

The CARES Act: What Small Business Owners and Not-For-Profit Organizations Need To Know

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) (the “CARES Act”). On April 3, 2020, the U.S. Small Business Administration (the “SBA”) announced an interim final rule, implementing Sections 1102 and 1106 of the CARES Act (13 C.F.R. Part 120). The CARES Act implements two important sources of liquidity for small business owners and not-for-profit organizations—the Paycheck Protection Program and the COVID-19 Economic Injury Disaster Loan Program. Under these initiatives, small businesses and not-for-profit organizations with fewer than 500 employees¹ can receive low-interest small business loans to provide a much-needed cash infusion to help weather the storm created by COVID-19. In addition, under the Paycheck Protection Program, up to 100% of the principal amount of these loans and any accrued interest may be forgiven, with certain limitations and restrictions.

I. The Paycheck Protection Program

The Paycheck Protection Program is a new program created under Section 7(a) of the Small Business Act (15 U.S.C. 636) (the “Small Business Act”) that empowers authorized SBA lenders to provide loans to businesses primarily to help cover payroll costs.² The loan proceeds may also cover utilities, rent payments, and interest on existing debt and mortgages. The CARES Act allocates \$349 billion to this program. Importantly, to encourage lenders to participate, the CARES Act provides compensation to lenders, and the SBA will guarantee 100% of each loan. Lenders can process loan applications under the Paycheck Protection Program beginning April 3, 2020. The application form may be accessed [here](#).

Small business owners and not-for-profit organizations may borrow an amount equal to 2.5 times their average monthly payroll costs, up to a maximum amount of \$10 million. In calculating estimated payroll costs, amounts paid to an employee in excess of \$100,000 are excluded. The loans will have a maturity of 2 years and an interest rate of 1.00%. Loan payments will be deferred for six months. Borrowers may be eligible for loan forgiveness for expenditures made during the 8-week period following the loan’s origination for payroll costs, utilities, rent, and interest on an existing mortgage, provided that at least 75% of the loan proceeds are used for payroll costs. Loan forgiveness will be reduced in proportion to a decrease in the number of employees during the period beginning February 15, 2020 and ending June 30, 2020 compared to a reference period of either February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020. Borrowers can avoid this reduction by rehiring employees by June 30, 2020. Forgiveness may also be reduced if the borrower decreases the pay of any employee who receives a wage less than \$100,000 by more than 25% as of the last calendar quarter.

The CARES Act waives the Small Business Act’s affiliation rules with respect to eligibility of businesses in the hospitality and food industry with more than one location. Therefore, if a business in that industry employs more than 500 workers, but less than 500 at each location, the business would be eligible for a loan at each location.

¹ The SBA has determined that businesses in certain industries with more than 500 employees may also qualify for a loan under the Paycheck Protection Program if they do not exceed the employee size standards listed in the table found [here](#).

² Payroll costs include total compensation paid to employees whose principal place of residence is in the United States and who earn less than \$100,000 in total compensation. Total compensation includes wages and salary, payments for vacation, parental, family, medical or sick leave, allowance for separation or dismissal, payments for employee benefits and payment of state and local compensation taxes. Payroll costs exclude federal employment taxes imposed or withheld between February 15, 2020 and June 30, 2020, payments to independent contractors and 1099 workers and qualified sick and family leave under Sections 7001 and 7003 of the Families First Coronavirus Response Act (H.R. 6201).

Companies in other industries are lobbying for a similar waiver of the affiliation rules, particularly in the context of private equity ownership.

The CARES Act also provides that the SBA will pay the principal, interest, and associated fees for pre-existing loans under Section 7(a) of the Small Business Act that are unrelated to the COVID-19 pandemic. New borrowers who take out such loans within six months of March 27, 2020 will also be eligible for such relief.

II. The COVID-19 Economic Injury Disaster Loan Program

The CARES Act also expands the existing loan program under Section 7(b) of the Small Business Act (“EIDL”) to provide expedited low interest loans to small businesses and not-for-profit organizations. These loans are not eligible for forgiveness like the loans granted under the Paycheck Protection Program; however, they can be used for a broader set of purposes and have no conditions related to level of employment. Importantly, these loans are made directly by the SBA, and not by private lenders. Businesses can now apply for loans directly on the SBA’s website found [here](#). Once a business applies, they are placed in a queue and will be contacted by the SBA for loan processing. Further information will be requested as needed.

EIDL loans are available for up to \$2 million. Loan proceeds may be used for any financial obligations that the borrower cannot meet due to the COVID-19 pandemic, including (but not limited to) the same costs identified in the Payroll Protection Program (payroll costs, utilities, rent payments, and interest on existing debt and mortgages). Within three days of receiving a loan application, the SBA will advance \$10,000 of the loan. This principal advance will be considered a grant and will not have to be repaid, even if the borrower is not ultimately granted a loan. The CARES Act waives the Small Business Administration’s requirement to provide personal guarantees for EIDL loans up to \$200,000 and the requirement for collateral for loans of \$25,000 or less. The CARES ACT also waives the SBA’s requirement that the applicant be unable to obtain credit elsewhere. A borrower may apply for and receive loans both under the Paycheck Protection Act and the COVID-19 Economic Injury Disaster Loan Program, so long as the proceeds of the loans are used for the stated purposes. A business that received an EIDL loan between January 31, 2020 and April 3, 2020 and used the loan proceeds for payroll costs will have to use a loan received under the Paycheck Protection Program to refinance such EIDL loan.

Small businesses and not-for-profit organizations are particularly vulnerable to closures and slowdowns as they do not typically have a large cushion of cash or easy access to lines of credit. These programs under the CARES Act are intended to provide them a lifeline.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Helene R. Banks at 212.701.3439 or hbanks@cahill.com; or Robyn Sablove at 212.701.3753 or rsablove@cahill.com; or email publications@cahill.com.