

COVID-19

What Every Small Employer Should Know

Part - 2: CARES Act Summary

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CARES Act:

Coronavirus Aid, Relief & Economic Security Act



The CARES Act

Type:	Small Business Interruption Loans (i.e., forgivable loans related to COVID-19)	
Eligibility	<p>Businesses (including sole props & self-employed) & nonprofits except those with Medicaid funds and</p> <ul style="list-style-type: none"> with fewer than 500 employees (subject to the limited exceptions); or that meet the Small Business Administration's ("SBA") industry-based "size standard" requirements for the applicable NAICS code (based either on number of employees or annual receipts) 	<p>Must have been "substantially affected by COVID-19," which are described as:</p> <ul style="list-style-type: none"> supply chain disruptions staffing challenges; a decrease in sales or customers; or shuttered businesses
Loan Duration & Amount	<p>With a maximum maturity of 10 years, the amount to be the lesser of (a) \$10 million or (b) 2.5 multiplied by the average total monthly payments by the applicant for payroll, mortgage payments, rent payments, and payments on any other debt obligations incurred during the 1 year period before the date on which the loan is made. Note (b) above is different for newer companies or those with seasonal employees</p>	
Allowable Use	<ul style="list-style-type: none"> Payroll support (up to \$100k annual salary), including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits during those periods of leave; Employee salaries; Mortgage payments; 	<ul style="list-style-type: none"> Rent (including rent under a lease agreement); Utilities; and Any other debt obligations that were incurred before the covered period
Loan Forgiveness	<p>An eligible recipient shall be eligible for forgiveness of indebtedness in an amount equal to the cost of maintaining payroll continuity and other allowable costs during the covered period (8 weeks from loan origination). The borrower shall submit to the lender an application, which shall include documentation verifying the number of full-time equivalent employees on payroll and the other costs included in "Allowable Use:"</p> <ul style="list-style-type: none"> payroll tax filings reported to the Internal Revenue Service; 	<ul style="list-style-type: none"> state income, payroll, and unemployment insurance filings; financial statements verifying payment on debt obligations incurred before the covered period; and any other necessary documentation to be determined <p>The amount of any loan forgiveness will be reduced by any reductions in employee wages (in excess of 25% for any employee) or a reduction in the number of employees during the covered period</p>
Taxability	<p>Canceled indebtedness under this section shall be excluded from gross income</p>	
Other Terms	<ul style="list-style-type: none"> Final rates (which are not to exceed 4%), underwriting standards and other terms & conditions are to be determined These loans will be issued by SBA 7(a) lenders¹ 	

The CARES Act

Type:	Credit Support for Other Affected Businesses (other than Small Businesses)
Overview	<ul style="list-style-type: none"> • The Secretary of the Treasury (the "Secretary") is given discretion to determine which businesses will be beneficiaries of the credit support but likely to include businesses that would otherwise not qualify for the Small Business Interruption Loans assistance (e.g., businesses with more than 500 employees) • The Secretary will be authorized to make loans, guarantees and other investments (e.g., an equity stake or warrants) in support of eligible businesses as well as states and municipalities not to exceed \$500 billion • An independent oversight committee will oversee the program
Loan Amount and Terms	Maturity not to exceed 5 years . The Secretary is given similar discretion on determining the terms related to rates, underwriting and other terms & conditions. These loans are not forgivable.
Compensation Limits	<p>Businesses that receive loans or guarantees under this provision will be required to agree to certain caps on compensation and severance payments for employees whose compensation exceeded \$425,000 in the 2019 calendar year. Employees with compensation exceeding \$425,000 will be capped at the 2019 levels and any severance pay is not to exceed twice the maximum compensation received in 2019.</p> <p>For officers or employees who earned more than \$3 million in 2019 annual salary, their compensation would be capped at \$3 million plus 50% of the amount exceeding \$3 million in 2019 (example an individual earned \$5 million in 2019 would be capped at \$3 million + 50% x (\$5 million - \$3 million) = \$4 million cap)</p> <p>These caps will be in place for the period while the loan is outstanding plus an additional 12 months</p>
Buybacks & Dividends	Companies may not conduct stock buybacks nor provide dividends nor capital distributions to investors while the loan is outstanding plus an additional 12 months
Employment Levels	Until September 30, 2020, companies are to maintain levels of employment as of March 24, 2020 to the extent that is practical and in no case is the company to reduce employment by more than 10%

The CARES Act

Relief for business owners. Please note that this program is different than the program in "Phase III" and that participating in this program may make the borrower ineligible for participating in the "Phase III" program

Loan size:	Up to \$2,000,000
Who is eligible:	Small businesses, including ESOPs, and non-profits affected by the coronavirus in presidential and SBA-declared disaster areas (<i>list is updated regularly</i>)
Interest rate:	2.75% for nonprofits 3.75% for small businesses
Term length:	Will vary, but up to 30 years
Usage:	Accounts payable, fixed debts, payroll, and other bills due to the virus
What you'll need to provide	Supporting documentation could include the business's most recent tax returns, a personal financial statement and a schedule of liabilities that lists all your current debts
More information	https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources
How to apply	Apply directly to the SBA @ https://disasterloan.sba.gov/ela/ selecting Economic Injury as your reason. Alternatively, call SBA disaster assistance customer service center at 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail disastercustomerservice@sba.gov .
Note	These loans are issued by the government and <i>not</i> UBS Financial Services Inc., its affiliates or other banks. While interest rates are low and terms may be favorable, it is possible that the application process may take considerable time as details are not yet finalized. Some business owners may wish to seek traditional SBA "7(a)" loans ¹ at higher rates to potentially receive funding faster.

Additional Relief Programs

Program	Description
Income Tax Filing & Payment	<p>The federal tax return filing and payment deadlines are now July 15, 2020</p> <p>Check your state and local tax agencies as well as several states have aligned their deadlines</p>
State and Local Relief Programs	<p>Several local jurisdictions are supporting small businesses with loans, grants, or deferment of collection of taxes and fees. Forbes and Inc have evolving listings of local programs**</p>
B2B Transactions	<p>Check with your providers, as many B2B providers (companies, utilities, etc.) are providing discounts, deferral of payments and/or grants to small businesses</p>
"Phase II" Coronavirus Stimulus: Families First Coronavirus Response Act	<ul style="list-style-type: none"> • Tax credits for businesses with fewer than 500 employees to cover: <ul style="list-style-type: none"> – Two weeks of paid sick leave for employees who have been quarantined, have a sick family member, or have been affected by school closings – Up to three months of paid family and medical leave amounting to no less than two-thirds of regular pay for those employees listed above • The option for the Labor Department to exempt businesses with fewer than 50 employees from abiding by the paid leave mandate, if the Labor Department decides the new law could pose an existential threat to the company
"Phase III" Coronavirus Stimulus	<p>More than \$1 Trillion in spending, tax benefits, loans, and other aid to businesses; \$2 Trillion in overall relief</p> <p>Delays of payment of Employer Payroll Taxes</p> <ul style="list-style-type: none"> • Payroll taxes due to the IRS through the end of 2020 can be deferred with 50% of those deferred payments due by December 31, 2021 and the remaining 50% due by December 31, 2022 • Taxpayers that had indebtedness forgiven under the CARES Act are excluded from this benefit <p>Changes to Net Operating Loss Rules to use losses today against past profits to claim refunds</p> <ul style="list-style-type: none"> • The Act temporarily reverses changes to how net operating losses can be carried back. • Losses from 2018, 2019 and 2020 will be permitted to be carried back for up to five years (or forego the carryback and instead carry the loss forward) for 2019 and 2020 income <p>Increases to the amount of interest expense businesses may deduct from 30% to 50% for 2019 and 2020</p>

CARES: The Details

Paycheck protection under 7(a) of SBA

- Open to small businesses with less than 500 employees
- Includes non-profits
- Includes sole-proprietors, independent contractors, and other self-employed individuals as eligible for loans
- Affiliation rules are waived for many franchises and businesses in the hospitality and restaurant industries
- Covered loan period as beginning on February 15, 2020 and ending on June 30, 2020
- Maximum 7(a) loan amount to \$10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan
- Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments
- For eligibility purposes, requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor
- Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program
- Waives collateral and personal guarantee requirements under this program
- Max interest rate of 4%, no prepayment fees
- Increases the government guarantee of 7(a) loans to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding \$150,000 and 85 percent for loans equal to or less than \$150,000
- Allows complete deferment of 7(a) loan payments for at least six months and not more than a year
- Provides an authorization level of \$349 billion for the 7(a) program through December 31, 2020

CARES: The Details

Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8-week period compared to the previous year or time period, proportionate to maintaining employees and wages:
- Payroll costs plus any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) plus any payment on any covered rent obligation + and any covered utility payment.
- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Allows forgiveness for additional wages paid to tipped workers.
- Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses.
- Upon a lender's report of an expected loan forgiveness amount for a loan or pool of loans, the SBA will purchase such amount of the loan from the lender.
- Canceled indebtedness resulting from this section will not be included in the borrower's taxable income.
- Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact

CARES: The Details

Emergency EIDL Grants

- Expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private non-profits are also eligible for both grants and EIDLs.
- During the covered period, allows SBA to approve and offer EIDL loans based solely on an applicant's credit score, or use an alternative appropriate alternative method for determining applicant's ability to repay.
- Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than \$10,000, which the SBA must distribute within 3 days.

CARES: The Details

Unemployment Insurance Provisions

- Creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
- This section provides payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits.
- Provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- Provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.
- Provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.
- Provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.
- Applications for unemployment compensation and assistance with the application process, to the extent practicable, be accessible in two ways: in person, by phone, or online.
- Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. Employee would have had to work for the employer at least 30 days prior to being laid off
- Allows employers to receive an advance tax credit from Treasury instead of having to be reimbursed on the back end.

CARES: The Details

Rebates (Checks in the Mail) and Other Individual Provisions

- All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) rebate. In addition, they are eligible for an additional \$500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.
- For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

Student Loans:

- Requires the Secretary to defer student loan payments, principal, and interest for 6 months, through September 30, 2020, without penalty to the borrower for all federally owned loans. This provides relief for over 95 percent of student loan borrowers.
- Provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

CARES: The Details

Retirement Accounts/Funds

- Waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief.
- A coronavirus-related distribution is one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.
- Waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19

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Charitable Giving

- Allowance of partial above the line deduction for charitable contributions.
- The provision encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to \$300 of cash contributions, whether they itemize their deductions or not.
- Increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

CARES: The Details

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CARES: The Details

Business Provisions

- Provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.
- The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
- Provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.
- Provision relaxes the limitations on a company's use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency
- Modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.
- Corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

CARES: The Details

Business Provisions, continued...

- Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50.
- Percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.
- Provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.
- Provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

CARES: The Details

Healthcare

- This section would clarify a section of the Families First Coronavirus Response Act of 2020 (Public Law 116-127) by ensuring that uninsured individuals can receive a COVID-19 test and related service with no cost-sharing in any state Medicaid program that elects to offer such enrollment option
- Coronavirus Relief Fund provides \$150 billion to States, Territories, and Tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines, allocated by population proportions, with a minimum of \$1.25 billion for states with relatively small populations.

CARES: Resource Links

- **The CARES Act Document HR 748:** <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.xml>
- **The Law Firm: Bass Berry. Good summary of CARES Act Summary:** <https://www.bassberry.com/services/covid-19-resource-center/cares-act/>
- National Law Review: CARES Act Summary: <https://www.natlawreview.com/article/current-economic-relief-opportunities-us-small-businesses-impacted-covid-19-outbreak>
- Small Business & Entrepreneurship Council: CARES Act Summary: <https://sbecouncil.org/2020/03/30/whats-in-the-cares-act-for-small-businesses-the-self-employed-and-gig-workers/>
- The Tax Foundation: CARES Act Summary: <https://taxfoundation.org/cares-act-senate-coronavirus-bill-economic-relief-plan/>
- Akin Gump CARES Summary: <https://www.akingump.com/en/experience/industries/national-security/covid-19-resource-center/cares-act-summary-small-business.html>
- MINTZ CARES Act Summary: <https://www.mintz.com/insights-center/viewpoints/2226/2020-03-27-summary-cares-act-employers>
- Lexology CARES Act Summary: <https://www.lexology.com/library/detail.aspx?g=92908731-f760-4ef0-bf1f-7918ce00f2ef>