

CORONAVIRUS RELIEF PACKAGE: Small Business Features of the CARES Act



Do you need some optimism in uncertain times? Well, the Senate overwhelmingly passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, and the House is set to do the same, leaving just the President to sign the bill into law. The CARES Act will send a large cash infusion into the economy with over \$2 trillion in relief, ranging from individual rebates and small business loans to increased unemployment benefits and a wide variety of tax breaks.

Below is a summary of the small business loan provisions of the legislation.

Paycheck Protection Loans

Section 1102 of the CARES Act amends Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) to provide relief for businesses (and sole proprietors) with less than 500 employees (full-time, part-time, or other basis). The definition of the number of employees is expanded to permit applicability to businesses with not more than 500 employees **per physical location** who are assigned a NAICS code beginning with 72. This business classification generally includes restaurants, hotels and related industries. A complete listing of such businesses may be found at <https://www.census.gov/eos/www/naics/>.

Paycheck protection loans will be available during the “covered period,” which runs from February 15, 2020 through June 30, 2020. They are insured 100% by the federal government through 2020. All standard fees are waived, and no personal guarantees or collateral is required. **The loan term has recently been defined as 2 years and the interest rate has recently been determined to be 0.5%.** The maximum amount available is the lesser of \$10 million or generally, 2.5 times you average monthly payroll costs (determined based on the previous twelve months’ payroll but adjusted for seasonal employees).

Payroll costs means the sum of the following:

- wages, commissions, salary, or similar compensation to an employee or independent contractor,
- payment of a cash tip or equivalent,
- payment for vacation, parental, family, medical or sick leave,
- allowance for dismissal or separation,
- payment for group health care benefits, including premiums,
- payment of any retirement benefits, and
- payment of state or local tax assessed on the compensation of employees.

Payroll costs do not include, however:

- the compensation of any individual employee in excess of an annual salary of \$100,000,
- payroll taxes,
- any compensation of an employee whose principal place of residence is outside the U.S., or
- any qualified sick leave or family medical leave for which a credit is allowed under the new Families First Coronavirus Response Act passed last week.

*Example: Jimbo’s Place applies for a paycheck protection loan on April 1, 2020. The business had \$2.4 million in payroll costs for the period April 1, 2019 through March 1, 2020, for a monthly average of \$200,000. Jimbo’s is entitled to a fully guaranteed federal loan of \$500,000 (\$200,000 in average payroll costs * 2.5).*

The loan proceeds can be used for:

- Payroll costs (including salaries, commission or similar compensations)
- Group health care benefits during periods of sick, medical, or family leave
- Interest on mortgages (can't be used for principle) and interest on debt incurred before covered period
- Rent/lease payments
- Utilities

Deferral of payments for six months up to a year is available for qualifying businesses. *Financial institutions will be administering the paycheck protection loans.*

Loan Forgiveness of Paycheck Protection Loans

Section 1106 of the CARES Act calls for a portion of the aforementioned paycheck protection loans to be forgiven on a tax-free basis. The amount of forgiveness is the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan:

- payroll costs (as defined above),
- mortgage interest,
- rent, and
- certain utility payments.

The forgiveness depends on several factors, including a provision that could reduce the forgiveness if the workforce (think number of employees or amounts paid to them) is reduced in the covered period. To seek forgiveness, a borrower must submit to the lender an application that includes documentation verifying the number of employees and pay rates, and cancelled checks showing mortgage, rent, or utility payments.

Emergency EIDL Loan and Grants

The CARES Act also expands access to Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act to include not only businesses with fewer than 500 employees, but also sole proprietors and ESOPs. EIDL loans are generally intended to assist businesses through a disaster recovery period and are limited to the 'economic injury' as determined by the SBA. Such loans can provide vital economic support to help overcome temporary losses in revenue. For any loan made under this program before December 31, 2020, no personal guarantee will be required on loans below \$200,000. The bill allows a disaster loan to be taken out between January 31, 2020 and the date on which a paycheck protection loan is available for reasons "other than paying payroll costs." Presumably, any loan taken out for payroll purposes will be confined to the paycheck protection loans described above.

The Act also created an Emergency Grant to allow a business that has applied for a disaster loan to get an immediate advance of up to \$10,000. If the 7(b) loan is denied, the advance is not required to be repaid.

The SBA will be directly administering EIDL loans and grants.

Subsidy for Certain Loan Payments

Excluding loans under section 7(a), the CARES Act provides for a government subsidy whereby the SBA will pay six months of principal, interest and fees on qualifying loans.

Employee Retention Credit for Employers Subject to Closure or Experiencing Economic Hardship

This provision would provide a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis. Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship are eligible for the credit. For employers with 100 or fewer fulltime employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 455).

The credit is not available to employers receiving assistance through the Paycheck Protection Program. The credit is provided through December 31, 2020.

Delay of Payment of Employer Payroll Taxes

This provision would allow taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.

Conclusion

At this time, most of these programs above are not in place. The SBA has 30 days after the President signs the bill to put procedures in place to handle the programs. Like mentioned above, there are many reasons to be optimistic in these unstable and fast changing economic times. Now is the time to get with your business advisor and get on solid ground to ensure the continuity of your business.