

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT 2020

The CARES Act provides federal support to small businesses and employees affected by the COVID-19 pandemic through **Loan Provisions, Social Security Tax Credits for Employers, and Unemployment Insurance.**

LOAN PROVISIONS

Small Business Loans:

Who Qualifies? The Act authorizes SBA loans (via the SBA or participating lending institutions) to a qualifying small business. Generally, a qualifying small business has no more than 500 full and part-time employees. Small business qualification applies to profit and not-for-profit entities, sole-proprietorships, and businesses with multiple locations provided each location does not exceed the 500 employee limit.

How Much Can Be Borrowed?

The loan amount is the LESSER of: 1) \$10,000,000; or 2) 2.5 times the average monthly payroll over a one year period prior to disbursement of the loan. (Seasonal employers may use the average total monthly payments for payroll for the 12-week period beginning February 15, 2019, or at the election of the employer, March 1, 2019, and ending June 30, 2019.)

What is the Money Intended to Cover?

- Any currently permissible usage for SBA loans generally
- Payroll costs” during the covered period of February 15, 2020 through June 30, 2020 that does not exceed \$100,000 annualized (per employee)
- Group health care insurance premiums and benefits during periods of paid sick, medical, or family leave
- Salaries, commissions or similar compensation
- Payments of interest on mortgages (but not payments of principal)

- Rent
- Utilities
- Interest on any other debt obligations incurred before the covered period

“Payroll Costs” means payments of any compensation with respect to employees that is a salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits, including insurance premiums; payment of any retirement benefit; payment of State or local tax assessed on the compensation of employees; and the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period; but does not include any sick or family medical leave for which credit is already provided by law, such as payments required by the FFCRA.

What Are the Loan Terms?

Loans are for a maximum 10-year term and a maximum interest rate of four (4%) percent. Deferment of repayment will be granted for six (6) to twelve (12) months after loan issuance. All loan application fees, personal guarantees, collateral requirements, and credit status will be waived for any covered loan, however, any person using loan proceeds for unauthorized uses will be personally liable.

Loan Forgiveness Provisions:

The CARES Act provides for Loan Forgiveness for small businesses. Loan Forgiveness will be equal to the principal amount of any covered loan proceeds that are used to pay payroll costs, mortgage interest, rent payments and/or utility costs during the 8-week period beginning on the date of the origination of a covered loan. However, Loan Forgiveness is limited or reduced by the following:

1. Forgiveness Limitations Based Upon Reduction of Workforce. Forgiveness will be reduced by a percentage calculated by multiplying the total amount of loan eligible costs paid with loan proceeds by the quotient obtained by dividing (at the employer’s option) either:

- a. The average number of full-time equivalent employees (“FTEE’s”) during the covered period (February 15, 2020 through June 30, 2020) by the average number of FTEE’s during the same period in 2019 (i.e. February 15, 2019 through June 30, 2019); or
- b. The average number of FTEE’s during the period of January 1, 2020 through February 29, 2020.

2. Forgiveness Limitations Based Upon Reduction of Salary/Wages. Forgiveness will be reduced by the amount of any reduction in total salary/wages of any employee during the covered period (February 15, 2020 through June 30, 2020) that is more than 25% of the employee’s salary/wages during the employee’s most recent full quarter of employment before the covered period. “Employee,” for purposes of this subparagraph only, does not include any employee who received during any single pay period in 2019 a salary or wages at an annualized rate of pay over \$100,000. Employers with tipped employees may receive forgiveness for additional wages paid to those employees.

Exemptions to the Forgiveness Limitations. In general, the loan forgiveness limitations will not be imposed for employers who have reduced any of their full-time employee or salary/wages between February 15, 2020 and 30 days after enactment of this Act (April 27, 2020) IF:

- a. The employer rehires those employees by June 30, 2020; and
- b. The employer has reinstated any wage/salary reduction by June 30, 2020.

Requests for Loan Forgiveness will require the following proof: (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods including payroll tax filings reported to the IRS; and State income, payroll, and unemployment insurance filings; (2) documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments; (3) a certification from a representative of the eligible recipient authorized to make such certifications that (a) the documentation presented is true and correct; and (b) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments

on a covered rent obligation, or make covered utility payments; and (4) any other documentation the Administrator determines necessary.

No employer will receive forgiveness without submitting this documentation to the lender that is servicing the covered loan. A decision regarding the loan forgiveness application must be made no later than 60 days after submission.

All loan repayment that is granted loan forgiveness will not be includible as income to the employer.

SOCIAL SECURITY TAX CREDIT FOR EMPLOYERS

The CARES Act provides Social Security tax credits for employers who are subject to a full or partial suspension of business due to the COVID-19 pandemic.

Specifically, employers can receive a tax credit equal to 50 percent (50%) of the employer portion of Social Security taxes payable on W-2 “qualifying wages” paid to employees from March 13, 2020 through December 31, 2020.

This credit is applied after tax credits are given for the employer’s payment of the emergency sick and family leave wages to employees as required by the Families First Coronavirus Response Act (FFCRA) (please see prior law update for more information on FFCRA).

The tax credit is available to employers whose operations are either fully or partially suspended by a government order relating to COVID-19 OR the employer’s gross receipts during a calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter during 2019.

“Qualifying wages” are:

- For an employer with more than 100 full-time employees in 2019, qualifying wages are wages that continue to be paid to employees who are not providing services due to a COVID-19 suspension of business operations or due to the reduction in gross receipts.
- For an employer with 100 or less full-time employees in 2019, qualifying wages are all wages paid to all employees regardless of whether or not the employee is providing services.
- The maximum amount of qualifying wages that can be included for an individual

employee during the entire COVID-19 period is \$10,000.00.

-Wages do not include the FFCRA required sick leave and family leave payments.

UNEMPLOYMENT INSURANCE

The CARE Act provides additional unemployment benefits, including:

1. Extends unemployment insurance by 13 weeks

2. Extends coverage to those who provide a self-certification that they are available to work but are unemployed or partially unemployed due to:

-Being diagnosed with COVID-19 or is experiencing symptoms and seeking a medical diagnosis

-A member of the individual's household has been diagnosed with COVID-19

-The individual is providing care for a family member or household member who has been diagnosed with COVID-19

-The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility as a direct result of COVID-19

-The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19

-The individual is unable to work because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns

-The individual has become the major support for a household because the head of household has died as a direct result of COVID-19

-The individual has to quit their job as a direct result of COVID-19

-The individual's place of employment is closed as a direct result of COVID-19

Individuals are not eligible if they are able to work remotely, are receiving paid sick leave or paid family leave or the State unemployment insurance provider determines ineligibility.

3. The Act also increases unemployment by an additional \$600 per week to each recipient of unemployment insurance for up to four months (expires on July 31, 2020).

The total amount of benefits will be equal to the amount determined under state law, plus an additional amount of \$600 per worker per week.

The Act states that if an individual knowingly made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received the extra \$600 per week, the individual will be ineligible for further compensation, subject to prosecution, and will have to repay the amounts received due to the fraud.