

COVID-19 RESPONSE

CARES ACT LOAN PROVISIONS

PAYCHECK PROTECTION PROGRAM The following provisions are eligible for businesses with less than 500 employees (exceptions apply) and small business concerns as defined under the existing Small Business Act subject to the affiliation rules. This program is also extended to sole proprietorships and nonprofit entities. The purpose is to allow employers to maintain their workforce and assist with payroll and general operating expense for the “covered period”, which is defined as February 15, 2020 through June 30, 2020.

- Does not require that the small business is unable to obtain credit elsewhere and waived the filing fees as well as the personal guarantee.
- Allows for existing loans administered by the Small Business Administration (SBA) to be refinanced under the program, including any EIDL (discussed further below) that may have been entered into between February 15, 2020 and March 31, 2020.
- Allows employers to receive a loan up to the lesser of 2.5 times the average monthly “payroll costs” for the prior year 12 months or calendar year 2019 or \$10 million. The loan has a term of 2 years and a rate of 1%.
- Provides that payroll costs include salaries, wages, commissions, tips, vacation or other leave, allowance for separation, several taxable and nontaxable employee benefits, and certain state taxes. Excluded: amounts paid in excess of a \$100,000 annual salary to an employee, certain payroll taxes, any employees outside the US, and any wages for which the employer received a credit under the Families First Coronavirus Response Act.
- Provides that funds received can be used for a multitude of expenses including payment of payroll costs, employee benefits and related insurance premiums, interest on any mortgage (but not principal or prepayment), rent, utilities and interest on any other debt obligations incurred prior to the covered period.
- Provides for loan forgiveness. For the eight weeks following the origination of the loan, any incurred costs and payments made for payroll costs, interest on any mortgage (but not principal or prepayment), rent, and utilities are eligible forgiveness. Essentially, any cash from the loan used to pay qualified expenses will be forgiven. Note that the Treasury has limited the usage to under 25% for non-payroll costs. As an additional bonus, this relief is not considered cancellation of debt income to the borrower and is not included in their gross income.

- One caveat: In the event that the employer reduces the workforce, the amount of eligible loan forgiveness will be prorated by the average number of fulltime employees in the covered period divided by the average fulltime employees for the prior year or immediately prior to the covered period. Similarly, a reduction in the amount of salary or wages paid to an employee in excess of 25% will also reduce the amount eligible for forgiveness. The proration is not considered when there is a rehiring of terminated employees.
- Provides for a deferral on payments of interest and principal on the loans for six months to one year for impacted borrowers. This deferral would begin after the forgiveness previously discussed.

SBA SUBSIDY FOR OTHER LOANS The Act stipulates that all current borrowers under the SBA are considered adversely affected by COVID-19, and relief payments are appropriate for all covered loans to provide relief. As such, the Administrator will pay the principal, interest, and fees on a covered loan that was made prior to the Act beginning for the six-month period starting with the next payment due.

EMERGENCY ECONOMIC INJURY DISASTER LOAN (EIDL) & GRANTS This provision creates an advance up to \$10,000 to provide sick leave, maintain payroll amid business disruptions, meet increased costs to obtain materials, make rent or mortgage payments and repay other obligations. These advances are not required to be repaid under the Act.

In addition, loans are available to businesses for up to \$2 million at an interest of 3.75% (2.75% for nonprofits) and a term not to exceed 30 years. Any loans made under this program in response to COVID-19 will waive the personal guarantee up to \$200,000 and the requirement that the business be operational for one year (although the business must be in operation as of January 31, 2020). Similar to the above program, the provision removes the requirement that the small business is ineligible for credit elsewhere.

Note that businesses may not obtain an EIDL for economic injury mitigated under the Paycheck Protection Program above. EIDLs obtained between January 31, 2020 and April 3, 2020 and used for payroll costs must be refinanced into a PPP loan.

ENTREPRENEURIAL DEVELOPMENT “Resource Partners,” defined as small business development centers and women’s business centers, may receive grants to provide education, training and advising to small businesses impacted by COVID-19 through SBA grants. Small business development centers and women’s business centers may receive up to 80% and 20%, respectively, of the required funds to perform various activities to aid small businesses impacted by COVID-19. There are also grants available for resource partner associations. Minority business centers and minority chambers of commerce may receive grants to provide education, training, and advising to minority business enterprises. Similar to the above resource partners grants, these are available to assist centers assisting businesses impacted by COVID-19.

OTHER PROVISIONS The act also extends the grants available under the State Trade Expansion Program through fiscal year 2021. Recipients are eligible for reimbursement for financial losses related to trade show or foreign trade missions cancelled as a result of COVID-19.

Other changes include increasing the value of Express Loans to \$1,000,000 (previously \$350,000).

April 13, 2020