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The CARES Act - Loan Programs for Small and Mid-Sized Businesses

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

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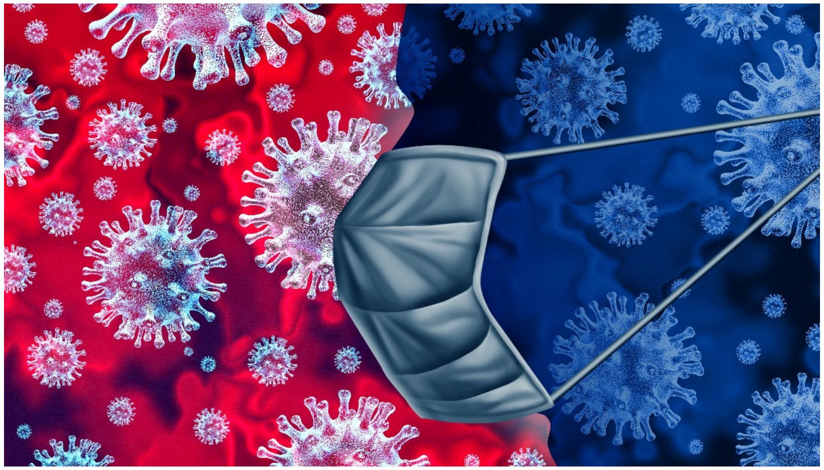
Agenda

- Paycheck Protection Program
- Mid-Sized Business Loans
- Q&A



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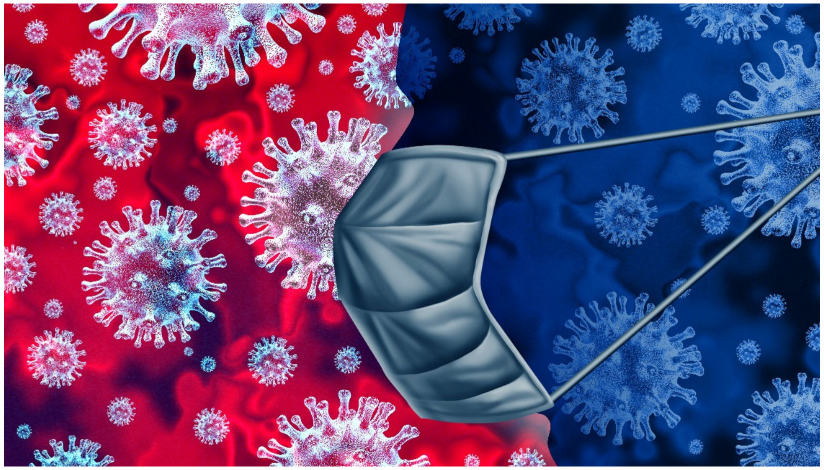
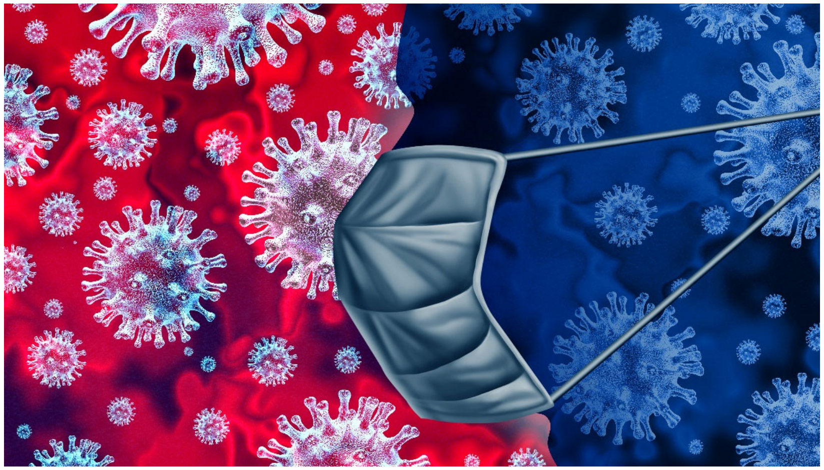
Disclaimer

This presentation is for educational purposes only. It addresses what we currently know about these recently signed laws and our understanding of how the applicable regulatory agencies will interpret these laws.



CARES Act

Paycheck
Protection
Program



Coronavirus Aid, Relief, and Economic Security (CARES) Act Paycheck Protection Program

On March 27, 2020 the President signed the CARES Act into law, providing for $2 Trillion in economic relief to individuals and businesses affected including $350 Billion available in loans for small businesses with less than 500 employees called the Paycheck Protection Program (“PPP”).

Loan Eligibility – Size Requirements

- You are eligible for the PPP if you are a small business with fewer than 500 employees.
- Generally, affiliates are combined for purposes of determining number of employees. Entities are affiliates of one another when one controls or has the power to control the other or a third party controls or has the power to control both.
- Normal affiliation rules do not apply if operating as a franchise that is assigned a franchise identifier code by the Small Business Act ("SBA") or assigned a North American Classification System ("NAICS") code beginning with 72 (accommodation and food industries).
- Businesses that employ less than 500 employees per location are also eligible if assigned a NAICS code beginning with 72.

Loan Eligibility – Certification and Other Requirements

Must make good faith certification that:

- (1) the uncertainty of current economic conditions makes necessary the loan request to support ongoing operations;
- (2) funds will be used to retain workers and maintain payroll or make mortgage payments, lease payment and utility payments; and
- (3) no application pending for duplicative loan, and no other applications made for same loan between 2/15/2020 and 12/31/2020.

- Collateral Requirement? None
- Economic Hardship Requirement? None
- Lost Revenue Requirement? None
- Personal guarantee requirement? None
- Use Requirement: Anti-Fraud provision

Determining Loan Amount

- The maximum loan amount shall be the lesser of $10mm or:
  - (a) the product obtained by multiplying the average total monthly payment by the applicant for payroll costs incurred during the 1 year period before the date on which the loan is made by 2.5; or
  - (b) the product obtained by multiplying the average total monthly payment by the applicant for payroll costs incurred from January 1, 2020 through February 29, 2020 by 2.5 (if not in business during the period from February 15, 2019 through June 30, 2019); and
  - Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL loan (because the advance does not have to be repaid).
- “Payroll costs” **<u>include</u>**: (a) salary/wages, commission, cash tips; (b) allowance for dismissal or separation; (c) vacation, sick, family, or parental leave; (d) payments for group health benefits, retirement benefits; and (e) state/local taxes on compensation of employees.
- “Payroll costs” **<u>exclude</u>**: (a) compensation of an individual employee in excess of an annual salary of $100,000 as prorated from February 15, to June 30, 2020; (b) federal taxes; (c) compensation of an employee whose principal place of business is outside the United States; and (d) sick or family leave wages under the Families First Coronavirus Response Act.

Uses of the Loan

- The loan may be used for:
  - Payroll Costs (at least 75 percent of loan proceeds)
  - Costs related to the continuation of group health care benefits during periods of paid sick, medial or family leave, and insurance premiums
  - Employee salaries, commissions, or similar compensations
  - Payments of interest on any mortgage obligation (does not include principal)
  - Rent (including rent under a lease agreement)
  - Utilities
  - Interest on any other debt obligations that were incurred before issuance of the loan
  - Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020. If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020 you can apply for a PPP loan. If it was not used for payroll costs, it does not affect your eligibility for a PPP loan. If it was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to $10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

Loan Forgiveness – What May be Forgiven

Loans taken under the PPP may be forgiven—in whole or in part—if used for purposes authorized by the CARES Act.

- Amounts eligible for forgiveness are equal to the sum of:
  - Payroll costs
    - “Payroll costs” are the same as those defined in the PPP for the purpose of calculating the maximum loan amounts
  - Interest on covered mortgage obligations
  - Covered rent obligations
  - Covered utility payments
  - “Covered” mortgages, rent, and utilities are those incurred prior to February 15, 2020
  - That are paid during the covered period, which is the 8-week period beginning on the date of the loan.

Loan Forgiveness – How Does It Work

A borrower may not have the entirety of its loan forgiven if:

1. Improper Use: Loan proceeds are used for other than payroll costs or covered mortgage interest, rent, and/or utilities paid during the covered period; and/or
2. Failure to Maintain Headcount and Wage/Salary Levels.

   A. Headcount: The amount eligible for forgiveness will be reduced if the borrower decreases its full-time employee headcount

   - The reduction amount is calculated as follows:

     → Average monthly payroll costs is MULTIPLIED BY –

     → Average number of full-time employees during the covered period DIVIDED BY (a) the average number of full-time employees per month from February 15, 2019 to June 30, 2019 *OR* (b) the average number of full-time employees per month from January 1, 2020 to February 29, 2020.)

   - Calculation differs slightly for seasonal employers and employers who were not in business between February 15, 2019 and June 30, 2019.

Loan Forgiveness – How Does It Work (cont.)

2. Failure to Maintain Headcount and Wage/Salary Levels (Cont.)

   B. Wages/Salaries: The amount eligible for forgiveness will also be reduced if the borrower decreases total salaries and wages of employees (who made less than $100,000) during the loan period in excess of 25% the total wages the employee was paid in the most recent full quarter in which the employee was employed before the covered period.

   - Example
     - Employee earns $15,000 in last quarter ($5,000 per month)
     - 25% of $15,000 equals $3,750, which is maximum amount of permitted reduction
     - Employee would earn $10,000 during 8 week loan, but $6,250 with permissible reduction

Loan Forgiveness – The Exemption

BUT, a borrower may be able to eliminate any reductions based on decreased headcount or decreased payroll levels.

1. Reductions in headcount will not decrease the loan forgiveness amount where:
    - There is a reduction in full-time equivalent employees as compared to headcount on February 15, 2020;
    - The reduction takes place between February 15, 2020 and April 26, 2020 (30 days after the date of enactment); and
    - No later than June 30, 2020, the borrower eliminates the reduction.

Loan Forgiveness – The Exemption (Cont.)

2. Reductions in salary/wage levels will not decrease the loan forgiveness amount where:
   - There is a reduction in salary or wages of 1 or more employees (who were not paid over $100,000 in 2019) as compared to February 15, 2020;
   - The reduction takes place between February 15, 2020 and April 26, 2020; and
   - No later than June 30, 2020, the borrower eliminates that reduction

Loan Forgiveness - Examples

- Scenario 1
  - Average number of full time employees during period of February 15, 2019 to June 30, 2019: 100
  - Employer lays off 10 employees on February 15, 2020
  - Employer lays off 40 more employees on March 1, 2020
  - Loan is secured April 15, 2020; 8-week “covered period” is April 15 – June 15.
  - Average number of full time employees during Loan Period (4/15 to 6/15): 50
  - Forgiveness amount is reduced by 50% (50 FT employees / 100 FT employees)
- Scenario 2
  - Same scenario as above, except on June 28, 2020, employer rehires the 40 employees laid off on March 1.
  - Forgiveness amount is only reduced by 10% (90 FT employ
    - the calculations are run without regard to the 40 employees laid off March 1

Loan Forgiveness – Other Considerations

- Forgiveness amount cannot exceed principal loan amount.
- Regulations expected to include a requirement that 75% of proceeds are used for payroll costs.
  - Timing of loan may need to factor in pay periods and pay dates.
- It is unclear how terminations for other than economic reasons (e.g., disciplinary discharges, or voluntary quits) may impact forgiveness. Law is currently silent, so should assume would have to replace that headcount.
- Forgiven amounts are treated as canceled indebtedness under the Small Business Act.

Obtaining Loan Forgiveness

- An eligible recipient seeking loan forgiveness under this section shall submit to the lender that is servicing the covered loan an application, which shall include—
  - Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the applicable periods including—
    - Payroll tax filings reported to the Internal Revenue Service; and
    - State income, payroll, and unemployment insurance filings;
  - Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;

Obtaining Loan Forgiveness (Cont.)

- A certification from a representative of the eligible recipient authorized to make such certifications that—
  - The documentation presented is true and correct; and
  - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
- Any other documentation the Administrator determines necessary.

- A borrower that does not submit the required documentation will be denied forgiveness of the loan.

What Happens to Unforgiven Amounts

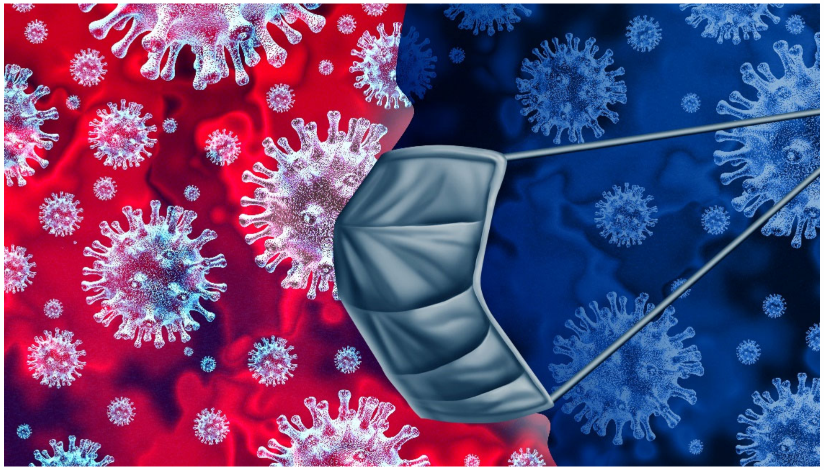
- 1 Percent fixed interest rate
- Deferment of payment for 6 months following the date of the disbursement of the loan
- Interest will continue to accrue during the 6 month deferment
- Loan is due 2 years from issuance
- You can pay earlier than 2 years – there is no prepayment penalty

Employee Retention Tax Credit

- The CARES Act also provides an employee retention tax credit for eligible employers
  - Refundable tax credit equal to half of the wages paid to employees between March 12, 2020 and January 1, 2021 up to $10,000 per employee per year.
  - The credit is appliqued to employer social security taxes.
- Eligible employers are employers that were doing business in 2020 which, in any quarter
  - Fully or partially suspended business due to COVID-19; or
  - Suffered a significant decline in gross receipts in a period beginning with the first quarter on December 31, 2019, for which gross receipts for the quarter are less than 50% of gross receipts for the same quarter in the prior year.
- For an employer that has more than 100 employees, the tax credit applies to wages paid to employees who are not working. For smaller employers, the credit applies to compensation paid to both non-working and working employees (including, for example, those whose schedules are reduced).

CARES Act

Economic
Stabilization Act



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Coronavirus Economic Stabilization Act

- Allocates $454 billion to the U.S. Treasury's Exchange Stabilization Fund.
- Loans to eligible "midsized" businesses with 500 to 10,000 employees.
- Unlike PPP loans, no part of these loans is forgivable.
- Must be an air carrier or a "United States business" that has not received other loans or guarantees under the CARES Act.
- However, a borrower companies must certify that it is created or organized in the United States or under the laws of the United States, and has significant operations in and a majority of its employees based in the United States.

Coronavirus Economic Stabilization Act

- Loans on favorable terms:
  - Maximum interest rate of 2%
  - 6 month deferral of all principal and interest payments
- But with strings attached:
  - Cannot reduce employment levels by more than 10% of the size of the workforce on March 24, 2020.

Coronavirus Economic Stabilization Act

- A borrower company must certify that:
  - Funds will be used to retain at least 90% of workforce until September 30
  - It will not increase salaries of highly compensated executives
  - It is not in bankruptcy
  - It will not pay stock dividends or engage in stock buy-back during the term
  - It will not outsource or offshore jobs during loan term or 2 years thereafter
  - It will not abrogate a CBA for the term of the loan or 2 years thereafter
  - It will remain neutral in any unionizing effort for the term of the loan

Payroll Tax Deferral

- The CARES Act permits employers to defer payment of the employer portion of payroll taxes that would otherwise be due between March 27 and December 31, 2020.

- Employers that defer payroll taxes must pay at least 50% of the deferred payroll taxes by December 31, 2021, and the remaining 50% by December 31, 2022.

- Any employer that receives forgiveness for any portion of a Paycheck Protection Program Loan is ineligible to defer federal payroll taxes.

Questions?

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