



MEMORANDUM

From: Loveless Law Firm, LLP

Date: April 3, 2020

Re: A Guide to the New Federal Help (CARES Act): Small and Mid-sized Businesses

As you are likely aware, the federal government has recently enacted a number of measures intended to help America's small and mid-sized businesses persevere through the current crisis. These measures are included within the Coronavirus Aid, Relief, and Economic Security (CARES) Act. In this letter, I want to take a moment to walk you through what is included, so you can more easily determine how these programs may benefit you and your business.

I. Paycheck Protection Program (PPP)

This new program is intended to provide cash-flow assistance through 100 percent federally guaranteed loans to employers who maintain their payroll during this emergency. If employers maintain their payroll, the loans would be forgiven. The PPP has a host of features, including no SBA fees, and at least six months of deferral with maximum deferrals of up to a year. Small businesses (under 500 employees) and other eligible entities are able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020. This program is retroactive in order to help bring workers who may have already been laid off back onto payrolls.

The Treasury department has indicated that applicants can begin obtaining loans from participating lenders as soon as **Friday, April 3, 2020** (for small businesses and sole proprietorships). Independent contractors and self-employed individuals can begin applying **April 10th**. The [SBA website](#) has a list of current SBA lenders, and other lenders will be available to make loans as soon as they are approved and enrolled in the program. **Loans are available through June 30, 2020.**

The Treasury department has also provided the following guidance about the PPP:

- (1) The SBA has waived its standard affiliation rules for (i) businesses in the food, beverage and hospitality industries, (ii) franchises that are found within the SBA's Franchise Directory, and (iii) small businesses that received financial assistance through a Small Business Investment Company.
- (2) Borrowers are required to provide a good faith certification that the loan is necessary due to economic conditions brought about because of COVID-19 and that the borrower will use the funds to retain workers, maintain payroll and pay utilities, lease and/or interest on mortgage payments.
- (3) This loan program has a \$10,000,000 maximum loan amount, which is double the customary SBA 7(a) loan maximum.
- (4) The loan term is two years, with an interest rate of .5%.
- (5) The lender will determine the loan amount based upon a multiplier of 2.5 times the applicant's average monthly payroll costs based upon the trailing 12-month period.
- (6) Borrower's loan payments will be deferred for six months.

- (7) Borrower and lender fees are waived and there is no prepayment penalty. The credit elsewhere test under the SBA SOP and the standard requirements of collateral and a personal guaranty are also waived under this program.
- (8) This loan can be used for: (i) payroll support (wages, insurance premiums, payroll taxes, etc.); (ii) utility payments; (iii) mortgage interest payments, (iv) rent and (v) interest on other business debt payments. Items (ii) through (v) must have been in existence as of February 15, 2020.
- (9) Lenders shall base their underwriting on whether a business was operational on February 15, 2020 and had employees for whom it was responsible for or paid for services from an independent contractor.

Additionally, the following information concerns loan forgiveness, but it **only** applies to the PPP and not to other programs:

- (1) A borrower will be eligible for loan forgiveness related to a PPP loan in an amount equal to eight weeks of payroll costs, and mortgage interest payments (not principal), rent payments and/or utility payments so long as all payments were obligations of the borrower prior to February 15, 2020, and 75% or more of the loan proceeds are used to pay for payroll costs. Payroll costs are limited to compensation for a single employee to be no more than \$100,000 in wages and the amount of forgiveness cannot exceed the principal loan amount.
- (2) The amount of loan forgiveness will be reduced proportionally by any reduction in the borrower's workforce or a reduction of more than 25% of any employee's prior quarter's compensation. The measuring stick will be a comparison to the borrower's number of employees during a period determined in the CARES Act dependent upon the business being new, seasonal or established. If a borrower has already furloughed employees due to COVID-19, employers are encouraged to rehire them by not being penalized for having a reduced payroll at the beginning of the covered period, which means the initial eight-week period after the loan's origination date. Any additional wages that may be paid to tipped workers are also covered in the calculation of payroll forgiveness.
- (3) Borrowers must keep accurate records and document their payments because lenders will need to verify the payments to allow for loan forgiveness. Borrowers will not have to include any forgiven indebtedness as taxable income.
- (4) Any portion of the PPP loan that is not forgiven on or before Dec. 31, 2020, shall automatically convert to a two-year term loan with an interest rate of .5% interest and the loan's 100% SBA guaranty will remain.

II. **Small Business Debt Relief Program**

This program is intended to provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans. Under it, SBA will cover all loan payments on these SBA loans, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out loans within six months after the enactment of the CARE Act. Any loan that may currently be on deferment will receive the six months of covered payments once the deferral period has ended. This provision applies to loans that may have been sold by your lender on the secondary market. If your loan maturity date conflicts with benefiting from this amendment, your lender can extend the maturity date of the loan.

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III. Economic Injury Disaster Loans & Emergency Economic Injury Grants

Even previous to the CARES Act, the Small Business Administration (SBA) has provided **Disaster Loans** to help businesses recover from various declared disasters. The current crisis already qualifies as a disaster in all fifty states. As far as eligibility, the general rule of thumb is that the SBA defines most small businesses as having less than 500 people.

Under the CARES Act, the eligibility for a **Disaster Loan** has been expanded to include: (i) any individual operating as a sole proprietor or independent contractor; (ii) private non-profits and (iii) Tribal businesses, cooperatives and Employee Stock Ownership Plans (ESOPs) with fewer than 500 employees during Jan. 31, 2020 to Dec. 31, 2020. Any Disaster Loan made prior to Dec. 31, 2020, to a business existing for a one-year period by the date of the Disaster Declaration in each respective state will no longer require a personal guaranty on advances and loans under \$200,000, and the credit elsewhere requirements for Disaster Loans has been waived.

An **Emergency Economic Injury Grant** has also been established to allow an eligible entity who has applied for a Disaster Loan because of COVID-19 to request an advance of up to \$10,000 on that loan. **The SBA is to distribute the advance within three days.** If the applicant is denied a Disaster Loan, this initial advance is not required to be paid back. An applicant must self-certify that it is an eligible entity prior to receiving such an advance. Advances may be used for providing sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, rent or mortgage payments and payment of business obligations that cannot be paid due to loss of revenues. Applicants must apply directly with the SBA for this program.

Hopefully, the above information will prove helpful to you in obtaining everything your business is entitled to under the CARES Act. Please be aware, however, that there are certain portions of the Act that require the SBA and IRS to provide further guidance, so there may be some slight changes ahead. We will strive to keep you updated as the rules, procedures and best practices present themselves.

And as always, remember that Loveless Law Firm is here for you. If we can be of service to you in sorting through the legal aspects of these various programs, please be sure to let us know.

NOTE:

****This is not meant to be construed as legal advice or guidance on a particular circumstance as each issue that arises for a particular employer will require a fact-intensive evaluation of many factors, including without limitation the employer's policies, the severity of COVID-19 as indicated by public health officials, and local or nationwide emergency regulations and directives.**

If you have questions regarding particular situations or circumstances, please feel free to contact any member of Loveless Law Firm, LLP directly.

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