

CARES Act

Coronavirus Aid, Relief, and Economic Security Act

**Written as of March 25, 2020 prior to final passage by the Senate & House
(as of 8:00pm on March 25th – DRAFT HEN 20309)**

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Further changes could occur before signing by President Trump but are not expected

The CARES Act is just one act of many that the U.S. government is deploying to provide economic relief to industry, employers and employees as a result of the Covid-19 epidemic. This specific summary focuses on the loans to be provided to businesses to maintain employment of their employees. Note that for purposes of speed, this Act utilizes the SBA 7(a) loan program as a background from which to facilitate loans to employers. The list of provisions below must be read in light of the SBA 7(a) program and, as written above, all of this summary is of a DRAFT document that might change – although not expected as of March 25, 2020.

ISSUE	SUMMARY OF ACT	COMMENTS
Sec 1101 and 1102 – Definitions & Paycheck Protection Program	<p>“Small Business Concern” has the meaning given the term in Section 3 of the Small Business Act.</p> <p>“Covered Loan” means a loan made under this Act during the covered period.</p> <p>“Covered Period” means the period beginning on February 15, 2020 and ending June 30, 2020</p> <p>“Eligible Recipient” means an individual or entity that is eligible to receive a covered loan.</p> <p>Employee includes individuals employed on a full-time, part-time or other basis.</p> <p>“Payroll Costs” means the sum of payments to employees that is a) salaries or wages, b) payment of cash tip, c) payment of vacation or sick leave, d) allowance for dismissal or separation, e) payment of health benefits insurance, f) payment of retirement benefits, g) payment of state or local tax assessed on compensation; AND the sum of payments to a sole proprietor or independent contractor that is an amount not more than \$100,000</p>	<p>Covered Period is a key term throughout the Act. However, there is a Covered Period for the Loan and a different Covered Period for Loan Forgiveness.</p> <p>All costs included in payroll but excludes payroll for employees greater than \$100,000. Not clear as to whether just excludes amounts over \$100,000 or the entire payroll for those employees.</p>

	<p>per year prorated for the covered period. Payroll Costs SHALL NOT include a) the compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period, b) certain taxes per IRS sections, c) qualified sick leave and family leave wages under section 7001 and 7003 of the Families First Coronavirus Response Act.</p> <p>In addition to small business concerns (as defined above), ANY business concern described in section 31(b)(2)(C) shall be eligible so long as it does not employ more than the GREATER of a) 500 employees or b) the size standard in number of employees established by the SBA for the industry in which the business concern operates.</p> <p>For business concerns with more than one physical location – during the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and is assigned a SIC code beginning with 72 shall be eligible to receive a covered loan. (Codes beginning with 72 are Hotels, RV camps, Food Service Contractors, Bars, Restaurants and Snack Bars.)</p> <p>Waiver of Affiliation – SBA loans typically require the control parent entity to apply for the loan. The CARES Act provides a waiver for a) any business concern with less than 500 employees that is assigned a SIC code beginning with 72, b) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration, and c) any business concern that receives financial assistance under section 301 of Small Business Investment Act</p> <p>Maximum Loan amount shall be the lesser of 250% of the average total monthly payments for payroll costs incurred during the one year period before the date on which the loan is made (with exceptions for seasonal businesses), OR b) for businesses begun since Feb 15, 2019, 250% of the average total monthly payroll incurred during the period January 1, 2020 through February 29, 2020, AND c) the outstanding amount of a loan under the Disaster Recovery program subsection (b)(2) made during the period beginning on January 31, 2020 and ending on the date which the covered loans are made available, OR c) \$10 million.</p> <p>Allowable Uses of Covered Loans shall include a) payroll costs, b) costs for health care benefits, c) employee salaries, commissions, d) mortgage payments, e) rent, f) utilities, and g) interest on any other debt.</p> <p>Disaster Recovery Loans – these loans can be received by the borrower and then refinanced into the covered loan as part of this Act.</p> <p>Nonrecourse – the SBA shall have no recourse against any individual shareholder, member, or partner of a borrower except to the extent the shareholder, member or</p>	<p>Note that this allowance to have more than 500 employees is limited to restaurants and hotels.</p> <p>This Waiver is critical to many franchisors that could apply for franchisor activity separate from franchisor owned units. The inclusion of “and” versus “or” is critical here. More guidance will most likely be provided.</p> <p>Loans will generally be limited to 250% of prior 12-month average payroll. As noted below, this is the maximum for the loan and the maximum for loan forgiveness is calculated differently.</p> <p>Loan will now be for 250% of average monthly payroll PLUS refinancing of any Disaster Recovery Money received, subject to a \$10 million limitation in the aggregate.</p> <p>Loan proceeds can be used for much more than just payroll.</p> <p>No personal guarantees</p>
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	<p>partner uses the covered loan proceeds for a non-authorized use described above.</p> <p>Certification by the Borrower – an eligible recipient applying for a covered loan shall make a good faith certification acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments AND that the eligible recipient does not have an application pending under with the SBA for the same purpose (including disaster recovery), AND during the period Feb 15, 2020 to Dec 31, 2020, the eligible recipient has not received amounts under paragraph (34) for the same purpose.</p> <p>Credit Elsewhere – during the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, shall not apply to a covered loan.</p> <p>Waiver of Personal Guarantee – during the covered period, with respect to a covered loan, no personal guarantee shall be required for the covered loan.</p> <p>Maturity – for any amounts not forgiven, the remaining balance shall continue to be guaranteed by the SBA and shall have a maximum maturity of 10 years from the date of application for forgiveness.</p> <p>Interest Rate – a covered loan shall bear an interest rate not to exceed 4%.</p> <p>Waiver of Prepayment – there shall be no prepayment penalty</p>	<p>Loans that are not forgiven can have a term up to 10 years.</p>
<p>Section 1106 Loan Forgiveness</p>	<p>“Covered Mortgage Obligation” – means any debt incurred in the ordinary course of business and incurred before February 15, 2020.</p> <p>“Covered Period” means the 8-week period beginning on date of the origination of a covered loan</p> <p>“Covered Rent Obligation” means the rent obligated under a leasing agreement in force before February 15, 2020.</p> <p>“Covered Utility Payments” mean payment for electricity, gas, water, transportation, telephone, or internet access which began February 15, 2020.</p> <p>“Expected Forgiveness Amount” means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of a) payroll costs, b) payments of interest on any covered mortgage obligation, c) payments of covered rent obligations, and d) covered utility payments.</p>	<p>The Covered Period for Loan Forgiveness is the 8 weeks from loan origination.</p>

	<p>Forgiveness – a recipient shall be eligible for forgiveness of a covered loan in an amount equal to the sum of these costs during the covered period: a) payroll costs, b) any payment of interest on a covered mortgage obligation, c) any payment of covered rent, and d) any payment on covered utility.</p> <p>Reduction of Forgiveness – the amount of loan forgiveness shall be reduced by multiplying the forgiveness amount by the quotient obtained by dividing a) the average number of FTE’s per month during the covered period, by AT THE ELECTION OF THE BORROWER either 1)) the average number of FTE’s per month during the period from Feb 15, 2019 and ending on June 30, 2019 OR 2) the average number of FTE’s per month during the period January 1, 2020 and ending on Feb 29, 2020. The average number of FTE’s shall be determined by calculating the average number of FTE’s for each pay period falling within a month.</p> <p>Reduction of Forgiveness Related to Salary and Wage Reductions – the amount of loan forgiveness shall be reduced by the amount of any reduction in total salary or wages of any employee (with annual pay less than \$100,000) that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.</p> <p>Tipped Workers – a borrower may receive forgiveness for additional wages paid to tipped employees.</p> <p>Exemption for Rehires -the Act contains provisions for rehiring of employees to the extent that a borrower has terminated employees since Feb 15, 2020 or re-instating pay that has been reduced, so that the borrower might be able to maximize loan forgiveness.</p> <p>Decision – not later than 60 days after the date on which a lender receives an application for loan forgiveness under this section from an eligible recipient, the lender shall issue a decision on the application.</p> <p>Taxability – canceled indebtedness under this section shall be EXCLUDED from gross income for purposes of the Internal Revenue Code.</p>	<p>Loan amounts will be <u>forgiven</u> for costs incurred during the 8-week covered period for a) payroll costs, b) any payment of interest on a mortgage, c) any payment of covered rent, and d) any payment on covered utility – all subject to reduction as noted below.</p> <p>In general, the loan forgiveness will be reduced by the same percentage that FTE’s have been reduced on a year-over-year basis.</p> <p>The loan forgiveness will be further reduced to the extent that pay for employees who make less than \$100,000 have had their pay reduced by more than 25%.</p> <p>Loan forgiveness will be made within 60 days after a lender receives an application for loan forgiveness.</p> <p>The loan forgiveness is NOT included in gross income for tax purposes.</p>
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