CARES Act Update

Current as of 3/30/20 5pm Eastern

On Friday the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). This is the so-called Phase Three of the federal legislative response to the coronavirus pandemic. Here's what it means for you.

FOR EVERYONE

(WHO MAKES LESS THAN $75,000 INDIVIDUALLY OR $150,000 JOINT)

Business owners, freelancers, employees, and social-security recipients will all receive a one-time payment from the federal government of $1,200 for single tax filers or $2,400 for joint filers. Plus an extra $500 per dependent child. These benefits start to phase out for single filers at $75,000 and joint filers at $150,000 of annual income.

This money is yours to save or spend in any manner you like, including on your business—or not. Everyone who filed a tax return for 2018 or 2019 or who receives Social Security will get this money.

$1,200 SINGLE TAX FILERS

$2,400 JOINT TAX FILERS

+ $500 PER DEPENDENT CHILD

FOR BUSINESSES

There are three significant benefits available to businesses with fewer than 500 employees: loans to cover payroll, rent, and other emergency expenses, deferral of pre-existing SBA loans, and refundable tax credits. Most small and mid-sized businesses will see more benefit in the new loans and loan deferral programs than in the refundable tax credits, so let's start there.

1. **SBA Loans**
2. **Loan Payment Deferrals**
3. **Refundable Payroll Tax Credits**

1 SBA Loans

The Small Business Administration guaranties loans. Banks and other SBA partners purchase guaranties from the SBA for loans made to small businesses. Most often these guarantees fall under section 7(a) of the Small Business Act. That's the main lending program for run-of-the-mill business loans. But in disaster situations the SBA's 7(b) program kicks in.

The CARES Act implements new programs by amending both 7(a) and 7(b) of the Small Business Act. Many businesses can take advantage of both programs at once so long as the funds for both programs aren't used for the same purpose.

Payroll Protection Program – Sec. 7(a)(36)

(aka the main lending program for run-of-the-mill business loans)

Aside from the universal checks, above, most of what you've heard about the CARES Act probably relates to the Payroll Protection Program.

Under this new program a business can borrow up to 2.5 times its average monthly payroll. The SBA will guaranty 100% of the loan, which does not require a personal guaranty or collateral.

What makes the Payroll Protection loans unique is they will be forgiven to the extent that in the eight weeks after you get the money you put it toward permitted uses: payroll costs, mortgage interest payments, rent, or utilities so long as the mortgage, lease, or utilities were in place before February 15, 2020.

Proceeds of the loan may be used for:

- **Payroll costs - including your own salary as a sole proprietor or independent contractor**
- **certain health benefits**
- **Mortgage interest payments**
- **Rent**
- **Utilities - including electricity, gas, water, transportation, telephone, internet access**
- **Interest on other debts**

It's worth noting: you will become personally liable for any part of the loan used on anything else.

Two important points on forgiveness.

First, the forgiven amount is not considered taxable income. So that's good.

Second, less good. The amount that is forgiven will be reduced proportional to layoffs and pay cuts in the eight weeks after disbursement. Here's how that reduction is calculated:

Average number of full-time equivalent employees per month during eight weeks after you receive the loan proceeds

Average number of full-time equivalent employees per month during the period of either February 15 to June 30, 2019 or January 1 to February 29, 2020. (A seasonal employer has to use the 2019 period.)

X

The amount of loan money that was spent on the permitted items listed above—payroll, mortgage, rent, and utilities

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The amount, if any, that you cut the pay of any employee making less than $100,000 by more than 25% during the same eight-week period.

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Net it out. That's what will be forgiven.

Continue to this formula in written form on page 3

If you'd like the formula from page 2 written out:

First, divide your average number of full-time equivalent employees per month during eight weeks after you receive the loan proceeds by your average number of full-time equivalent employees per month during the period of either February 15 to June 30, 2019 or January 1 to February 29, 2020. (A seasonal employer has to use the 2019 period.) Now multiply that number by the amount of loan money that was spent on the permitted items listed above—payroll, mortgage, rent, and utilities. Finally, take the resulting number and reduce it by the amount, if any, that you cut the pay of any employee making less than $100,000 by more than 25% during the same eight-week period. Net it out. That's what will be forgiven.

The rest you have to pay back. But the balance will have an interest rate capped at 4%, a term of up to 10 years, and all payments on the remaining balance will be deferred for at least six months.

If you have already laid off employees or cut wages that won't necessarily count against you. A reduction in employees or pay made between February 15, 2020 and April 26, 2020 will not impact forgiveness if the reduction is eliminated by June 30, 2020. In other words, you have a little time to get the loan and then re-hire or replace those employees.

Disaster Loans – 7(b)(2)

(aka for disaster situations)

The second new source of funding is an expansion of the SBA's disaster-loan program. Historically these loans have been given to businesses located in an area affected by a disaster. Now the entire country is an area affected by disaster. So the program covers everyone.

Disaster loans are available to any business, cooperative, or ESOP under 500 employees, all sole proprietors and independent contractors, and private non-profits. Loans under $200,000 will not require a personal guaranty.

An eligible applicant may request an advance on the loan of up to $10,000. It will be paid out in three days. If the loan is approved, it will be reduced by the amount of the advance. If a loan is not approved, the applicant will not be required to repay the advance. But if the applicant also receives a Payroll Protection loan under 7(a) then the forgivable amount, discussed above, is reduced by the amount of the advance.

This loan may be used for:

- **Providing paid sick leave to employees**
- **Maintaining payroll**
- **Covering increased costs of operating**
- **Making rent or mortgage payments**
- **"Repaying obligations that cannot be met due to revenue losses."**

2 Loan Payment Deferrals

FOR BUSINESSES

It's worth mentioning while we're talking about loans that aside from the options for new loans that we just discussed, if you already have an outstanding SBA loan—or if you take out a new, ordinary 7(a) loan outside the Payroll Protection Program—the SBA will cover your payments of principal and interest for six months.

3 Refundable Payroll Tax Credits

FOR BUSINESSES

Only available to businesses that are either shut down entirely as a result of the pandemic or have taken a 50% or greater revenue hit versus the same quarter last year

The new tax credits will not be very useful to most small businesses. For one thing they are only available to businesses that are either shut down entirely as a result of the pandemic or have taken a 50% or greater revenue hit versus the same quarter last year. Think restaurants, hotels, and similar businesses that are more or less out of commission.

These businesses, in lieu of either a 7(a) or 7(b) loan—because you can't get both credits and loans—may elect to receive refundable employer-side payroll tax credits equal to 50% of each employee's wages, up to $10,000 per employee per year.

Any amount of the credit that exceeds the employer's payroll-tax obligation (6.2%) is refundable. For companies over 100 employees the credit is only paid for employees kept on payroll but unable to work. For smaller companies it applies to all employees.

Any payroll tax owed for 2020 is deferred. Half is due in 2021 and half in 2022.

These credits may be quite valuable to certain businesses. But the parameters around eligibility and the relatively small amounts available mean most small businesses will be better off focusing on the Payroll and Disaster loans.