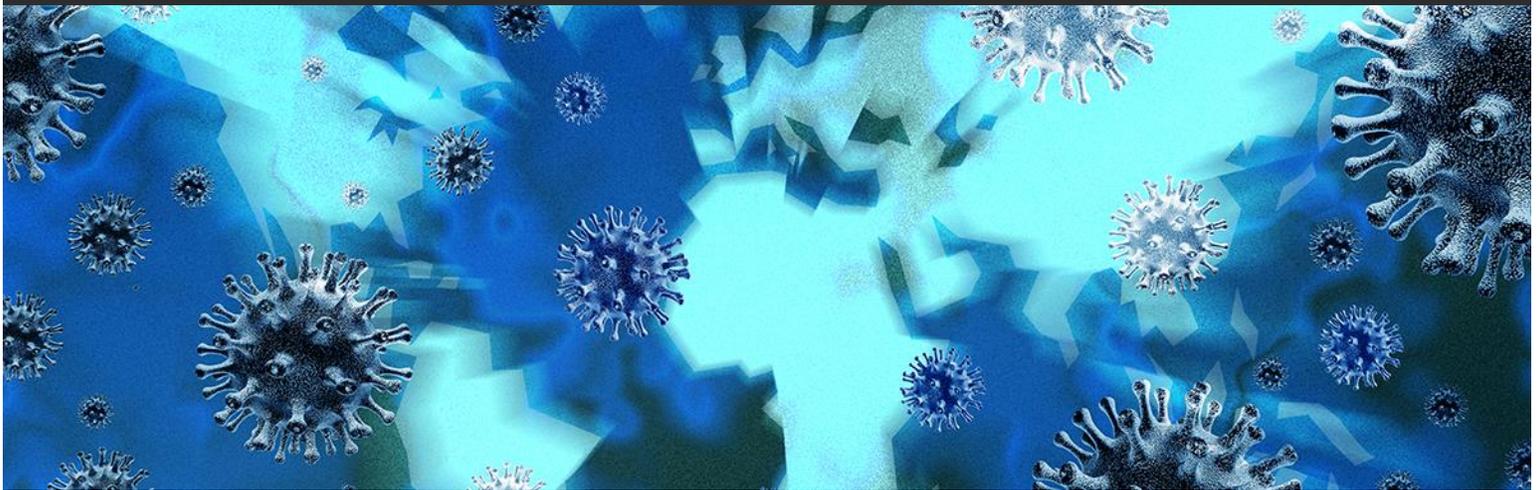


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019/COVID-19 Economic Stimulus**



March 2020

Congress Passes CARES Act: Overview of the Relief Available to Small Business Concerns

In the midst of a global pandemic and the highest unemployment rates in the United States since 1933, President Trump signed into law today the \$2 trillion dollar Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”), providing economic relief to many businesses, States and municipalities, and individuals affected by COVID-19. While the scope of the CARES Act is wide-ranging, this alert is limited to providing a high-level overview of the relief available for qualifying business concerns (generally small businesses with certain limited exceptions). Additional detail will be provided as the SBA drafts implementing regulations over the next 15 days.

Which businesses will be eligible for relief under the CARES Act?

Under Title I of the CARES Act (“Keeping American Workers Employed and Paid”), **qualifying businesses** that have suffered significant disruption as a result of COVID-19 will be able to receive no-fee “small business interruption loans.” Qualifying small businesses include “any **business concern, nonprofit organization, veteran’s organization, or Tribal business**” that have:

- fewer than 500 employees, whether employed on a full-time, part-time, or other basis; or

- meet the Small Business Administration’s (“SBA”) industry-based “size standard” requirements for the applicable NAICS code, which are based either on number of employees or annual receipts, if larger than 500 employees, in which the concern operates.¹

What are the exceptions to the “500 employees” rule? How do the SBA’s affiliation rules come into play?

To determine an applicant’s receipts or number of employees, each applicant can generally expect that it must aggregate all employees on an affiliate basis, including subsidiaries and, in the context of private equity-backed and venture capital-backed businesses, portfolio companies. Exceptions are made in the legislation for:

- franchises and hospitality businesses (NAICS code 72 “accommodation and food services”) with multiple locations, whereby the 500-person limitation is tested on a per location business; and
- any business receiving financial assistance from a Small Business Investment Company (“SBIC”).

Who will provide and administer the loans?

Loans will be administered pursuant to SBA’s section 7(a) loan program, as modified by the CARES Act. Loans will be made and serviced by existing banks and lenders enrolled in the SBA 7(a) program, as well as any other lenders determined by the SBA “to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.”

What is the maximum loan size?

The CARES Act sets the **maximum** loan amount under the Paycheck Protection Program as the **lesser of either \$10 million, or 2.5 times the average monthly payroll costs** for the one-year period preceding the issuance of the loan (giving effect to any seasonality-based adjustments and based on a shorter period for business less than a year old) for the applicable borrower. Loans can have a **maximum term of up to ten years, and interest rates shall not exceed 4% per annum and there shall be no prepayment penalties. The SBA will also reimburse lenders for origination or underwriting fees in an amount of: (i) 5% for loans of not more than \$350,000, (ii) 3% for loans of more than \$350,000 and less than \$2 million and (iii) 1% for loans equal to or greater than \$2 million.** Calculations vary slightly for seasonal businesses and businesses that were not in operation between February 15 and June 30, 2019. The SBA will issue additional regulations and guidance with respect to other terms and conditions of the program.

Any other restrictions on loan terms?

Yes, the CARES Act limits the use of Paycheck Protection Program loans to: (1) **payroll costs**, excluding the prorated portion of any compensation above \$100,000 per year for any person; (2) **costs related to the continuation of group health care benefits** during periods of paid sick, medical, or family leave, and insurance premiums; (3) **employee salaries**, commissions, or similar compensations; (4) **payments of interest on any mortgage obligation** that existed on February 15, 2020 (which shall not include any prepayment of or payment of principal on a mortgage obligation); (5) **rent** payments (including rent under a lease agreement); (6) **interest on any other debt obligations**; and (7) **utility payments**, including electricity, gas, water, transportation, and phone and Internet access for service

¹ Small business size standards vary by industry and are generally based on the number of employees or the amount of annual receipts the business has. Small business size regulations can be found in **Title 13 Part 121** of the Electronic Code of Federal Regulations (eCFR).

incurred in the ordinary course of business prior to February 15, 2020, in each case, paid during the eight-week period commencing on the date of origination of the loan.

Will interest payments be deferred for any period?

Yes, loans will be entitled to complete deferment of payments (including principal, interest and fees) for a period of not less than 6 months and not more than one year.

What portion of the loans will be eligible for forgiveness?

The loan will be eligible for **forgiveness** to the extent that the loan proceeds have been used for the following costs incurred and payments made during the eight-week period after the loan is made: (1) **payroll costs**, excluding the prorated portion of any compensation above \$100,000 per year for any person; (2) group healthcare benefits and insurance premiums; (3) mortgage interest (but not on any prepayment of or payment of principal on a covered mortgage obligation); (4) **rent payments and leases in existence prior to February 15, 2020**, and; (5) certain **utility payments**, including electricity, gas, water, transportation, and phone and Internet access for service incurred in the ordinary course of business prior to February 15, 2020, in each case, paid during the eight-week period commencing on the date of origination of the loan.

However, the amount forgiven is reduced based on failure to maintain the average number of full-time equivalent employees versus the period from either February 15, 2019 through June 30, 2019, or January 1, 2020 through February 29, 2020, as selected by the borrower. The amount forgiven is also reduced to the extent that compensation for any individual making less than \$100,000 per year is reduced by more than 25% measured against the most recent full quarter. Reductions in the number of employees or compensation occurring between February 15, 2020 and 30 days after enactment of the CARES Act, will generally be ignored to the extent reversed by June 30, 2020. Forgiven amounts will not constitute cancellation of indebtedness income for federal tax purposes.

A borrower will be required to submit a detailed application in support of loan forgiveness directly to the lender (see [chart here](#)). The lender will make a determination on the application within 60 days of receipt of the application; within 90 days after the loan forgiveness amount has been determined, the SBA will reimburse the lender directly for the principal amount of any forgiven debt, plus interest accrued through the date of repayment. SBA will issue additional implementation guidance and regulations regarding the loan forgiveness process within 30 days after enactment of the CARES Act.

Borrowers will not recognize any cancellation of indebtedness income upon forgiveness of any portion of the loan for tax purposes.

What can the loans be used for? Are there any restrictions?

Payroll, rent, mortgage payments, utilities, sick leave, insurance benefits and healthcare premiums are among the permitted uses. Proceeds of loans may also be used to make interest payments on other debt obligations that were incurred prior to February 15, 2020. However, loan proceeds may not be used to make any payment or prepayment of principal of existing debt obligations (e.g., mortgages).

Will these loans be secured? Where would these loans rank in security and priority as compared to any pre-existing third-party debt instruments?

No, the loans will be unsecured and will not take precedence over existing debt instruments in terms of payment priority. The loans will also not require collateral or personal guarantees from owners of borrowers. There will be no recourse to owners or borrowers for nonpayment, except to the extent proceeds are used for an unauthorized purpose. The SBA has also waived prepayment penalties and has waived the guaranty fee and annual fee applicable to other 7(a) loans.

What is the deadline to apply to the program?

June 30, 2020.

Will these loans trade on the secondary market?

Yes.

Are the small business interruption loans the same as the small business “disaster” loans I have read about?

No, the “disaster” loans are relief in addition to the small business interruption loans. Under existing authority, the SBA will also provide smaller “Economic Injury Disaster Loans” (“EIDLs”) in an amount up to \$2 million to businesses with not more than 500 employees, agricultural cooperatives, and private nonprofit organizations that meet the SBA’s industry-specific business size limitations in declared disaster areas (a growing list of states) and have suffered substantial economic damage as a result of COVID-19 for the period of January 31, 2020 to December 31, 2020.

Can I get a Payment Protection Act loan if I received an EDIL Loan?

Yes, to the extent that the disaster loan is/was used for a purpose other than those permitted for Payment Protection Act Loans.

Did the Care Act relax other EIDL Program Requirements?

Yes, the CARES Act also: (1) **waives** any requirement for a **personal guarantee for loans that are less than \$200,000**; (2) replaces the requirement that eligible businesses be in business for the 1-year period before the disaster with a requirement that **businesses must have been in operation on January 31, 2020**, and; (3) **waives requirement that applicants are unable to obtain credit elsewhere**.

What about advances?

The CARES Act also allows businesses, that self-certify as eligible, to apply for an EIDL advance/ grant, in an amount up to **\$10,000, to be provided within 3 days** after receipt of the application. Advances can be applied to any allowable purpose under the section 7(b) program, including: (1) **providing paid sick leave** to employees unable to work due to the direct effect of COVID-19; (2) **maintaining payroll to retain employees** during business disruptions or substantial slowdowns; (3) meeting **increased costs to obtain materials unavailable** from the applicant’s original source due to interrupted supply chains; (4) **making rent or mortgage payments**, and; (5) repaying **obligations that cannot be met due to revenue losses**. If an applicant that receives an advance is subsequently denied an EIDL loan, the advance does not need to be repaid. If an applicant receives an advance under the EIDL

program and “transfers into, or is approved for, the loan program under” the 7(a) program, “the advance amount shall be reduced from the loan forgiveness amount for a loan for payroll costs made under such section 7(a). The CARES Act designates **\$10 billion for these immediate EIDL grants.**

What about tax credits?

Certain employers will be eligible for a payroll tax credit in each applicable quarter in an amount equal to 50% of the first \$10,000 of qualified wages paid to employees (including health benefits) between March 13, 2020 and December 31, 2020. This credit will be available to employers whose business (i) was fully or partially suspended due to a government shutdown order or (ii) experienced a decline of gross receipts of at least 50% vs. the same calendar quarter in the prior year (until such time as gross receipts for a quarter are greater than 80% vs. the same calendar quarter in the prior year). For businesses with greater than 100 full-time employees, the tax credit is only available to the extent wages are paid to employees who are unable to work as a result of a government shutdown order. For businesses with fewer than 100 full-time employees, the tax credit is available for all employees, even if no government shutdown order was in place. This relief is set forth in Title II (Section 2301) rather than Title I of the CARES Act.

The CARES Act



\$250 Billion
set aside for direct payments to
individuals and families



\$377 Billion
in small business loans



\$260 Billion
in unemployment insurance
benefits



\$500 Billion
in loans for distressed
companies



\$150 Billion
to assist states and localities



\$150 Billion
for hospitals to invest in
equipment and infrastructure

For a detailed overview of the loan options available under the CARES Act, see our chart.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

Authors

This GT Alert was prepared by:

- [Jennifer S. Zucker](#) | +1 202.331.3114 | zuckerjs@gtlaw.com
- [Shomari Wade](#) | 1 202.530.8515 | wades@gtlaw.com

Special thanks to [Steven M. Felsenstein](#), [Barbara A. Jones](#), [Peter Lieberman](#), [Michael J. Schaengold](#), [Scott Schipma](#), [Brittany E. Allison](#), [Danielle K. Muenzfeld](#), and [Caroline E. Thee](#) for their assistance with this Alert.

*Admitted in Indiana. Not admitted in Illinois.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.~ Houston. Las Vegas. London.* Los Angeles. Mexico City.+ Miami. Milan.* Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.∞ Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.^ Tokyo.* Warsaw.- Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. #Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.*