You can find a sample form of the application [here](#).

What terms apply to a PPP Loan?

Limits on PPP Loan amount. An Eligible Business can borrow up to the lesser of (a) \$10 million, or (b) the product obtained by multiplying the average total monthly payroll costs during the one-year period prior to the date of the PPP Loan by 2.5. Note that businesses that were not in existence during the one-year period can borrow up to the lesser of (x) \$10 million or (y) the product obtained by multiplying the average total monthly payroll costs from January 1, 2020, to February 29, 2020, by 2.5. The term "payroll

costs" includes salaries, wages, tips, paid sick leave, health insurance premiums, retirement benefits, state and local taxes assessed on compensation of employees, but it does not include compensation to any individual employee or independent contractor in excess of \$100,000.

Permitted uses of PPP Loan proceeds. An Eligible Business that obtains a PPP Loan (a "Borrower") may use the proceeds thereof to cover payroll costs, mortgage, rent and utility payments, and interest on other debt obligations incurred prior to February 15, 2020. However, due to likely high subscription, it is anticipated that no more than 25% of the loan proceeds may be used to pay for non-payroll costs in for a PPP Loan to be eligible for full loan forgiveness (which is described below).

Loan Forgiveness. A Borrower may apply for loan forgiveness equal to the aggregate amount of expenses incurred and payments made on payroll costs, mortgage interest, rent, and utilities during the 8-week period which commences on the origination date of such Borrower's PPP Loan. Note that any mortgage interest, rent, or utility expenses must have been incurred with respect to a mortgage instrument, lease agreement, or utility service which was in force prior to February 15, 2020. The amount of loan forgiveness will not constitute cancellation of debt income and, accordingly, will be excluded from a taxpayer's gross income.

Limitations on Loan Forgiveness. The amount of loan forgiveness is limited to the principal amount of financing made available under the PPP Loan.

Additionally, as an incentive for businesses to retain employees and to maintain salaries or wages, the amount of loan forgiveness is also subject to reduction (i) if the Borrower's average number of full-time employees during the covered period (the 8-week period commencing on the date of such Borrower's PPP Loan) is less than the average number of full-time employees per month during the preceding 12-month period; or (ii) if, compared to an employee's total salary or wages during the most recent full quarter of employment prior to the PPP Loan, there is a reduction of more than 25% of the total salary or wages of such employee during the 8-week period following the date of the PPP Loan. The latter reduction does not apply with respect to an employee whose annualized wages or salary for any pay period in 2019 exceeded \$100,000.

Importantly, there are exemptions from the reductions in loan forgiveness described above. If a Borrower instituted a reduction in employees or salaries/wages due to the coronavirus outbreak (i.e., during the period commencing February 15, 2020, and ending 30 days after enactment of the CARES Act), the loan forgiveness amount will not be reduced if the Borrower eliminates such reduction in employees or salaries/wages by June 30, 2020, meaning that recently laid off employees can be re-hired and paid out of the PPP Loan.

In addition, as briefly mentioned above, it is anticipated that no more than 25% of the forgiven amount may be used for non-payroll costs according to recent guidance from the Treasury.

Interest; Maturity. A PPP Loan, or any portion thereof, that is not forgiven will accrue interest at 1.0% from the date of the loan and will mature after two years. Payments of principal and interest will be deferred for six months.

Other important terms:

- Waives requirements for collateral and personal guaranties for PPP Loans;
- Permits up to one year of deferral on payments on Traditional SBA Loans under Section 7(a) of the Small Business Act;
- Waives affiliation rules for Hospitality Businesses for the purposes of PPP Loans;
- PPP Loans may be provided by the traditional SBA lenders (i.e., financial institutions already authorized under the SBA loan program), but the CARES Act also provides that the U.S. Department of Treasury may authorize additional financial institutions to make PPP Loans (but not Traditional SBA Loans).

2. SBA Economic Injury Disaster Loans and Grants

The CARES Act provides \$562 million for the SBA to provide Economic Injury Disaster Loans ("EIDLs") under Section 7(b)(2) of the Small Business Act to businesses that need financial support during the coronavirus pandemic.

Eligibility for SBA EIDL expanded; certain requirements waived. The CARES Act also expands availability of the EIDLs beyond the current eligible entities to any business, ESOP, cooperative, or tribal small business concern with 500 or fewer employees, and to individuals who operate under a sole proprietorship or as independent contractors. The bill also (i) waives requirements for personal guaranties on loans and advances of not more than \$200,000 made at any time during the period commencing January 31, 2020, and ending on December 31, 2020, and (ii) waives requirements that the applicant must have been in business for the one-year period before the disaster.

EIDL Grants. Eligible businesses which apply for EIDLs may request an emergency advance of up to \$10,000, which must be disbursed by the SBA to the applicant within three days (an "***EIDL Grant***"). Notably, EIDL Grants do not have to be repaid, even if the SBA subsequently denies the grant recipient's request for an EIDL.

3. Debt Relief for New and Existing SBA Loan Borrowers

The stimulus package includes relief for businesses with existing SBA loans (not only Traditional SBA Loans, but also 504 loans and microloans) and businesses who take out SBA loans within six months of enactment of the CARES Act. Under this provision, the SBA will make all loan principal, interest, and fee payments on behalf of SBA borrowers.

The above summary is intended to be brief and to highlight the various SBA loan provisions of the CARES Act, which is currently over 800 pages. Despite approval from Congress and the President, the CARES Act remains subject to a potentially weeks-long rule making process. We understand there are currently glitches and difficulties associated with the online application processes because of heavy use, but we



recommend that businesses that are interested and that might be eligible apply online with the SBA or contact banks with SBA lenders as soon as possible.

If you have questions or would like to discuss further, please contact Trey DeLoach, Nikki Gibson, Ed McQueen or Ira Perez.

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