

On March 27, 2020, Congress approved, and President Trump signed, the \$2 trillion Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) to provide economic relief to businesses, state and local governments, and individuals affected by COVID-19. Of this amount, \$367 billion is available to assist small businesses. As the Small Business Administration (“SBA”) issues more guidance in the next two weeks, we will update this FAQ. A central part of the CARES Act is the Paycheck Protection Program, which enables small businesses to obtain low-interest loans which will be forgiven upon satisfying certain simple conditions put in place by the CARES Act.

The nuances of the CARES Act are still being fleshed out as we wait for guidance from federal regulatory authorities and lenders. The purpose of this FAQ is to provide a general overview of the CARES Act’s Paycheck Protection Program for you and/or your business.

### **What businesses can seek relief under the CARES Act?**

Under the CARES Act, “qualifying businesses” that have suffered significant disruption as a result of COVID-19 will be able to receive “small business interruption loans.” The term “qualifying businesses” includes any business, nonprofit organization, veterans organization, religious organization, or tribal business that has fewer than 500 employees. If your business has over 500 employees, it may still qualify on a limited or modified basis if it can meet certain SBA regulatory requirements.

### **Can sole proprietors, independent contractors, and individuals that are self-employed qualify?**

Yes, all are eligible for the Paycheck Protection Program (discussed below) under the CARES Act.

### **What is the Paycheck Protection Program?**

The Paycheck Protection Program is designed to enable employers to maintain their payrolls during the COVID-19 emergency. The Paycheck Protection Program is an expansion of the SBA’s Section 7(a) loan program that authorizes financial institutions to issue loans to qualifying small businesses on the terms set forth in the CARES Act. The federal government will fully guarantee these loans. The Act directs the SBA to issue necessary regulations within 15 days of the law’s enactment.

### **How does this work for nonprofit organizations?**

Nonprofit organizations that are tax-exempt under sections 501(c)(3) and 501(a) of the Internal Revenue Code are eligible for SBA loans under the Payroll Protection Program, provided they otherwise satisfy the requirements of the Paycheck Protection Program. Nonprofit organizations that are not tax-exempt under sections 501(c)(3) or 501(c)(19) are not eligible.

### **Who will give me my CARES Act loan?**

Loans will be administered under the SBA’s section 7(a) loan program, however, the CARES Act will significantly modify that program to make it easier on borrowers. Banks and lenders currently enrolled in the SBA’s section 7(a) loan program, as well as some other lenders to be determined by the SBA, will all be able to provide, service, and administer CARES Act loans.

Qualifying businesses can apply for the Paycheck Protection Program at any lending institution that is approved to participate in the program through the existing SBA’s Section 7(a) lending program and additional lenders approved by the Department of Treasury. There are thousands of banks that already participate in the SBA’s lending programs, including numerous community banks. You do not have to visit any government institution to apply for the program. We recommend that you start by contacting your current bank as to the availability of the program.

**How much can I borrow?**

The amount of the loan cannot exceed the sum of (i) 2.5 times the average cost of monthly payroll cost during the year prior to the loan and (ii) the amount of economic injury disaster loans being refinanced under the program; it must be capped at \$10 million. The amount is intended to cover eight weeks of payroll expenses and any additional amounts for making payments towards debt obligations. This eight-week period may be applied to any time frame between February 15, 2020 and June 30, 2020. Seasonal business expenses will be measured using a 12-week period beginning February 15, 2019 or March 1, 2019, whichever the seasonal employer chooses.

The term of the loan may differ on a case-by-case basis. However, the maximum term of the loan is ten years with an interest rate capped at 4% annually and there are no prepayment penalties.

**Are there other restrictions on the loan terms?**

The CARES Act limits the use of Paycheck Protection Program loans to: (i) payroll costs (with limitations on employees making over \$100,000 a year); (ii) costs for group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; (iii) employee salaries, commissions, or similar compensations, with certain availability for regularly utilized contractors; (iv) payments of interest on any mortgage obligation that existed on February 15, 2020 (but not payments of principal or prepayments); (v) rent payments; (vi) interest on certain other debt obligations; and (vii) most utility payments. The foregoing requirement to use the Paycheck Protection Program loans for certain costs begins on the loan origination date to ensure compliance with the loan forgiveness portion of the Paycheck Protection Program.

If forgiveness on the loan is sought (discussed below), loan proceeds cannot be used to pay federal income taxes, compensation for employees who principally reside outside the U.S., qualified sick and family leave wages for which a borrower receives a credit under sections 7001 and 7003 of the Families First Coronavirus Response Act, or any other expense not otherwise allowed under the Paycheck Protection Program. Before accepting a loan, an employer should make arrangements to cover accepted costs with his/her Paycheck Protection Program funds to maximize the employer's loan forgiveness.

Loan payments (principal, interest, and, to the extent applicable, fees) will have a 6 to 12 month deferral depending on the specific terms of the loan.

**Do I have to provide collateral or a personal guaranty?**

The SBA has no recourse against any borrower for non-payment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose. The loans will be unsecured and not require personal guarantees of any nature.

**When is the application deadline?**

The deadline to apply for such loans is June 30, 2020. However, we expect the Paycheck Protection Program will be pursued by many small businesses and the number of applications may overload and delay lenders. We recommend that you immediately assess your needs and desire to participate in the program, and, if you decide to participate, that you move quickly. Otherwise, even if approved, you may not receive loan proceeds when you most need them.

**How does forgiveness of the loan work?**

The purpose of the Paycheck Protection Program is to help businesses retain employees at their current base pay. If all employees are retained, the entirety of the loan will be forgiven. Employers who re-hire employees previously laid off as a result of the COVID-19 crisis will not be penalized for having a reduced payroll for the beginning of the relevant period. This means that if you already laid off employees due to COVID-19, you may re-hire them and take them out of the unemployment compensation system. We anticipate more guidance on the timing of the re-hire of laid off and furloughed employees.

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If employees are laid off after the Paycheck Protection Program loan originates, the forgiveness of that loan will be reduced by the percent decrease in the number of employees.

If the full principal of the Paycheck Protection Program loan is forgiven, the borrower is not responsible for the interest accrued during the 8-week covered period. Any portion of the loan that is not forgiven will operate according to the loan terms agreed upon by the borrower and the lender.

#### **Do I have to pay cancellation of indebtedness income on the forgiven portion of my loan?**

No, the amount of the loan forgiveness is not included in gross income for federal income tax purposes.

#### **What will the loan forgiveness process look like?**

Borrowers must apply for loan forgiveness by submitting required documentation to their lenders and will receive a decision within 60 days. Under the CARES Act, to be eligible for loan forgiveness, a borrower must submit a complete application to the lender containing the following required documents: (i) employee and payroll information for the periods before and after the loan, along with Forms 941 and related schedules and filings; (ii) substantiation for expenses, such as rent, in the form of checks or bank statements; (iii) a certification from the owner of the business (or an appointed representative) that all the document provided is true, correct, and complete and that the amount of forgiveness requested was used to retain employees and make payments on only authorized expenses; and (iv) any other documentation the SBA requests.

#### **When can we expect further guidance on loan forgiveness?**

The SBA Administrator is required to issue further guidance regarding loan forgiveness within 30 days of the enactment of the CARES Act (by April 27, 2020).

#### **Can I apply for the Paycheck Protection Program if I already have an SBA loan?**

Yes, the SBA will pay the principal, interest, and fees on most pre-existing SBA loans for six months.

#### **What's the difference between the CARES Act's Paycheck Protection Program loans and the small business "disaster" loans that everyone is talking about?**

The "Disaster" loans are relief in addition to the CARES Act the small business interruption loans. Under existing authority, the SBA will also provide smaller "Economic Injury Disaster Loans" (EIDLs) in an amount up to \$2 million to businesses with fewer than 500 employees, agricultural cooperatives, and private nonprofit organizations that meet the SBA's industry-specific business size limitations in declared disaster areas and have suffered substantial economic damage as a result of COVID-19 for the period of January 31, 2020 to December 31, 2020.

If an EIDL loan was obtained on the basis of COVID-19 between January 31, 2020 and the date on which the Paycheck Protection Program becomes available, borrowers will be able to refinance the EIDL into the Paycheck Protection Program for loan forgiveness purposes. However, borrowers may not take out an EIDL and a Paycheck Protection Program for the same purposes.

#### **Are there any tax credits?**

Some employers will be eligible for a payroll tax credit in each applicable quarter in an amount equal to 50% of the first \$10,000 of qualified wages paid to employees (including health benefits) between March 13, 2020 and December 31, 2020. However, this credit is not available to employers who participate in the Paycheck Protection Program.

This credit will be available to employers whose business is at least partially suspended due to a government shutdown order or which has experienced a decline of gross receipts of at least 50% over the same calendar quarter in the prior year (until such time as gross receipts for a quarter are greater than 80% of the same calendar quarter in the prior year).

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For businesses with more than 100 full-time employees, the tax credit is only available to the extent wages are paid to employees who are unable to work as a result of a government shutdown order. For businesses with fewer than 100 full-time employees, the tax credit is available for all employees, even if the employee works from home during the business closure.

Because this 50% tax credit for wages paid is not available to employers who participate in the Paycheck Protection Program, an employer would need to choose between taking this credit or obtaining a loan under the Paycheck Protection Program. Employers should consult with their tax professionals in order to make the best decisions for them.

**Helsell Fetterman LLP has created a team of attorneys licensed to practice law in Washington, Oregon, and Alaska to assist clients in these times of crisis, and we are here to help you and/or your business navigate the COVID-19 pandemic. If you have any questions, please call Helsell Fetterman LLP to someone in our COVID-19 Response Group.**

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