The CARES Act: What You Need to Know

Key Provisions for Businesses

$10,000 Grant awarded within three days under Expansion of SBA Disaster Loan Program (SBA 7(b))

For eligible applicants, small businesses with 500 or fewer employees, sole proprietors, and independent contractors, the CARES Act makes changes to the SBA Disaster Loan program by waiving: 1-rules related to personal guarantees on loans of up to $200,000, 2-the 1 year in business requirement, and 3-the requirement that an applicant be unable to find credit elsewhere; and allows lenders to approve applicants based solely on credit scores or other appropriate methods to determine ability to repay.

Applicants can request an emergency advance of up to $10,000 which does not have to be repaid, even if the loan is later denied. Advances are to be awarded within three days of application.

Forgivable Loans under SBA 7(a) Payroll Protection Program

For small businesses, one of the more important sections of the CARES Act is the Paycheck Protection Program. This program gives the SBA the ability to guarantee $350 billion in loans to small businesses via a network of more than 800 banks. The program provides eight weeks of cash-flow assistance to small businesses with 500 employees or fewer, and administration will be handled by banks. Businesses would be well advised to communicate with their lending institutions soon, and all qualifying businesses are eligible without regard to entity type, including sole proprietors and independent contractors

The low-interest loans are meant to cover payroll costs, paid sick leave, employee salaries, health-insurance premiums, utilities, and rent or mortgage payments. The maximum loan amount is $10 million, maximum maturity is 10 years, and the interest rate on the loans can’t surpass 4%. There is $17 billion available to cover six months of payments for small businesses already using SBA loans. Requirements and further details:

- A borrower can get an SBA 7(a) forgivable loan and add the outstanding amount of a loan made under the SBA’s Disaster Loan Program (SBA 7(b)) between January 31, 2020 and the date on which such loan may be refinanced as part of this new program.
- Increased eligibility is eligible for certain small businesses that employ less than 500 employees per physical location of the business. Generally speaking, this provision applies to accommodation and foodservice businesses.
- Loans are calculated on a formula of the average monthly payroll costs times 2.5 plus any outstanding amount made under the SBA’s disaster loan program as referenced above.
- SBA will waive the guarantee fee required for a 7(a) loan.

- SBA will eliminate the requirement that a small business concern is unable to obtain credit elsewhere.
- A good faith certification from the eligible recipient will be required, stating that the uncertainty of the economic conditions make the loan request necessary to support the ongoing operations of the recipient, acknowledge that the funds will be used to retain workers and maintain a pre-crisis level of full-time equivalent employees or make mortgage payments, lease payments and utility payments.
- The new program provides a process to allow borrowers to be eligible for loan forgiveness in amount equal to their payroll costs, health benefits, interest portion of mortgage payments, rent and utility costs during the 8-week period that begins on the origination date of the 7(a) loan.
- The amount of the debt forgiveness will be reduced proportionally by the number of employees laid off during this time. Any staffing reductions made after February 15, 2020 that are remedied no later than June 30, 2020 shall not impact the amount forgiven.
- Any amount forgiven shall be excluded from gross income. For most borrowers, these provisions will convert the loan into a tax-free grant upon certification of the incurred costs.

Employee Retention Credit

- A 50 percent employee retention payroll tax credit for wages paid to employees during the COVID-19 emergency. The fully refundable credit would be available to any business or non-profit that has a furloughed or reduced workforce as a result of forced closure due to a federal, state or local government directive or as a result of quarantining of employees. The credit would also be available to any business that has seen a 50 percent drop in gross receipts.
- The credit is limited to $10,000 per employee and is refundable against payroll tax.
- The Treasury Department would provide advance payments to get money to businesses more quickly.
- A special rule applies to eligible small employers (those with 100 employees or less) that provides a 50 percent credit for all wages paid, regardless of whether employees are furloughed or not.
- The credit would be available to businesses that do not receive the 7(a) payroll protection Small Business Administration loan described above. Business owners would be able to choose whether that SBA loan or employee retention credit is better suited to their situation. Disaster loans under 7(b) are still able to be received in conjunction with the credit.

Delayed Payment of Employer Payroll Tax and Self-Employment Tax

For those businesses who do not receive a 7(a) payroll protection loan from the SBA, a delay of employer Social Security tax (6.2%) and one-half of the self-employment tax (6.2%) is available. Payments that would have been due from the date of the law’s enactment through December 31, 2020 are delayed and split into two equal payments due December 31, 2021 and December 31, 2022.

Net Operating Losses

Firms may take net operating losses (NOLs) earned in 2018, 2019, or 2020 and carry back those losses five years. The NOL limit of 80 percent of taxable income is also suspended, so firms may use NOLs they have to fully offset their taxable income. The bill also modifies loss limitations for non-corporate taxpayers, including rules governing excess farm losses, and makes a technical correction to the treatment of NOLs for the 2017 and 2018 tax years.

Alternative Minimum Tax (AMT)

Firms with tax credit carryforwards and previous alternative minimum tax (AMT) liability can claim larger refundable tax credits than they otherwise could.

Qualified Improvement Property

The CARES act contains a technical correction to a drafting error within the Tax Cuts and Jobs Act (TCJA). This correction changes the life of Qualified Improvement Property (QIP) from 39 years to 15 years and now eligible for 100% bonus depreciation, or immediate expenses. This retroactive for 2018 tax years. This is a substantial retroactive change for any business that had these additions.

Net Interest Deduction

Currently, this limits businesses' ability to deduct interest paid on their tax returns to 30 percent of earnings before interest, tax, depreciation, and amortization (EBITDA). The Act expands it to 50 percent of EBITDA for 2019 and 2020. This will help businesses increase liquidity if they have debt or must take on more debt during the crisis.

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