



CARES Act Provides Relief to Small Businesses: What You Need to Know Now

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), a sweeping third-wave relief package in response to the COVID-19 pandemic, became law March 27. To read the full overview of the bill, [click here](#).

The CARES Act creates the Paycheck Protection Program. This Program will make significant changes to the Small Business Administration's (SBA) current government-guaranteed 7(a) Loan and Express Loan programs. These loans will be available through private lending institutions, but 100% guaranteed by the SBA through December 31, 2020, and thereafter reducing to 75% guarantees for loans exceeding \$150,000 and 85% guarantees for loans equal to or less than \$150,000.

Below are answers to the most common questions about the Act.

Who is eligible?

- Generally small businesses with 500 or fewer employees (or meet the applicable SBA size standard for the industry in which the organization operates)
- 501(c)(19) veteran organizations
- 501(c)(3) nonprofits
- Sole proprietors
- Independent contractors
- Other self-employed individuals

What can the loans be used for?

The following expenses incurred between February 15, 2020 through June 30, 2020:

- Payroll costs

- Excluding the costs of any individual employee annual salary which exceeds \$100,000 and the compensation of employees whose principal residence is outside of the US
- Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums
- Mortgage interest
- Rent
- Utility payments
- Interest on other debt obligations entered into before February 15, 2020

What are the loan terms?

- Up to \$10,000,000, but will be based on a calculation of two and half times the business's average total monthly payroll costs during the one-year prior to the loan, with certain restrictions
- Maximum term of 10 years
- Interest rate not to exceed 4%
- SBA's standard fees are waived
- No personal guarantee from the business owner is required
- No collateral is required

What are the criteria for approval?

- The business must have been operational on February 15, 2020.
- The business had employees for whom they paid salaries and payroll taxes or paid independent contractors.
- The business must certify that it has been substantially impacted by public health restrictions related to COVID-19 and will use the loan proceeds to keep employees, make payroll and other debt obligations.

- The business does not have to have a minimum credit score or show an ability to repay the loan.

Can the loan be forgiven?

Yes, part of the loan is eligible for forgiveness. The Act creates a system to determine how much may be forgiven. In general, the forgiveness program has the following aspects:

- Forgiveness is available in an amount equal to the amount spent by the borrower during an 8-week period after the loan closing date on payroll costs, mortgage interest, rent obligations, and utility payments, that were in place before February 15, 2020.
- There are caveats and statutory calculations governing forgiveness. For example, payroll expenses for employees earning above \$100,000 (prorated to the covered period) are not forgiven.
- The forgiven amount is reduced proportionally by any reduction in employees retained or in the pay of any employee (beyond 25% of prior compensation).
- Borrowers that re-hire workers previously laid off from February 15 through April 1, 2020 will not have those numbers counted against them during such period for loan forgiveness purposes, so long as they are rehired by June 30, 2020.
- The forgiven amount will not be included in the borrower's taxable income for this year.
- The SBA will purchase the forgiven amount of the loan from the lender.

Can loan payments be deferred?

Yes, lenders will be required to provide deferment relief for a period of no less than six months but not more than one year. The SBA is required to provide further guidance on the deferment process within 30 days of the Act.

Has anything changed for an EIDL SBA Disaster Loan related to COVID-19?

- Yes, the following EIDL loan provisions have been waived formally by the CARES Act:
 - Personal guarantee requirement for loans of \$200,000 or less
 - The requirement to have been in business for one year, although the business must have been in operation on January 31, 2020.
 - The requirement to prove that you cannot obtain credit elsewhere
- These can be approved solely on the applicant's credit score without having to submit tax returns.
- An applicant can request up to \$10,000 as an "advance" on the loan to be paid within three days of the SBA receiving the application, if the borrower certifies it is an eligible business. An applicant will not be required to repay this advance even if the loan is ultimately denied.

NOTE: If you received one of these loans, it may be refinanced under the Paycheck Protection Program.

Do you have an existing SBA 7(a), 504(b) or microloan?

The SBA will require lenders to provide payment deferments and will, to avoid balloon payments or other adverse consequences to borrowers, make the requisite payment on these loans to the lender for a six-month period.

What should you do next?

For more information please contact [Jana Syrcle](#), [Jared Tully](#), [Shannon Kuhl](#) or any attorney in Frost Brown Todd's [Corporate Law](#) practice group, or contact your bank about available options.

The impact of COVID-19 is impacting small businesses in different and unexpected ways. If you have any other coronavirus questions, please contact Frost Brown Todd and review the numerous articles available at: <https://fbtgibbons.com/coronavirus-response-team/>.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Resource Page](#). We have also convened a dedicated Coronavirus Response Team, with attorneys on hand to field questions concerning labor and employment matters, commercial contracts, litigation risks, as well as business succession, continuity and crisis response planning.

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