

CARES Act Offers Relief for Employers

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The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") was signed into law on March 27, 2020, with the goal of offsetting some of the economic consequences of the COVID-19 pandemic. A key part of the legislation is a \$349 billion forgivable loan program, titled the Paycheck Protection Program, for companies with 500 or fewer employees, designed to incentivize employee retention. State and municipal assistance programs may also be available to small businesses, and some businesses will also benefit from employment tax benefits offered under the CARES Act. The CARES Act provides funding for an additional \$454 billion program designed to facilitate loans to companies with between 500 and 10,000 employees, also subject to conditions designed to assure continued employment.

The Paycheck Protection Program

Eligibility

The CARES Act expands the ability to obtain loans under Section 7(a) of the Small Business Act through a new \$349 billion Paycheck Protection Program. Ending on June 30, 2020, the program is available for businesses with 500 or fewer employees that were operational on February 15, 2020, had employees for whom they paid salaries and payroll taxes, and have been impacted by COVID-19. The loans are to be made by lending institutions participating in the federal Small Business Administration loan program, and the lenders will benefit from a federal guarantee of the loans. Borrowers do not need to qualify for Small Business Administration loans generally.

Each borrower will be required to submit a good-faith certification that: (i) the loan is needed to continue operations during the COVID-19 emergency; (ii) funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments; (iii) the borrower does not have any other application pending under this program for the same purpose; and (iv) from February 15, 2020 until December 31, 2020, the borrower will not receive duplicative amounts under this program.

Employers in the food service and accommodation industries may be eligible for relief under the Paycheck Protection Program even if they have more than 500 employees, so long as they have no more than 500 employees at each location.

Employers must be based in the U.S. and have substantial U.S. operations in order to be eligible. Employees outside the U.S. are not included in the calculation of the 500 employee maximum.

Not-for-profit organizations, individual proprietorships and self-employed individuals may be eligible for the loans.

Allowable Uses of the Loan

During the period between February 15, 2020 and June 30, 2020, borrowers may use the loan proceeds for (i) payroll costs, (ii) continuation of health care benefits, (iii) employee salaries, commissions, and

similar items of compensation, (iv) mortgage interest obligations, (v) rent, (vi) utilities, and (vii) interest on debt incurred before February 15, 2020.

Loan Amount and Terms

The amount of the loan cannot generally exceed the lower of 2.5 times the average monthly payroll cost during the year prior to the loan (as calculated under the CARES Act) or \$10 million. Payroll costs as calculated under the CARES Act exclude, among other things, individual employee compensation above \$100,000 per year, as prorated for the applicable period, and payroll costs for individuals located outside the U.S.

Interest on the loans is capped at 4 percent per annum. No personal guarantees or collateral for the loan are required. No administrative fees are payable in connection with the loans, and there is no prepayment penalty.

Loan Forgiveness

All or a portion of the loan may be forgivable and debt service payments may be deferred for up to 1 year. The borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the loan origination date on (i) rent, (ii) payroll costs, (iii) interest on a mortgage, and (iv) utility payments. The forgiven portion of the loan will not be included in the borrower's taxable income.

The amount forgiven will be lowered by reductions in full-time employment and in situations where total salaries and wages of any employees making less than \$100,000 annually fall by more than 25% from the most recent full quarter, but this can be mitigated by rehiring employees.

Loan amounts not forgiven at the end of one year continue to be fully guaranteed by the federal government and will have a maximum maturity date of 10 years from the date the borrower applied for loan forgiveness.

Further Information on the Treasury Department Website

Further guidance and an application for the Paycheck Protection Program loans can be found on the Treasury Department's website at <https://home.treasury.gov/cares>.

Similar State and Local Loan Programs

A variety of state and local programs may provide loans to businesses affected by the coronavirus. For example, the NYC Small Business Continuity Loan Program provides an interest-free loan up to \$75,000 to New York City businesses with fewer than 100 employees that can demonstrate at least a 25% decrease in revenue as a result of COVID-19. To qualify for the loan, businesses must (i) be located within the five boroughs of New York City; (ii) demonstrate that the COVID-19 outbreak caused at least a 25% decrease in revenue; (iii) employ fewer than 100 employees in total across all locations; (iv) have been in operation for at least 2 years; (v) demonstrate an ability to repay the loan; and (v) have no outstanding tax liens or legal judgements. At least a 25% decrease in revenue should be demonstrated by comparing average revenue for two months in 2020 (after the COVID-19 impact) to (i) average revenue for the same two month period in 2019, or (ii) average monthly revenue based on total 2019 revenue. More

information can be found on the New York City website: <https://www1.nyc.gov/nycbusiness/article/nyc-small-business-continuity-loan-program>.

Employment Tax Credits

Employee Retention Credit for Employers Subject to Closure Due to Covid-19

Under Section 2301 of the CARES Act, an employer is eligible for a refundable credit against Social Security taxes if, during any calendar quarter of 2020, it has operations fully or partially suspended due to a COVID-19-related governmental order, or it has a decline in gross receipts of more than 50% compared to the same quarter of the prior year. Eligible employers must have carried on a trade or business during 2020.

The refundable credit is applicable for all wages paid between March 12, 2020, and before January 1, 2021. The credit equals 50 percent of the first \$10,000 in wages per employee (including the value of health plan benefits). The credit can be claimed by employers with more than 100 full-time employees for employees who are retained but not currently working as a result of COVID-19. For employers with 100 or fewer full-time employees, all wages paid qualify for the credit so long as they meet other requirements related to suspension of business or reduction in gross receipts.

This credit is not available to employers who receive a Paycheck Protection Program loan.

Delay of Payments of Employer Payroll Taxes

Section 2302 of the CARES Act permits employers to defer the deposit of their share of Social Security taxes attributable to wages paid during 2020. Half of the deferred Social Security taxes would be required to be paid by December 31, 2021. The remaining half of the deferred taxes would be due December 31, 2022.

Loans to Larger Businesses

The CARES Act authorizes up to \$500 billion in loan programs to businesses other than those eligible for the Paycheck Protection Program. Up to \$46 billion is earmarked for cargo and passenger air carriers and businesses necessary to national security. The remaining \$454 billion may be used for loan programs to support states, municipalities and businesses that have between 500 and 10,000 employees.

Borrowers under the \$454 billion program must certify that: the uncertainty of economic conditions makes the loan necessary; proceeds will be used to retain at least 90% of their workforce at full compensation and benefits until September 30, 2020; they intend to restore not less than 90% of the workforce that existed on February 1, 2020 within 4 months after the termination of the public health emergency declared on January 31, 2020; they are domiciled in the U.S. with significant operations and a majority of employees in the U.S.; they will not pay common stock dividends or repurchase shares listed on a national securities exchange while the loan is outstanding; they will not outsource or offshore jobs for the term of the loan plus two years following repayment; they will not abrogate any collective bargaining agreement during the term of the loan plus two years following repayment; and they will remain neutral in any union organizing effort during the term of the loan.

Further information about these loans is expected to be posted on the Treasury Department website.



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