

COVID-19 SMALL BUSINESS ASSISTANCE UNDER THE CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which is designed to provide financial relief to American businesses in response to the economic fallout from the efforts to stem the coronavirus (COVID-19) pandemic. The CARES Act provides direct financial aid to American families, payroll, and operating expense support for small businesses, and loan assistance for distressed industries.

One of the core pieces of the CARES Act is the provision of hundreds of billions of dollars for small businesses through federally-backed loans under an expanded Small Business Administration (SBA) through a Section 7(a) loan guaranty program called the Paycheck Protection Program and an expanded Economic Injury Disaster Loan program. Congress has designed the programs to make funds available to qualifying businesses quickly through approved banks and nonbank lenders.

Paycheck Protection Program: SBA 7(a) Loans Under the CARES Act

Under the CARES Act, the SBA can now make forgivable loans through the Paycheck Protection Program under Section 7(a) of the Small Business Act. Loans under this program are to be used for payroll costs, mortgages, rents, and utilities for eight weeks. These are loans from private financial lenders that are guaranteed by the SBA. As such, businesses should reach out to their existing lenders to inquire about an SBA 7(a) loan. If a business does not have an existing lender, or the existing lender does not offer the SBA 7(a) loan, the SBA offers a lender match program on its website: <https://www.sba.gov/funding-programs/loans> (click “Find Lenders”).

Eligibility:

Businesses must employ no more than the greater of 500 employees and, if applicable, the size standard set forth in the SBA Small Business Size Standards.

For certain businesses in the accommodation and food service industries, if such business has more than one physical location, the business must employ no more than 500 employees per location and restrictions on affiliated entities are waived.

If an Economic Injury Disaster Loan (EIDL), as described below, has been granted, a business can also apply for a Paycheck Protection Program loan if the EIDL is used for other purposes.

Applicants must make a good faith certification of the following: (a) the loan request is necessary to support operations due to the uncertainty of current economic conditions; (b) acknowledge that it will use the funds to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; (c) that it does not have an application pending for a loan under 7(a) for the same purpose; and (d) from February 15, 2020 through December 31, 2020 it has not received amounts under 7(a) for the same purpose.

Loan Amount:

Up to 2.5 times average monthly payroll, up to a maximum of \$10,000,000, calculated based on average total payroll costs incurred during the year before the loan is made. For seasonal employers, the period is 12 weeks beginning February 15, 2019 or March 1, 2019, through June 30, 2019 (at the applicant's discretion). For employers not in business from February 15, 2019 through June 30, 2019, calculation is based on average total payroll costs incurred from January 1, 2020 through February 29, 2020. Certain EIDLs will be required to be refinanced as part of this Paycheck Protection loan and, therefore, will be included in the loan amount.

Use of Proceeds:

During the "covered period" (February 15, 2020 through June 30, 2020) the proceeds may be used for:

- Payroll costs, which the CARES Act defines as: compensation to employees including salary, wage, commission, cash tips; paid leave; dismissal or separation allowance; group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; compensation to sole proprietors or independent contractors that is a wage, commission, income, net-earning from self-employment, etc. up to \$100,000 per year, prorated for the covered period; and *excludes* individual employee compensation more than \$100,000 per year, prorated for the covered period; certain federal taxes; compensation for employees whose principal place of residence is outside the U.S.; and sick and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act;
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries, commissions, or similar compensations;
- Payments of interest on mortgage obligations.
- Rent;
- Utilities; and
- Interest on any other debt obligation incurred before the covered period.

Interest Rate:

Maximum of 4%.

Loan Term: Maximum of 10 years from the date on which the business applies for loan forgiveness.

Repayment: Deferral on all loan payments for a period of 6 to 12 months; further SBA guidance on loan deferral to come within 30 days of enactment of the CARES Act.

Collateral/Guarantees: During the covered period, no collateral or personal guarantee is required.

Loan Forgiveness/Rehired Employees: Forgiveness for loans is available for employers that maintain certain payroll thresholds. Amount eligible for forgiveness will be allowed based on the following costs incurred and payments made during the 8-week period commencing with the loan origination: payroll costs, mortgage interest, rent, and utility payments.

Payroll does not include salary in excess of an annualized limit of \$100,000.

Amount eligible for forgiveness may be reduced by employee cuts and reductions in salaries. However, for employers that reduced employees or salaries beginning on February 15, 2020 that eliminate such reductions (i.e. rehire employees or return to prior salaries) by June 30, 2020, there will be no reduction in amounts eligible for forgiveness. Additionally, employees compensated over \$100,000 are not included in the forgiveness calculation.

Lender must make a decision on application for loan forgiveness within 60 days.

Forgiven debt will not be included as gross income for federal tax purposes.

Further SBA guidance on loan forgiveness to come within 30 days of enactment of the CARES Act.

SBA Economic Injury Disaster Loans (EIDLs)

The SBA may make Economic Injury Disaster Loans for businesses that have been impacted by the pandemic. These are loans directly from the SBA that are available to businesses that qualify as a small business under the SBA Small Business Size Standards. The loan application is available online at: <https://disasterloan.sba.gov/ela/>.

<i>Eligibility:</i>	Must qualify under the SBA Small Business Size Standards; visit the following link to see if your business meets the criteria: https://www.sba.gov/size-standards/ .
<i>Loan Amount:</i>	Maximum of \$2,000,000; SBA will determine loan amount based on estimated losses.
<i>Use of Proceeds:</i>	General working capital loan; cannot be used to refinance other debt.
<i>Interest Rate:</i>	Maximum of 3.75%.
<i>Loan Term:</i>	Up to 30 years.
<i>Repayment:</i>	6-month deferral on all loan payments; no prepayment penalty.
<i>Collateral:</i>	No collateral requested for a loan of less than \$25,000; no collateral required for any loan but if above \$25,000, SBA will take what collateral is available (e.g. will take a 4 th or 5 th position behind other liens).

Expansion of SBA 7(b)(2) EIDL Program and Advance Grants under the CARES Act

The CARES Act of 2020 expands the SBA’s EIDL program, including by waiving certain requirements and expanding the eligibility pool, as outlined below, and by providing for a limited, rapidly deployed partial advance on the loan. These advances are *grants* (no requirement to repay) directly from the SBA to businesses that have applied for an EIDL and are awaiting approval. The grant is a partial advance on the full amount of the loan that has been applied for.

Eligibility: In addition to businesses already eligible for EIDLs, this program is also available to businesses with 500 employees or less, individuals who operate sole proprietorships (with or without employees) or as an independent contractor, cooperatives with 500 employees or less, Employee Stock Ownership Plans (ESOPs) with 500 employees or less and tribal small business concerns with 500 employees or less.

The following are waived: (a) requirement to be in business for 1 year prior to the disaster, so long as the business was in operation on January 31, 2020 and (b) requirement that applicant be unable to find credit elsewhere.

During the “Grant covered period” (January 31, 2020 through December 31, 2020), the SBA may approve applicants based solely on credit score (no requirement to submit tax return) or upon another alternative method to determine applicant’s ability to repay.

Amount: Maximum of \$10,000, which must be awarded within three days of receipt of application.

Use of Proceeds: All purposes otherwise allowed under the 7(b)(2) disaster loan program, including:

- Providing paid sick leave to employees unable to work due to the direct effect of COVID-19.
- Maintaining payroll during business disruptions or substantial slowdowns.
- Meeting increased costs to obtain materials unavailable due to interrupted supply chains.
- Rent or mortgage payments.
- Repaying obligations that cannot be met due to revenue losses.

Repayment: This advance does not need to be repaid, even if the applicant is later denied the full loan under the 7(b)(2) disaster loan program.

If an applicant receives an advance under this program and is later approved for a 7(a) loan, then the advance amount under this program shall be reduced from the loan forgiveness amount for a loan obtained for payroll costs.

Guarantees: Rules related to personal guarantees on advances of \$200,000 or less are waived for all applicants.

Whiteman Osterman & Hanna LLP can assist with these issues and more, as you and your business work to navigate the novel and difficult decisions arising from the COVID-19 pandemic. For assistance with tax issues, please contact one of our tax attorneys:

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