



Coronavirus Aid, Relief, and Economic Security Act (CARES)

Paycheck Protection Program

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The CARES Act was passed on March 27, 2020, and signed by the President. One section (Paycheck Protection Program) funnels loans with generous repayment grants to small businesses through the Small Business Administration (SBA) and their Preferred Lenders with delegated authority. These loans will cover small businesses' payroll (with certain limitations), rent, mortgage interest, and utility payments.

Below is a summary put together by First American Bank of the salient terms of the Paycheck Protection Program section of the Act; although Exact rules are still being formulated.

Paycheck Protection Program

The Paycheck Protection Program, at a price tag of \$349 billion, covers the period February 15, 2020 through June 30, 2020, and greatly expands SBA loan eligibility.

- The loan program will allow businesses suffering due to the COVID-19 crisis to borrow money for a variety of qualified costs related to employee compensation and benefits, including (i) payroll costs, (ii) continuation of health care benefits, (iii) employee compensation (for those making less than \$100K), (iv) mortgage interest obligations, (v) rent, (vi) utilities, and (vii) interest on debt incurred before the covered period.

- The legislation greatly expands the number of businesses (including non-profits) that are eligible for SBA loans and raises the maximum amount for such a loan by 2.5 x the average total monthly payroll costs, not to exceed \$10 million. The interest rate may not exceed 4%.
- Companies that employ no more than 500 employees (or a greater number based on the size standard applicable to the industry) may be eligible. Certain companies in the Accommodation and Food Services Industry (NAICS Code 72) may be eligible if they have no more than 500 employees per physical location. In most cases, the number of employees is counted together with all affiliates.
- Waives affiliation rules under 13 C.F.R. 121.103 for any business with less than 500 employees in the Accommodation and Food Services Industry, certain franchise businesses, and small businesses that receive financing through the Small Business Investment Company Act. Affiliation rules otherwise apply to determine eligibility.
- Waives the credit available elsewhere, personal guaranty, and collateral requirements.
- For eligibility purposes, lenders are required to determine whether a business was operational on February 15, 2020 and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor. (This is likely to be interpreted to replace the determination of repayment ability which is not possible during the crisis.)
- All or a portion of the loan may be forgivable and debt service payments may be deferred for up to 1 year.

Loan Forgiveness

Establishes that the borrower under the Paycheck Protection Program shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date on (i) rent, (ii) payroll costs for workers making less than \$100K, (iii) interest on a mortgage, and (iv) utility payments. The amount forgiven may not exceed the principal of the loan.

- Incentivizes companies to retain employees by reducing the amount forgiven proportionally by any reduction in employees retained compared to the prior year.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

Emergency Economic Injury Disaster Loans (“EIDLs”)

For the period between January 31, 2020, and December 31, 2020 (the “covered period”), EIDL eligibility is greatly expanded to include any business with not more than 500 employees operating under a sole proprietorship or as an independent contractor, and any cooperative, ESOP and tribal

small business concern with not more than 500 employees. The number of employees is determined together with affiliates.

- Furthermore, EIDLs may be approved solely on the basis of an applicant's credit score or by use of alternative methods to gauge the applicant's ability to repay. Additionally, applicants may request an advance of up to \$10,000 within three days after the Administrator receives the application, subject to verification that the entity is eligible under this program. The advance may be used for any allowable purposes under §7(b)(2) of the Small Business Act and is not subject to repayment, even if the loan request is ultimately denied.
- Importantly, the CARES Act waives: (i) the requirement of personal guarantees for loans up to \$200,000, (ii) the requirement that the applicant must be in business for a year (but must be in operation on January 31, 2020), and (iii) the credit elsewhere test.