

# Navigating the CARES Act

## How Does It Affect Your Small Business?

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act, signed into law by President Trump on March 27, provides nearly two trillion dollars in economic stimulus for businesses and individuals. As the outbreak continues to impact small businesses for the foreseeable future, successfully navigating the CARES Act will allow those businesses to receive the maximum allocation of resources and give them their best shot at remaining viable through this period of uncertainty.

### **Paycheck Protection Program**

The Paycheck Protection Loan Program provides eligible borrowers with money to cover specific operating costs. Qualified uses of the proceeds from these loans include:

- Payroll costs
- Continuation of health benefits, including insurance premiums and sick, medical, or family leave
- Employee compensation including salaries, commissions, etc.
- Mortgage interest
- Rent (or lease payments)
- Utilities
- Interest on preexisting debt obligations (incurred before the covered period)

The CARES Act significantly expands those businesses that are eligible for SBA loans to include:

- Small business concerns as defined by the SBA
- Business, nonprofit organizations, veterans organizations, and tribal business concerns with less than 500 employees
- Sole proprietors, self employed individuals, or independent contractors

In addition, the affiliation rules under 13 C.F.R. 121.103 have been waived for any business under 500 employees if the applicant is in the “Accommodation and Food Service Industry” and is given an NAICS code of 72. Additionally, applicants in the Accommodation and Food Service Industry with multiple locations may be eligible if they have no more than 500 employees per physical location.

In order to be eligible, an applicant must have been in operation on February 15 and had employees for whom the borrower paid compensation and payroll taxes, or paid an independent contractor. The normal requirements for eligibility for an SBA loan have been relaxed, including the waiver of fees associated with the loans, waiver of the credit elsewhere requirement, and waiver of personal guaranty and collateral requirements.

### **How much can you receive?**

The loan amounts under this program are based on “payroll costs,” which are defined as compensation with respect to employees, including the following:

- salaries, wages, and other similar compensation
- vacation, family, parental, medical or sick leave
- severance for dismissal or separation
- health care benefits, including group insurance premiums
- retirement benefits
- State or local payroll taxes

- Any income through wages, commission, net earnings, etc. paid with respect to a sole proprietor or independent contractor, prorated for the covered period.

Payroll costs explicitly do not include:

- salaries to the extent they are more than \$100k
- salaries of people who live outside the United States
- other payments made under the Families First Coronavirus Response Act

The loan amounts will be determined by multiplying average monthly payroll costs for the prior 12 months, or for seasonal employers, as calculated for the 12 week period between February 15, 2019 and June 30, 2019 (or if not applicable, the period between January 1, 2020 and February 29, 2020), by 2.5, up to a maximum of \$10M.

Repayment of the loans, both principal and interest, will be deferred for at least six months, and for as long as one year. After the initial deferral period, the loan terms can be for a maximum of 10 years at no more than 4% interest.

### **Loan Forgiveness**

The CARES Act also allows for the potential of significant loan forgiveness, depending on the eventual uses of the proceeds and the staffing levels of the borrower.

The amount of the loan to be forgiven, up to the principal amount of the loan, is based on the money spent for qualifying purposes in the 8 weeks following the origination date of the loan. Qualifying costs include:

- Rent
- Payroll costs – for workers making less than \$100k
- Mortgage interest
- Utility payments

The program incentivizes employers to retain or rehire employees with loan proceeds by reducing the amount of loan forgiven in proportion to any reduction of employees retained from the previous year, or by the amount of any reduction of salaries of any employee from the previous quarter, over 25%. There is an exemption period meant to encourage employers to rehire any employees that have previously been laid off due to the crisis. Employers will not be penalized for having a reduced payroll at the beginning of the period if they re-hire by June 30, 2020.

### **Emergency Economic Injury Disaster Loans (EIDLs)**

The CARES Act also expanded the availability of EIDL's for business affected by COVID-19 for the covered period between January 31, 2020 and December 31, 2020. Much like the Paycheck Protection Loan Program, business, nonprofit organizations, veteran's organizations, and Tribal business concerns with less than 500 employees as well as sole proprietors, self employed individuals, or independent contractors are eligible, though unlike the PPLP, the affiliation rules have not been waived. ESOPs are also included as eligible businesses. These loans can be used to cover costs associated with:

- Sick leave
- Payroll
- Increased supply costs
- Rent or mortgage payments
- Other obligations that cant be met due to revenue losses

Qualifications are based solely on the basis of the applicant's credit score, or by alternative methods of determining ability to repay. No tax returns are required for approval. Importantly, applicants can request an advance within three days of up to \$10,000, an amount which will be forgiven even if the loan is ultimately denied.

Further, the CARES Act waives the 1 year in business requirement, the credit elsewhere test, and the requirement for a personal guaranty for any loan under \$200k.

### **Subsidy for Certain Loan Payments**

The CARES Act also provides relief for those businesses who have previously received loans guaranteed under §7(a) of the Small Business Act, Title V of the Small Business Investment Act, or made by an intermediary to a small business concern using loans or grants received under §7(m) of the Small Business Act. The CARES Act provides that the administrator shall pay the principal, interest, and fees owed on a covered loan in regular servicing, whether in deferment or not, for loans made before enactment of the CARES Act for the following six month period, or for loans made between the date of enactment and six months from that date. Loans under the Payroll Protection Loans or EIDLs are not eligible for the subsidy.

### **Tax Relief for Small Businesses**

There are significant changes in tax treatments that would benefit small businesses, including:

- A delay in the required payment of employer payroll taxes
- Modifications for net operating losses
- Modifications of prior year minimum tax liabilities
- Modifications to the limits on business interests
- Changes regarding qualified improvement properties
- ...and more

If you would like more information on the changes in the tax code that will affect your small business, or have questions regarding the CARES Act, please contact Patrick for a consultation.

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