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CUTTING THROUGH THE COVID-19 CHAOS: NAVIGATING & LEVERAGING THE CARES ACT

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Thursday, April 9, 2020

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QUESTION SUBMISSIONS

During this webinar you can submit questions through the Zoom Q&A function

- Questions will be visible to the presenters immediately after you submit your question
- The presenters will answer as many questions as possible live

CARES ACT & EMPLOYMENT

- \$2 trillion stimulus package signed into law Friday, March 27
- More than 16 million people have filed for unemployment over the past 3 weeks
- Key purpose: provide funding to incentivize employers to maintain workforces
- Employment-related programs include: payroll tax relief, deferral of Social Security tax payments; employee retention tax credits; expansion of unemployment insurance
- Employment-related conditions on lending programs for small and mid-size businesses

CARES Act programs are outlined in general terms and subject to regulations and guidance updated continuously

CARES ACT & EMPLOYMENT

Social Security Tax Deferral

- Employers pay Social Security taxes at a rate of 6.2% on the first \$137,700 of wages paid to employees for calendar year 2020.
- The CARES Act allows employers to defer payment of employer Social Security taxes that are otherwise owed for wage payments made after March 12, through the end of the calendar year.
- Instead of depositing these taxes on a next-day or semi-weekly basis, the deposit due date for 50% of the taxes is deferred to December 31, 2021, with the remaining 50% deferred until December 31, 2022.

CARES ACT & EMPLOYMENT

Employee retention tax credits

- Quarterly payroll tax credits to incentivize retaining employees on payrolls
- Refundable credits against Social Security tax obligations with a max annual credit of \$5,000 on the “qualified wages” paid to each employee.
- Credit recouped by reducing the tax deposits otherwise made for employee federal income tax withholding, the employee Social Security/Medicare taxes and the employer Social Security/Medicare taxes.
- Key conditions: (1) Employers receiving an SBA loan under the CARES Act’s Paycheck Protection Program **are not** eligible for employee retention credits.; (2) employer operations are at least partially or fully suspended due to government order; (3) employer experiences significant decline in gross receipts

CARES ACT & EMPLOYMENT

Assistance for Mid-Sized Businesses (500 - 10,000 employees)

- \$500 bn program/facility for banks and other lenders (interest rate \leq 2%)
- Good faith, employment-related compliance certifications required include:
 - Retain at least 90% of existing workforce, at full compensation and benefits, until September 30
 - Restore at least 90% of the workforce as of February 1, and restore compensation and benefits, no later than four months following the termination of the COVID-19 public emergency
 - Not outsource or offshore jobs for the loan term (not to exceed 5 years) and 2 years after repayment
 - **Remain neutral in any union organizing efforts for the term of the loan**
 - **Not breach collective bargaining agreements for loan term and 2 years after repayment**
 - Executive compensation restrictions on those above \$425K

CARES ACT & EMPLOYMENT

Assistance for Mid-Sized Businesses

- Employee counting complexity: uses the NLRA definition of “employee” which excludes “supervisors”
- Dep’t of Treasury regulates CARES; turf battle with NLRB on horizon
- NLRA contains “free speech” clause and employers have First Amendment rights
 - Employers, trade groups, and employees opposed to unionization, may seek injunction of “neutrality” requirement or undercut enforcement efforts
 - “Union neutrality” has historically, and broadly, referred to a special agreement, often signed under pressure (corporate campaign), with varying terms on:
 - Providing employee contact info (email and home addresses, phone numbers); access to property and employees; “gag rule” on negative speeches by management; no “captive audience” meetings; “card check” recognition

CARES ACT & EMPLOYMENT

Small Business Paycheck Protection Program


- \$349 billion in SBA loans (1% interest) to small businesses and nonprofits, through June 30 (100% guarantee by gov't, with interest waived for first 6 months)
- Loans by SBA-certified lenders not to exceed lesser of \$10M or 2.5X average monthly payroll (for 2019 or previous 12 months)
- Proceeds for payroll (except cash compensation > \$100k), benefits, mortgage payments, rent, utilities
- Potential 100% loan forgiveness to extent used for payroll, rent, mortgage interest, and utilities for 8 weeks after origination
 - Loan forgiveness reduced in proportion to reduction of headcount and reduction in employee pay greater than 25%
 - Baseline: avg. employee headcount during covered period **vs** (1) 2/15/19 – 6/30/19 **OR** (2) 1/1/20 – 2/29/20
 - Exception for headcount reduction b/t 2/15/20 and 4/26/20, if employees are rehired no later than 6/30/20

CARES ACT & EMPLOYMENT

Loan Forgiveness Hypo

- Small business employer has average monthly payroll of \$3.2 million
- Through CARES Act, applies for and receives \$8 million loan from SBA-approved lender (i.e., 2.5x monthly payroll)
- Employer chooses baseline headcount to be the period from 2/15/19 – 6/30/19, where employer had payroll of 400 employees
- Employer had to make drastic cuts to personnel and salaries in wake of COVID-19 and now only employs 320 employees on the date of the loan and cannot afford, even with loan, to increase employee numbers back to 400 by June 30 deadline
- Since loan origination date, employer has further needed to reduce individual pay of employees earning less than \$100k in amounts exceeding 25% of each affected employee's salary or wages. The total of these pay cuts are \$400k
- **Estimated loan forgiveness reductions:**
 - **Workforce Proportionality Reduction:** As the employer now has a workforce 20% lower than in the period of 2/15/19 – 6/30/2019, the amount of the loan that is forgivable is reduced by 20% of \$8 million, or \$1.6 million,
 - **Salary and Wage Reduction:** As the employer also cut wages in excess of 25% for individual employees earning less than \$100k in an aggregate amount of \$400,000 (5% of loan), the amount of the loan that is forgivable is further reduced by \$400k.

Thus, 75%, or \$6 million, loan forgiveness is projected to be available for this employer



SBA ASSISTANCE DURING THE COVID-19 CRISIS: WHAT'S AVAILABLE?

WHAT IS THE “CARES ACT?”

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act was adopted by Congress and signed into law by President Trump on Friday, March 27.
- The 880-page bill is **intended to help small and large businesses**, individuals, and the health care sector weather the economic storm caused by the unprecedented COVID-19 pandemic.
- Title I of the CARES Act—titled “Keeping American Workers Paid and Employed”—is specifically focused on helping small businesses survive this economic crisis through the establishment of the Paycheck Protection Program (PPP) and bridge loans under the PPP administered through the Small Business Administration (SBA).

THE PAYCHECK PROTECTION PROGRAM

- The 7(a) loan program is the SBA's primary program for providing financial assistance to small businesses. The CARES Act would **increase the maximum 7(a) loan amount to \$10 million, expand allowable uses of 7(a) loans as described below and, permit forgiveness of a portion of the loan based on certain requirements.**
- Under the CARES Act, the covered loan period for this program would begin on February 15, 2020, and end on June 30, 2020.

WHO IS AN ELIGIBLE RECIPIENT FOR A COVERED LOAN?

- The legislation increases eligibility for certain small businesses and organizations.
- Small businesses, 501(c)(3) nonprofit organizations, 501(c)(19) veterans organizations and tribal businesses.
 - Fewer than 500 employees (unless the covered industry's SBA size standard allows more than 500 employees).
- Businesses in the hospitality and restaurant industries with one or more physical location/store and with no more than 500 employees **per physical location**.
- Franchises that are approved on the SBA's Franchise Directory.
- Small businesses that receive financing through the Small Business Investment Company (SBIC) program.

APPLICATION PERIOD

- As of April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Apply through an existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.
- Visit www.sba.gov for a list of SBA lenders.
- Applications and documentation must be submitted by June 30, 2020.

ELIGIBILITY CRITERIA – EASING AND EXPEDITING THE PROCESS

- The legislation gives approved SBA lenders the delegated authority to make and approve loans.
- In evaluating a borrower's eligibility, an SBA lender must consider: whether a business was operational on February 15, 2020 and had employees for whom it paid salaries and payroll taxes.
- **The eligibility criteria for an SBA loan are eased under the PPP, and the process for applying is made easier.**

WHO IS AN “EMPLOYEE” FOR PURPOSES OF THE PPP?

- For purposes of calculating how many employees a business concern has under the PPP, an employee is defined as **those who are employed on a full-time, part-time or “other basis.”**
 - A regulation issued by the SBA on April 2, 2020 clarified that independent contractors do not count as employees for purposes of PPP loan calculations.
- The law provides for waiver of the affiliation rules for “any business concern operating as a franchise that is assigned a franchise identifier code by the Administration.”
 - A regulation issued by the SBA on April 3, 2020 provided additional guidance on affiliation rules.
 - Otherwise qualified faith-based organizations are exempt from affiliation rules.

BORROWER'S GOOD FAITH CERTIFICATION

- An eligible recipient (borrower) must make a good-faith certification that:
 - 1) the uncertainty of current economic conditions make the loan request necessary to support ongoing operations and **that they will use funds to retain workers and maintain payroll and other debt obligations**, and
 - 2) a borrower does not have an application pending for a loan for the same purpose and duplicative of amounts applied for or received under a covered loan, nor has it received such a loan between February 15, 2020 and December 31, 2020.

HOW IS THE COVERED LOAN AMOUNT DETERMINED?

- The loan amount of a covered loan will be the average monthly payroll for the past year multiplied by 2.5, or \$10 million, whichever is less.
- Loan amounts for seasonal or new businesses (which cannot demonstrate average monthly payrolls for the previous 12-month period) are calculated using a modified formula.
- Also, under the law, payroll costs do not include “the compensation of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period.”
- The legislation also excludes the compensation of an employee whose principal place of residence is outside the United States.

CALCULATING THE LOAN AMOUNT – AN EXAMPLE

<u>Expense</u>	<u>12-Month Avg.</u>
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• Payroll	\$23,145
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• 250% of Monthly Avg.	\$57,862
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- “Payroll costs” are a defined term in the law, and include payments of compensation for salary, wage or commission; cash tip or equivalent; payments for vacation, parental, family, medical or sick leave; payments required for group health benefits, including insurance premiums; and payment of state and local tax assessed on compensation of employees.

WHAT EXPENSES CAN I PAY FOR WITH A COVERED LOAN?

Eligible expenses include the following:

- Payroll costs
- Costs related to group health care benefits during the periods of paid sick, medical or family leave, and insurance premiums
- Employee salaries
- Mortgage interest costs
- Rent
- Payment of utility bills
- Interest on other debt obligations

OTHER CRITICAL PROVISIONS ABOUT COVERED LOANS UNDER THE PPP

- **1.0% fixed interest rate, and two years to repay outstanding balance.**
- **Both borrower and lender fees for 7(a) loans are be waived.**
- The SBA “credit elsewhere” test, personal guarantee and collateral requirements are waived during the covered period.
- Lenders are required to provide **complete deferment of 7(a) loan payments for not less than 6 months and not more than 1 year**, including payment of principal, interest, and fees. SBA is required to disseminate guidance on the deferment process within 30 days.
- Existing loans made under the SBA’s Disaster Loan Program between January 31, 2020, and the date on which covered loans are made available, may be refinanced as part of a covered 7(a) loan.

LOAN FORGIVENESS

- The PPP provides a process by which borrowers would be eligible for loan forgiveness based on –
- The amount spent by the borrower during an eight-week period after the origination date of the loan on the following items:
 - **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.
 - **Payment on any utility** for which service began before February 15, 2020.
- Note: This does not tie exactly to permitted uses of funds.
- Note: According to the April 2 regulation, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.

LOAN FORGIVENESS (CONTINUED)

- The amount forgiven is reduced in proportion to any reduction in employees retained compared to the prior year; and to the reduction in payroll beyond 25% of their prior year compensation.
- Employers will not be penalized for reductions in number of employees or employee pay if they rehire workers or restore pay that was reduced prior to June 30, 2020.
- Note that **additional documentation must be provided** as part of the loan forgiveness process, including payroll tax filings, and records related to mortgage, rent and utility payments.

PERMITTED USES AND LOAN FORGIVENESS

Permitted Uses

Payroll

Mortgage interest

Rent

Utilities

Interest on prior debt

Loan Forgiveness

Yes.

Yes, if mortgage incurred prior to 2/15/20.

Yes, if lease in force prior to 2/15/20.

Yes, if service began prior to 2/15/20.

No.

Limited to 8 weeks after origination date.

SBA EXPRESS BRIDGE LOANS

- The SBA's Express Bridge Loan (EBL) program allows SBA Express lenders to provide expedited financing to small businesses located in declared disaster areas.
 - Express Bridge loans are intended to be interim loans. Businesses use these funds for disaster-related purposes while they apply for and await long-term financing.
- Max loan is \$25,000, for small businesses only (no waivers).
 - Important for the smallest businesses who need funds urgently.
- See updated SBA EBL [program guide](#) for more information.

SBA EXPRESS BRIDGE LOANS (CONTINUED)

- Effective March 25, 2020, SBA expanded program eligibility to include small businesses nationwide that are adversely affected under the COVID-19 Emergency Declaration issued by President Trump on March 13.
 - Because the declaration covers all states, territories, and D.C., eligible small businesses under the EBL program include small businesses located in any state, territory and D.C. that have been adversely impacted by COVID-19.
- In the same notice, SBA extended the term of the EBL program through March 13, 2021.
 - EBL loans can usually only be made up to six months after the date of an applicable disaster declaration, but for COVID-19, EBL loans can be approved through March 13, 2021.

ECONOMIC INJURY DISASTER LOANS (EIDL)

- The first COVID-19 relief bill contained a provision enabling the SBA to make an estimated \$7 billion in low-cost loans to affected small businesses in the form of EIDLs.
 - EIDLs are available after a governor makes a disaster declaration pursuant to the Stafford Act and the President subsequently approves the declaration.
- Once a state disaster declaration is approved, EIDLs offer up to \$2 million in assistance per small business.
 - The loans can be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid due to the disaster.
 - The interest rate is 3.75% for businesses without credit available elsewhere (those with credit available elsewhere are not eligible) and 2.75% for nonprofits.
 - SBA offers loans with long-term repayments, up to a maximum of 30 years.
 - Borrowers cannot use EIDLs and PPP loans for the same purposes.

EIDLs (CONTINUED)

- The CARES Act contained a provision to allow entities that have applied for EIDL loans due to COVID-19 can receive an advance on that loan of no more than \$10,000, which the SBA must distribute within three days.
 - Applicants are not be required to repay advances, even in instances where the EIDL loan is subsequently denied
- Advance can be used for paid sick leave, payroll, rent and mortgage payments, meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains, and repaying obligations that cannot be met due to revenue losses.
- Small businesses can visit the [SBA's website](#) for more information on EIDLs.

ABILITY TO DEFER PAYROLL TAXES

- Section 2302 of the CARES Act grants significant latitude to delay paying payroll taxes (6.2% for Social Security).
- Employers may defer payments of those payroll taxes for 2020 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.
- **IMPORTANT NOTE:** businesses that receive loan forgiveness under CARES (available under Sections 1106 or 1109) will be ineligible for these deferred tax payments.
 - So, one must weigh loan forgiveness against possible deferred tax payments.

EMPLOYEE RETENTION CREDIT

- Section 2301 of the CARES Act offers an “employee retention” tax credit: a 50% tax credit for wages paid [A] in a calendar quarter where revenues are less than 50% of the prior calendar year quarter, or [B] in a calendar quarter where the business has been fully or partially suspended due to government orders limiting commerce, travel, or group meetings
- These credits apply to wages paid after March 12.

EMPLOYEE RETENTION CREDIT (CONTINUED)

- These credits turn on the number of employees. For employers of 100 or more employees, the tax credit applies in either qualifying period but only to wages paid “for which the qualifying employee is not providing services” due to those circumstances. For employers of less than 100, however, the tax credit applies even when the employees are working.
- For determining which entities should be aggregated for counting employer size for this purpose, “[a] persons treated as a single employer under...the Internal Revenue Code of 1986...shall be treated as one employer for purposes of this section.”

EXPANSION OF UNEMPLOYMENT INSURANCE BENEFITS

- **The CARES Act also expands unemployment insurance benefits:**
- Unemployment benefits will be available for those unemployed as a result of COVID-19 between January 27, 2020 and December 31, 2020.
- There will be an extra \$600 per week in benefits through July 31, 2020.
- There will be funding to eliminate the traditional waiting period.
- 13 extra weeks of benefits will be added on to the existing number of weeks of benefits.

KEY TAKEAWAYS

- The SBA process to receive a loan through the PPP under the CARES Act has been greatly streamlined, and the expected turnaround time to receive funds is a matter of days, [prepare your application immediately.](#)
- You will need to [process the application through a bank that supports SBA loans.](#)
- [Loan amount is 2.5 times average monthly payroll,](#) which includes associated state taxes and health benefits, average loan will be in the range of \$40-\$45k, will vary by volume
- Eligibility is based on less than 500 employees per physical location.

KEY TAKEAWAYS (CONTINUED)

- **Borrowers are eligible for loan forgiveness** equal to the expense incurred for the eight-week period after the origination date of the loan, based on payroll, mortgage interest, rent, and utilities.
- **Employers will not be penalized** (reduced loan forgiveness) for reductions in number of employees or employee pay **if they rehire workers or restore any pay** that was reduced prior to June 30, 2020.
- Loan amounts not forgiven have a fixed 1.0% interest rate over 2 years.
- For more information, visit: <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>

THANK YOU



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