



The Coronavirus Aid, Relief and Economic Security Act

**If you have any questions regarding COVID-19,
please do not hesitate to contact our
Carr Allison COVID-19 Response Team.**

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The Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020. This Act will have a significant impact on small to medium-sized businesses affected by the COVID-19 pandemic. The key provisions of the CARES Act related to businesses are summarized below.

Loans and Grants

There are two primary financing options created or modified by the CARES Act: Paycheck Protection Program Loans (PPPL) and Economic Injury Disaster Loans (EIDL).

Paycheck Protection Program Loans

The CARES Act authorizes up to \$349 billion in forgivable loans to small businesses. For a business to be eligible for these loans, they must meet one of the following criteria:

- Small business with up to 500 employees or otherwise meeting SBA size standards (https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019.pdf)
- Business in the hospitality or food services industry with up to 500 employees per location (even if the business has more than 500 employees in total)
- 501(c)(3) with fewer than 500 employees
- Individual who operates as a sole proprietor or independent contractor
- Individual who is self-employed and regularly carries on any trade or business
- Tribal business concern that meets the SBA size standard
- 501(c)(19) Veterans Organization that meets the SBA size standard

If a business qualifies for a loan, it may receive up to the lesser of: (1) 2.5 times the average monthly payroll costs for the business, plus any outstanding Economic Injury Disaster Loans made after January 31, 2020, or (2) \$10 million. The loan amount is calculated as follows:

- For businesses operating February 15, 2019 – June 30, 2019: The maximum loan is equal to 250 percent of the average monthly (not total) payroll costs during that time period. If the business employs seasonal workers, you can opt to choose March 1, 2019 as the time period start date.
- For businesses not operating February 15, 2019 – June 30, 2019: The maximum loan is equal to 250 percent of the average monthly (not total) payroll costs between January 1, 2020 and February 29, 2020.
- If the business took out an EIDL between February 15, 2020 and June 30, 2020 and wants to refinance that loan into a PPPL, you would add the outstanding loan amount to the payroll sum.

For purposes of this calculation, payroll costs include:

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
- Payment for vacation, parental, family, medical or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of state or local tax assessed on the compensation of employees

Payroll costs do not include:

- Employee/owner compensation over \$100,000
- Taxes imposed or withheld under Chapters 21, 22 and 24 of the IRS code
- Compensation of employees whose principal place of residence is outside of the U.S.
- Qualified sick and family leave for which a credit is allowed under the Families First Coronavirus Response Act

The borrower must make a good-faith certification that: (1) the loan is necessary due to uncertain economic conditions; (2) the funds will be used to retain workers and make mortgage, loans, and utility payments; (3) the recipient does not have a pending application for a duplicative loan; and (4) the recipient has not received a duplicative loan between February 15, 2020 and December 31, 2020. Loans through the Paycheck Protection Program will not require a personal guarantee or collateral. There will be no recourse against any shareholder, member, or partner of a recipient unless a loan is used for an unauthorized purpose.

Loan proceeds may be used for payroll costs and compensation (described above), group health care benefits continuation during paid medical or family leave and insurance premiums, mortgage interest, rent, utilities and any other interest incurred before the loan origination. Interest rates on loans under the PPPL will not exceed 4%. Lenders will be required to provide complete payment deferment relief for at least six months, but not more than one year. The term of the loan may be up to 10 years, and lenders may not charge loan fees or prepayment fees.

Loans under the PPPL will be forgiven up to the amount the business expends in payroll costs (described above), mortgage interest, rent and utilities in the eight week period following loan origination. However, the loan forgiveness will be reduced if the business lays off a substantial number of employees. The reduction is calculated by multiplying the maximum forgiveness amount by:

- The average monthly number of full-time equivalent employees (FTEs) during the eight week period following loan origination divided by any of these numbers (which the business can choose):
 - Average monthly number of FTEs between 2/15/19 and 6/30/19
 - Average monthly number of FTEs between 1/1/20 and 2/29/20
- In a mathematical formula, the equation would look like: Maximum Forgiveness Amount x (Monthly FTEs during covered period / Monthly FTEs between 2/15/19 and 6/30/19 OR between 1/1/20 and 2/29/20)

Loan forgiveness will also be reduced if employee wages are reduced during the eight week period following loan origination, as follows: if any employee's wages are reduced in excess of 25% of the employee's wages during the most recent full quarter of employment before the covered period, the loan forgiveness is reduced dollar-for-dollar. This would apply for every employee whose wages are reduced except employees who are paid over \$100,000 annually.

However, if the reductions in employment or wages occurred between 2/15/20 and 4/26/20, those reductions will not reduce the amount of loan forgiveness if the business eliminates that reduction by 6/30/20. Thus, if the business has already laid off employees or reduced wages, that can be "cured" for loan forgiveness purposes by restoring the employment or wages by June 30.

Loan forgiveness will not exceed the principal amount of the loan (meaning any interest accrued or paid will not be forgiven).

More details on the program, including a list of lenders and more concrete details on how to apply for the loans, will be released in the near future.

Economic Injury Disaster Loans

The SBA offers low-interest EIDL to small businesses (500 employees or less), up to \$2,000,000. The actual amount awarded is based on the business's economic injury and financial needs. EIDL funds may be used to pay fixed debts, payroll, accounts payable and other bills a business cannot pay because of the COVID-19 impact. EIDLs are not forgivable and must be repaid.

Small businesses are eligible for EIDLs if they have suffered substantial economic injury as a result of the COVID-19 pandemic. A business has suffered a "substantial economic injury" if the business cannot meet its obligations and pay its ordinary, necessary operating expenses due to the impact of COVID-19. Businesses with credit available elsewhere are generally not eligible for EIDLs.

Notably, the CARES Act permits an immediate advance of \$10,000, which will be received within three days of an application submitted by the business, which must certify that the business is eligible for a loan. The advance must be used for certain purposes including: sick leave for COVID-19 infected employees, payroll expenses to maintain employees during the pandemic, costs associated with unavailable product or supply chain disruptions, mortgage or rent, or the inability to repay debts as a result of income loss. If an applicant later finds it was not approved for a loan, no repayment will be required for the advance.

The CARES Act also waives certain requirements through 12/31/20: (1) a business will not be required to demonstrate it is unable to obtain credit elsewhere; (2) entities will not be required to exist for at least one year prior to the date of the disaster event; (3) EIDLs less than \$200,000 will not require personal guarantees; and (4) the SBA may approve loans based solely on an applicant's credit score, without requiring a tax return.

Loans for Mid-Sized Companies

For mid-size companies (between 500 and 10,000 employees), the CARES Act also provides for a direct loan if the company makes a “good-faith certification” that it will comply with requirements, such as:

- The intent to restore at least 90% of the company’s workforce, as it existed on 2/1/20, including compensation and benefits. This restoration must be accomplished within four months after Health and Human Services declares an end to the COVID-19 health emergency;
- A promise not to outsource jobs for the length of the loan (which cannot exceed five years), and for two years after the loan repayment date;
- A representation that it will not “abrogate” an existing collective bargaining agreement for the term of the loan and for two years after the loan repayment date.
- The employer will remain “neutral in any union organizing effort for the term of the loan.”

Principal and interest payment obligations may be stayed for up to six months, with an interest rate no higher than 2% annually.

Other Employer-Related Provisions

Employee Retention Tax Credit

A tax incentive is provided for eligible employers who retain their employees despite the COVID-19 crisis. An employer is eligible if: (1) its operations are fully or partially suspended by a government order relating to COVID-19, or (2) gross receipts during a calendar quarter are 50% less than the gross receipts for the same quarter in 2019. For eligible employers, the tax credit is calculated by multiplying 6.2% (the employers’ Social Security tax percentage) by the qualified quarterly wages paid to each employee after March 12, 2020 and before January 1, 2021 (which cannot exceed \$10,000 for all quarters), which is then subject to the following provisions:

- For employers with more than 100 employees in 2019, the qualified wages are limited to only those wages paid by the employer during the period of time when the business was shut down, and only to those employees who are not providing services.
- For employers with 100 or less employees in 2019, the qualified wages include both the period of time the business was shut down, and the period of time suffered the requisite 50% decline in business, and applies whether or not the employee was provided services.

This tax credit may be reduced or eliminated if the employer is already receiving tax credits under certain other programs.

Unemployment Benefit Expansion

The federal government (conjunction with state governments is permitted) will provide unemployment benefits to individuals who are now eligible for other benefits and are ordinarily able to work (including telework) except for one of the following:

- The individual, or a member of the individual's household, has been diagnosed with COVID-19;
- The individual is providing care for a family member/members of their household with COVID-19;
- The individual has a child unable to attend school that is closed because of COVID-19;
- The individual is unable to reach the place of employment because of a quarantine imposed due to COVID-19;
- The individual is unable to reach his place of employment because the individual has been advised by a health care provider to self-quarantine;
- The individual was scheduled to begin his job but no longer has one or cannot reach his job because of COVID-19;
- The individual has become the breadwinner because the head of the household has died as a result of COVID-19;
- The individual has to quit his job because of COVID-19;
- The individual's place of employment closed because of COVID-19; or
- The individual meets other criteria established by the Secretary of Labor.

These benefits will be provided for up to 39 weeks, at the weekly benefit amount authorized by state unemployment compensation laws (though it cannot be less than 50% of the average weekly payment in the state). There is no waiting period for this unemployment compensation.

Retirement Funds

The CARES Act waives the 10% tax penalty for premature distributions from an IRA or 401k, for qualifying individuals. The individual may elect to repay the distribution at any time over a three-year period from the date of the distribution. If that is done, the distribution will not be treated as income for tax purposes.

Individuals qualify for the benefits of this provision if:

- The individual has been diagnosed with SRS-COV-2 or COVID-19 by a test approved by the CDC
- The individual's spouse or dependent has been diagnosed
- The individual experiences adverse financial consequences from being quarantined, furloughed, laid off, or having work hours reduced or being unable to work due to lack of childcare

ERISA Plans

The CARES Act delays the due date for amendments to plans, so long as the plan is operated as if the amendment is in effect and any subsequent writing is retroactive, as follows:

- Amendments required because of the Act need only be made by the last day of the plan year beginning on or after January 1, 2022; and
- In the case of governmental plans, that date is the last day of the plan year beginning on or after January 1, 2024.

Payments to Individuals

Notably, the CARES Act provides for payments from the federal government to individuals. These payments will be based on the individual's adjusted gross income and do not affect any employment relationship or the obligations of a business to its employees.