

What *Small Business Owners* should know about the CARES Act: A Summary

April 21, 2020

By [Robert J. Giordanella](#) and [Ariana J. Sarfarazi](#)



This article summarizes the benefits to small businesses under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) signed into law by President Trump on Friday, March 27, 2020.

The CARES Act, the largest stimulus package in U.S. history, was enacted as an emergency response to the ongoing economic crisis caused by the global coronavirus pandemic. The CARES Act provides billions of dollars in economic relief to certain groups hard-hit by the pandemic, with a primary focus on small businesses.

Small businesses have been particularly hard hit by the coronavirus pandemic. Federal, state, and local governments have responded to the rapid spread of the coronavirus by issuing “stay at home orders” prohibiting people in their various jurisdictions from leaving their homes except for “essential” activities. This effectively shuttered “non-essential” businesses and left even essential businesses particularly vulnerable.

To combat the economic pressures experienced by small businesses, in most instances defined as those having 500 or fewer employees, the CARES Act includes various forms of economic relief to small businesses in the form of emergency loans and forgivable loans.

This summary provides a general overview of the relief available to small businesses, and is not intended as a comprehensive analysis.

FINANCIAL ASSISTANCE

The main feature of relief to small businesses under the CARES Act is in the form of forgivable loans and emergency grants, as well as relief for existing small business loans.

Unlike relief under the CARES Act to “big” corporations (with greater than 500 employees), which must be paid back to the federal government and is subject to public disclosures and other reporting requirements, certain types of economic relief afforded to small businesses under the CARES Act generally do not need to be repaid to the federal government, provided certain conditions are met.

Forgivable Loans

a) Paycheck Protection Program

NOTE: As of the date of this Alert, the funds initially set aside for the Paycheck Protection Program were completely exhausted. However, efforts are underway in Congress to provide additional funding. The following overview is provided for those businesses who did not participate in the program but may be able to do so in the future.

Overview and Eligible Expenses: The CARES Act allocated approximately \$350 Billion for the Paycheck Protection Program (PPP). This authorized the Small Business Administration (a U.S. government agency) to provide forgivable loans up to \$10 million per business to eligible small businesses, including 501(c)(3) organizations, sole proprietorships, independent contractors, and self-employed individuals. These loans are to cover only “payroll expenses” (including employee compensation such as wages, salaries, or commissions (subject to certain restrictions), health benefits and related insurance premiums, retirement benefits, and payment for employee vacation, sick, parental, or medical leave, rent payments, mortgage payments (interest only), and/or utility expenses.

Payroll expenses do NOT include the following: compensation to employees in excess of \$100,000 annual salary; federal payroll and income taxes; compensation for employees whose principal place of business is outside the United States; and qualified sick and family leave wages under the Families First Coronavirus Response Act.

The eligible amount of a PPP loan is generally limited to the lesser of (1) \$10 million or (2) an amount determined by a complex formula based on the company’s average monthly costs for either (i) the 2019 calendar year or (ii) the 12-month period before disbursement of the loan, multiplied by 2.5.

Eligibility: PPP loans are federally-guaranteed loans provided by SBA-approved lenders that do not require credit approval, collateral, a personal guarantee, or demonstration of the ability to re-pay the loan. To be eligible to receive a PPP loan, the small business must have been operation on February 15, 2020, and must have employees or independent contractors on the books for whom the business has already paid payroll expenses.

Additionally, to be eligible to receive the loan, the small business borrower must certify (1) that the uncertainty of current economic conditions makes the loan request necessary to support the ongoing operations of the business, (2) that such loan will be used to pay only the aforementioned eligible expenses, (3) that it has not received another PPP loan between February 15, 2020 and December 31, 2020, and (4) that the business does not have an application for a loan pending elsewhere to be used for the same purposes.

Forgiveness and Loan Terms: PPP loans may be forgiven (upon application to the SBA) for the amount equaling the documented eligible expenses (set forth above) paid within 8 weeks of the loan disbursement date (less any emergency grant issued to the small business, see below), provided that the small business’s existing employees remain employed with no changes in compensation through June 30, 2020. The PPP loan forgiveness option is structured to incentivize small businesses to continue to employ their workers at essentially their same levels of compensation.

The amount of loan eligible to be forgiven will be reduced proportionally by the reduction in the number of employees or a reduction of more than 25% in employee compensation. However, small businesses that rehire employees or reverse salary reductions by June 30, 2020 will not be penalized. Furthermore, any loan proceeds used to pay rent, mortgage interest and utilities that exceed 25% of the loan proceeds will not be forgiven.

The portion of a PPP loan that is not forgiven will be subject to a maximum 2-year term beginning from the date of loan disbursement and will be subject to an interest rate of 1% per annum. Interest begins to accrue from date of disbursement but repayment of loan principal commences 6 months after the date of disbursement.

For those who have obtained a PPP loan or are awaiting payment, SBA guidance on the exact computation of the loan forgiveness amount and process to request forgiveness is expected soon.

b) Economic Injury Disaster Loan Program

NOTE: As of the date of this Alert, the funds initially set aside for the Economic Injury Disaster Loan (EIDL) Program (including Emergency Grants discussed below) specifically for relief from the coronavirus pandemic were completely exhausted. However, efforts are underway in Congress to provide additional funding. The following overview is provided for those businesses who did not participate in the program but may be able to do so in the future.

Overview of Purpose and Eligible Expenses: The CARES Act also greatly expanded the Small Business Administration's already existing Economic Injury Disaster Loans (EIDL) Program by relaxing certain eligibility requirements and increasing funding through December 31, 2020.

The existing EIDL Program provides small businesses experiencing a loss of revenue with loans of up to \$2 million to help them overcome the temporary loss of revenue following a statewide economic injury declaration, which now has been expanded to include the coronavirus pandemic. EIDL loans can be used until resumption of normal operations for working capital and necessary expenditures to alleviate economic injury due to the coronavirus pandemic, but not beyond that which the business itself could have covered had the injury not occurred.

Under the CARES Act, EIDL loans can specifically be utilized for maintaining payroll to retain employees; paying sick leave to employees unable to work due to the coronavirus; covering increased costs for necessary materials due to supply chain issues; making rent or mortgage payments; and repaying obligations that cannot otherwise be met due to revenue losses. The EIDL loan amount (up to \$2 million) will be determined by the value of the company's actual economic injury caused by the coronavirus pandemic as determined by the SBA.

Eligibility: Under the relaxed requirements of the EIDL Program under the CARES Act, entities eligible for EIDL loans include small businesses, as well non-profits and other small private entities. The business must have been in existence and operation on January 31, 2020 (waiving the usual EIDL Program requirement that the business be in operation for a year prior to the date of the emergency declaration) and must have suffered "substantial economic injury" as a result of the coronavirus outbreak.

Certain other requirements of the EIDL Program are waived through December 31, 2020 for businesses impacted by the coronavirus. For example, the EIDL Program's usual requirement that, to be eligible for an EIDL loan, the business must demonstrate that it was unable to obtain financing elsewhere, has been waived (and therefore, a business may apply for an EIDL loan even if it is able to obtain credit elsewhere). Further, under the CARES Act, personal guarantees are not required for loans up to \$200k.

However, even under the CARES Act, EIDL loans do require personal guarantees by owners of more than 20% of the borrower entity for loans in excess of \$200k. Further, a demonstration of collateral is required for EIDL loans over \$25k. To approve an EIDL loan application, the SBA must be able to verify the applicant's ability to repay the loan (though to expedite approval, such verification can occur solely through the applicant's credit score and does not require the submission of the applicant entity's tax returns).

Forgiveness and Loan Terms: EIDL loans are not forgivable under any circumstances, though companies that previously obtained an EIDL loan related to economic injury resulting from the coronavirus pandemic may refinance their loans under the PPP to take advantage of its loan forgiveness option. EIDL loans to those impacted by the

coronavirus have a 30-year maximum repayment term (determined on a case-by-case basis) and will be subject to an interest rate of 3.75% for small businesses, and 2.75% for non-profit organizations (compared to a maximum interest rate of 4% for all EIDL loans).

Availability: Under the relaxed requirements set forth by the CARES Act, EIDL loans are available until December 31, 2020.

Application process: Unlike the PPP program, where applications are submitted through participating banks, EIDL loan applications are submitted directly to the SBA at <https://disasterloan.sba.gov/ela/>.

Emergency Grants

The CARES Act further allocates \$10 billion to allow potential EIDL borrowers to request an emergency grant of up to \$10,000 per business to be paid within 3 days of the SBA's receipt of its EIDL loan application. The emergency grant must be used to cover the business's immediate eligible operating costs and must be used for a qualified EIDL purpose, including maintaining payroll to retain employees; providing paid sick leave to employees unable to work due to the coronavirus; maintaining mortgage or rent payments; meeting increased costs to obtain materials due to interrupted supply chains; or repaying other obligations that cannot be met due to revenue losses caused by the coronavirus pandemic. Applicants are not required to repay the advance, even if they are subsequently denied a EIDL loan. Emergency grant requests are made directly to the SBA via its website, <https://disasterloan.sba.gov/ela/>.

Relief for Existing Loan Payments

The CARES Act allocates \$17 billion in federal subsidies to cover six months of payments for small businesses with existing SBA loans. In such circumstances, the SBA will pay the principal, interest, and any associated fees that are owed on an SBA loan. The CARES Act instructed the Small Business Administration to issue guidance on the terms of this deferral within 30 days of enactment of the CARES Act, which guidance is available [here](#).

Interplay of Loan Options

- If a borrower has received an EIDL loan in connection with the coronavirus outbreak, it may not receive a PPP loan for the same purpose, but it may refinance its existing EIDL loan as a PPP loan if it meets the eligibility requirements.
- If a borrower has received an EIDL loan unrelated to the coronavirus outbreak, it may still apply for a PPP loan due to the coronavirus outbreak.
- EIDL grants awarded under the EIDL program will be subtracted from any amount ultimately forgiven under the PPP.
- Any loan forgiven under the PPP will be excluded as income for federal tax purposes (it remains unclear whether states will follow the federal treatment), but will make the business ineligible for other tax relief (see below).

TAX RELIEF

The CARES Act also provides a variety of tax benefits designed to assist businesses, that are closed or distressed during the coronavirus pandemic, with maintaining their payroll operations (with the ultimate goal of keeping employees on the payroll without furloughing or terminating them).

The CARES Act provides corporate taxpayers with such benefits to afford businesses with liquidity during the coronavirus pandemic (though such liquidity may not be immediate), such as by pushing back payment deadlines, providing refundable tax credits, and permitting deductions that will reduce tax liabilities. Such tax benefits include:

Tax Delay: In response to the coronavirus outbreak, the Treasury Department recently announced that it was extending the filing and tax payment deadline for income tax returns for individuals, corporations, and trusts from April 15, 2020 to July 15, 2020. In addition to this extension, the CARES Act provides for the deferral of the employer portion of payroll taxes with respect to wages paid after March 12, 2020 through the end of the year. Payroll taxes accrued in 2020 will be paid in two installments over the following two years, with the first installment due December 31, 2021, and the second installment due December 31, 2022. This deferral applies both to employers (payroll tax) and self-employed individuals (self-employed tax). Employers that receive forgiveness of a portion of a PPP loan are not eligible for this deferral.

Refundable Employee Retention Credit: The CARES Act further provides a refundable payroll tax credit of up to \$5,000 per employee for wages paid by qualifying employers during the coronavirus pandemic. This credit is available only to employers whose (1) operations were fully or partially suspended due to a coronavirus shut-down order, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year. The credit is equal to 50% of the first \$10,000 in qualified wages (defined below) paid to the employee from March 13, 2020 through December 31, 2020. For eligible employers with an average of 100 or fewer full-time employees (based on 2019 figures), all employee wages qualify whether or not the employer is subject to a shut-down order or is otherwise open for business. However, for employers with an average of more than 100 full-time employees (based on 2019 figures), qualified wages are limited to the wages paid to retained employees who are not providing services due to circumstances related to the coronavirus pandemic. Thus, employers with 100 or fewer full-time employees can utilize the deduction even if they aren't closed, while employers with more than 100 full-time employees cannot. A business that receives a PPP loan (including by refinancing an EIDL loan) is not eligible for this credit.

Net Operating Losses: Prior to enactment of the CARES Act, net operating losses (NOL) could not be “carried back” to reduce income in a prior tax year. The CARES Act now allows an NOL arising in a tax year beginning after December 31, 2017, and before January 1, 2021, to be carried back 5 years. This allows suffering businesses to utilize losses to amend prior returns to obtain tax refunds, thereby providing crucial cash flow.

Other Tax Relief: The CARES Act also includes a host of other tax relief provisions, including the relaxation of limitations on business interest expenses and expensing of qualified improvement property, as well as deductions for charitable contributions. Additionally, the CARES Act accelerates the period for deducting excess corporate alternative minimum tax (AMT) credit. Finally, as noted above, the CARES Act excludes any forgiveness/cancellation of PPP loans from gross income for federal tax purposes.

OTHER EMPLOYER/EMPLOYEE-RELATED RELIEF

The CARES Act, along with its predecessor The Families First Coronavirus Response Act, or FFCRA, also provides a host of other employment-related benefits, including benefits making it easier for employees to take “coronavirus-related” distributions and loans from their employer-sponsored retirement plan accounts, which were summarized in our [prior alert](#).

CONCLUSION

The relief afforded to employers and small businesses under the CARES Act is complex, multi-faceted, and rapidly evolving. We will continue to actively monitor developments, and stand ready to help clients navigate these complicated legal developments and assess their impacts.

This summary should not be relied on in specific instances without the advice of your lawyer or tax advisor.

For further information, please contact [Robert J. Giordanella](#) and [Ariana J. Sarfarazi](#) or your CLL attorney.

[Robert J. Giordanella](#)



Partner

[Email](#) | 212.790.9234

Bob concentrates on tax and succession planning, and estate and trust administration.

He also handles significant commercial transactions, including the purchase and sale of publishing and other media related companies and businesses involved in the sale, distribution or manufacture of various consumer products.

[Ariana J. Sarfarazi](#)



Associate

[Email](#) | 212.790.9293

Ariana handles a wide range of legal matters, including general corporate and commercial law, Customs and international trade law, and litigation and early dispute resolution.