

CARES: Paycheck Protection Program Loans to Help Small Businesses

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President Trump signed a \$2 trillion relief measure, the largest stimulus package in U.S. history, called the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act – designed to mitigate the financial damage caused by the COVID-19 pandemic. Among many other provisions, CARES dramatically expands eligibility and relaxes restrictions on the U.S. Small Business Administration (“SBA”) Section 7(a) Loan Program, which is the primary program for providing small businesses with much needed financial assistance.

More specifically, CARES creates a new **Paycheck Protection Program (“PPP”)** to permit small businesses, non-profits, and individuals to obtain loans via the 7(a) Loan Program (“PPP Loans”).

Learn more about PPP loan eligibility, terms, and forgiveness by jumping to these sections:

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Previously, the 7(a) Program was only authorized for \$30 billion in total lending for fiscal year 2020. CARES increases this amount to \$349 billion in total lending from February 15 through June 30. Moreover, it provides \$349 billion for the SBA to fully guarantee loans under the new program, compared with a 75% or 85% guarantee for standard 7(a) loans. Remarkably, certain circumstances even merit PPP Loan forgiveness.

In this article, we survey CARES provisions pertaining to PPP Loans, and encourage affected readers to contact legal counsel to discuss how they may find relief in these times from CARES.

PPP Loan Eligibility

According to CARES, PPP Loans are available through June 30, 2020 for any business, nonprofit, veterans organizations, or Tribal business with 500 or fewer employees. Eligibility also extends to those companies operating within an industry-applicable size standard as determined by the SBA.



Additional provisions further expand CARES’s reach:

1. Even very large food and lodging service chains are eligible, so long as each physical location only has 500 or fewer employees.
2. Affiliation rules used to determine small business size are waived for (1) food or lodging companies with not more than 500 employees, and certain businesses that receive financial assistance from the Small Business Investment Company (SBIC) program.
3. Eligibility is extended to sole proprietors, independent contractors, and eligible self-employed workers

PPP Loan Terms

Generally, CARES provides that eligible recipients can borrow the lesser of \$10 million or 250% of their average monthly payroll costs (only those payroll costs incurred in the one-year period predating the loan). And interest rates through June 30, 2020, are capped at 4%. "Payroll costs" do not include compensation exceeding an annual salary of \$100,000. Note that CARES does not require collateral or personal guarantees.

An eligible recipient is limited to one covered loan, but the recipient may use it for any of the following expenses:

- payroll costs;
- continuation of group health care benefits during paid sick leave, medical or family leave, or insurance premiums;
- salaries or commissions (or similar compensation);
- interest on mortgage obligations;
- rent;
- utilities;
- and interest on other outstanding debt.



PPP Loan Forgiveness

Remarkably, PPP Loan principal can be forgiven under certain circumstances. The amount eligible for forgiveness is excluded from taxable income and is equal to the following expenses paid during the covered period:

1. payroll,
2. mortgage interest,
3. rent, and
4. utilities

Significantly, the amount of forgiveness is dependent on the recipient maintaining the average size of its full-time work force. The amount of forgiveness decreases if the recipient decreases the size of its full-time workforce below certain amounts during the covered period or reduces any employ-

ee's salary or wages by more than 25% of the employee's total salary or wages earning during the most recent quarter preceding the loan.

Thus, if the recipient avoids taking measures resulting in forgiveness reduction, and the loan is solely used for items (1)-(4) above, forgiveness is possible up to the principal amount of the PPP Loan.

CARES requires that an eligible business must submit an application for forgiveness to the lender that originated the covered loan. The application would need to include:

1. documentation substantiating the number of full-time equivalent employees on payroll and pay rates for applicable periods (including payroll tax filings; state income, payroll, and unemployment insurance filings);
2. documentation substantiating payments on covered mortgage obligations, lease obligations and utilities (such as cancelled checks, payment receipts, and transcripts of accounts); and
3. a representative's certification.

Cautionary Notes

At this time, we understand that participating in PPP may have the effect of making a business ineligible for other relief provided in CARES. So, an employer who receives a PPP loan is thereafter ineligible for the CARES §2301 employee retention credit.

However, it seems clear that a business is permitted to receive both a PPP loan and an economic injury disaster loan (EIDL) under certain circumstances.

We will continue to update our readers regarding the interplay of the different relief provisions once additional guidance is available.

Government Guidance Forthcoming

Currently, many questions remain regarding the PPP, including the procedure for applying for a PPP Loan. For now, we can only note that CARES indicates that within 15 days after its enactment, regulations are to be issued to implement the PPP. We are tracking this development closely and will continue to update our readers on all important issues.

This analysis is not legal advice. It is provided for informational purposes only. CARES is complicated and projected to require regulatory guidance for some provisions to take effect. This analysis does not constitute legal advice and is being provided on an informational basis only. For advice about whether and how you or your business can benefit from CARES, please contact your legal counsel.

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