

Coronavirus Aid, Relief, and Economic Security (“CARES”) Act Summary of Business Provisions

As of March 30, 2020, there have been three different acts passed by Congress and signed by the President addressing different aspects of the coronavirus (COVID-19) crisis:

Coronavirus Preparedness and Response Supplemental Appropriations Act enacted March 6, 2020 (Phase 1), (not summarized)

Families First Coronavirus Response Act (“Families First Act”), enacted March 18, 2020 (Phase 2) (summarized separately)

Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, enacted March 27, 2020 (Phase 3) (summarized in two pieces—provisions primarily affecting individuals below and provisions primarily affecting businesses in a separate piece)

This summary focuses on the tax aspects of the CARES Act as they impact small to medium sized businesses. It is not intended to cover all provisions of the act or its potential impacts. For a summary of the CARES Act provisions related to taxation of individuals see the separate piece on that topic. This material will be updated as additional information becomes available.

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Summary as of: 04/01/2020

Table of Contents

Paycheck Protection Program (PPP) - Small Business Loans	2
Economic Injury Disaster Loans (EIDL)	3
Economic Stabilization Fund (ESF) Business Loans - Mid-size Business (500-10,000 employees)	5
Net Operating Losses (NOLs)	5
Interest Deduction Limit Increased	7
SBA loan Deferrals	7
Payroll tax credits and deferrals	8

PAYCHECK PROTECTION PROGRAM (PPP) – SMALL BUSINESS LOANS

CARES Act Provision	Explanation
PPP allows SBA loans to affected small businesses. A portion of the loans may be forgiven.	Eligible small businesses “substantially affected by COVID-19” may apply for special SBA-administered loans up to \$10,000,000 if used for certain business related operating expenses, including salaries, rent, utilities, and loan interest. For qualifying borrowers, some of this debt may be forgiven (without including the forgiven amount in income).

What is a “small business” under the PPP?

To be eligible for these loans, a business or organization must have fewer than 500 employees (full and part-time) or must meet the SBA’s size requirements (as appropriate for its industry). All forms of businesses may be eligible, including, C corporations, S corporations, LLCs, partnerships, sole proprietorships, and non-profits.

Which small businesses will be eligible for loans?

The business must have incurred a supply chain disruption, decrease in sales, closure, or employee staffing problem.

How much can a business borrow under the PPP?

Businesses may borrow up to the lesser of \$10,000,000 or 2.5 times the average monthly payroll payments incurred during the one-year period before the loan date. For this purpose, compensation to sole proprietors can be taken into account up to \$100,000, prorated over the covered period (February 15, 2020 through June 30, 2020).

What terms will apply to these loans?

- Interest rate to be determined, but no higher than 4%
- Maximum term of 10 years
- Loans are only available until June 30, 2020
- Borrowers can automatically defer repayment for up to one year
- The loans will have no prepayment penalties

Will the business owners have to personally guarantee loans?

No. The loans are non-recourse, so no personal guarantee will be required of the owners.

Are there restrictions on how the money can be used?

Loan proceeds must be spent on an allowable use, which includes employee salaries, mortgage interest (not principal), rent, utilities, and interest on prior debts (before February 15, 2020).

While the proceeds may not be used to pay for salary that is in excess of \$100,000 for a particular employee, they may be used for payments related to vacation, family leave, sick pay, severance, retirement plan contributions, health care benefits, and state and local tax payments. They may not be used for federal income tax or FICA payments, or for paid sick leave or paid family medical leave under FFCRA legislation.

Can use PPP loan proceeds to make payments made to independent contractors?

No. Allowable uses include salaries (within limits) to W-2 employees, but not to independent contractors. Independent contractors may, however, apply for their own loans.

Under what circumstances will PPP loans be forgiven?

Businesses may apply for forgiveness of some of this debt, conditioned on documenting eligibility and proper use of the money received, as determined by the SBA. The maximum amount of loan forgiveness equals the amount spent by the business on allowable expenses in the eight weeks following loan origination.

To discourage employers from releasing employees, loan forgiveness will be reduced in dollar amount by reduction in employee wages of more than 25% for any employee. Loan forgiveness will also be reduced as a percentage by any reduction in staffing through June 30, 2020.

If a PPP loan does not have to be repaid, will the business incur income?

No. Cancelled debt is excluded from gross income.

Who provides the PPP loan on behalf of the SBA?

These loans will be issued by approved lenders such as banks, credit unions, and other financial institutions that are currently SBA 7(a) certified lenders.

ECONOMIC INJURY DISASTER LOANS (EIDL)

CARES Act Provision

EIDL allows SBA loans to affected small businesses after declared disaster. CARES enhanced benefits available under existing program.

Explanation

In response to the Coronavirus (COVID-19) pandemic, small business owners (including non-profits) in all U.S. states, Washington D.C., and territories are eligible to apply for an Economic Injury Disaster Loan advance of up to \$10,000. The SBA's Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.

What is a "small business" under the EIDL?

To be eligible for these loans, a business or organization must have fewer than 500 employees (full and part-time) or must meet the SBA's size requirements (as appropriate for its industry), or is an individual operating as a sole proprietorship, with or without employees, or as an independent contractor. All forms of businesses may be eligible, including, C corporations, S corporations, LLCs, partnerships, sole proprietorships, and non-profits.

Which small businesses will be eligible for loans?

The business must have suffered substantial economic injury as a result of COVID-19.

What is the EIDL Emergency Grant?

The CARES Act permits any eligible entity (including sole proprietors and independent contractors) applying for an EIDL as a consequence of the coronavirus outbreak to request an advance on that loan of up to \$10,000, which the SBA must distribute within 3 days. Emergency Grant funds are required to be used for payroll costs,

increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to economic losses related to the coronavirus outbreak.

What if the EIDL loan request is denied?

If the EIDL loan request is denied, the \$10,000 emergency grant is not required to be repaid as long as it was used for covered purposes.

How much can a business borrow under the EIDL program?

Businesses may borrow up to \$2,000,000.

What terms will apply to these loans?

- Interest rate is 3.75% for small businesses, and 2.75% for non-profit organizations
- Maximum term of 30 years, with a one-year deferment on the first payment
- Borrowers can automatically defer repayment for up to one year
- The loans will have no prepayment penalties

Will the business owners have to personally guarantee loans?

No, up to loans of \$200,000. Any EIDL made in response to the coronavirus outbreak before the covered period ends will waive any personal guarantee on advances and loans below \$200,000 and will waive the requirement for an applicant to be in business for at least a year before the disaster.

Are there restrictions on how the money can be used?

There is more flexibility with an EIDL loan than with a PPP loan; these loans may be used to pay fixed debts, payroll, accounts payable, and other bills that can't be paid because of the disaster's impact.

Under what circumstances will EIDL loans be forgiven?

EIDL loans are not eligible for loan forgiveness.

Can a business apply with the SBA for both a PPP loan and an EIDL loan?

You can apply for both loans, just not for the same purposes. If applying for both loans, the EIDL loans must be used for a purpose other than covering payroll costs.

Why might I want to apply for an EIDL loan rather than a forgivable PPP loan?

In addition to the \$10,000 emergency advancement benefit, recipients of an EIDL loan are still eligible to utilize other CARES Act benefits, such as the Employee Retention Credit or the Payroll Tax Deferral.

How do I apply for an EIDL?

Apply directly on the SBA website at <https://covid19relief.sba.gov/#/>.

ECONOMIC STABILIZATION FUND (ESF) BUSINESS LOANS

CARES Act Provision

Support loans from Treasury for businesses other than small businesses.

Explanation

For businesses too large to qualify for an SBA loan under PPP, Treasury can lend money necessary to support eligible businesses.

What is the intent of the ESF loan program?

This credit support program is intended to help mid-sized U.S. businesses (with 500 or more employees) maintain employment. As with the PPP, the law contains incentives to maintain levels of employment. Borrowing employers must maintain employment (determined as of March 24th 2020) to the extent practical.

How must the ESF loan proceeds be used?

The loan proceeds must be used to maintain 90% of the business's employees at full compensation and benefits through September 30, 2020. Further, the business must commit to restore terminated employees such that 90% of the business's employees who were employed as of February 1, 2020 are employed with the business within 4 months after termination of the COVID-19 public health emergency.

What are the loan terms?

The maturity of loans under this program is a maximum of five years, but that other terms and conditions will be determined by the Treasury Department. The Treasury Department has been given the flexibility to lend money, make guarantees, and take warrants or equity positions as necessary to support eligible businesses.

Will the loans be forgiven?

Unlike the PPP loans, these loans **cannot** be forgiven.

What other restrictions apply?

Businesses that accept an ESF loan will be prohibited from buying back stock, paying dividends, and making capital distributions while the loan is active (plus 12 months).

In addition, borrowers will be required to impose caps on compensation for certain employees whose compensation exceeded \$425,000 in 2019. These caps on compensation must remain in place while the loan is outstanding and for 12 months following.

Compensation for employees making more than \$425,000 in 2019 will be capped at the 2019 level. Severance pay cannot exceed 2X compensation paid in 2019.

The compensation cap for officers and employees with compensation above \$3 million in 2019 is \$3 million, plus 50% of amount exceeding \$3 million in 2019.

NET OPERATING LOSSES (NOLs)

CARES Act Provision

Allows net operating losses from 2018-2020 to be carried back up to five years.

Explanation

The CARES act provides for a five-year carry back of NOLs for tax years 2018, 2019, and 2020. Additionally, it temporarily suspends the 80% limitation of taxable income until 2021.

How do the changes under the CARES Act affect NOLs for specific tax years?

The CARES Act substantially liberalizes the NOL rules as set out in the table below:

	Pre 2017 TCJA	2017 TCJA Changes	CARES Act
Carryback of NOLs	2 years	No carryback	5 year carryback for 2018, 2019 and 2020 tax year
Carryforward of NOLs	20 years	Indefinite	Indefinite
Limitation	Up to 100% of taxable income	Up to 80% of taxable income	2018-2020 – up to 100% of taxable income 2021+ - up to 80% of taxable income

What was the tax rule related to NOLs prior to the 2017 TCJA?

For tax years prior to 2018, businesses could generally carryback NOLs two years and carry them forward twenty years to offset taxable income. Additionally, there was no limit on how much of those losses could be used to offset taxable income; meaning business owners could use NOLs to eliminate tax liability.

What changes did the 2017 TCJA make to NOLs?

Beginning in 2018, the TCJA repealed the ability to carryback NOLs two years. It allowed losses to be used in future years indefinitely. The TCJA also limited the deduction to 80% of taxable income so that NOLs cannot eliminate all taxable income in subsequent years.

Does the CARES Act make any changes for non-corporate taxpayers?

Yes, under prior law, individual taxpayers could only claim business losses up to \$250,000 if single, and \$500,000 if married filing jointly. Any amounts in excess could be carried over to future tax years and treated as NOLs. The CARES Act temporarily modifies the loss limitation for non-corporate taxpayers so both single filers and joint filers can fully deduct excess business losses arising in 2018, 2019, and 2020. The loss limitations will apply for tax years 2021 and going forward.

How can corporate and non-corporate taxpayers benefit from these changes?

Corporate and non-corporate taxpayers should consider the potential benefits of filing an amended return allowing them to claim refunds of amounts previously paid to provide further liquidity to help them through the COVID-19 crisis.

What are the effective date(s) for these provisions?

The carryback provisions apply to NOLs arising in tax years beginning after December 31, 2017 (2018, 2019, 2020) and to tax years to which NOLs are carried.

The temporary suspension of the 80% limitation applies to tax years beginning after December 31, 2017 (2018, 2019, 2020) and to any tax year beginning on or before December 31, 2017, to which NOLs arising in tax years beginning after December 31, 2017 are carried.

The amendments related to non-corporate taxpayers apply to tax years beginning after December 31, 2017.

INTEREST DEDUCTION LIMIT INCREASED

CARES Act Provision

Loan interest deductions liberalized.

Explanation

For tax years 2019 and 2020 businesses can deduct loan interest up to 50% of taxable income.

What changed for loan interest deductions?

The provision temporarily increases the amount of interest expense businesses can deduct on their tax returns. For 2019 and 2020 businesses may deduct interest expenses up to 50% of taxable income (with adjustments). Prior to CARES, the limit was 30%.

SBA LOAN PAYMENT DEFERRALS

CARES Act Provision

Six-month deferrals for SBA loans.

Explanation

To reduce business defaults resulting from business loan debts, CARES allows for deferral up to 6 months of some existing SBA 7(a) loans. Payments on loans guaranteed by the SBA but not on deferment already generally qualify.

What portion of a payment may be deferred under this provision?

Deferral applies to all parts of the payment, including principal, interest, and fees.

Does the six-month deferral opportunity apply to all loans?

No. This provision only applies to existing SBA-guaranteed loans. It does not apply to PPP loans.

When does deferral begin?

The deferral starting date depends on when the loan was originally taken out and whether it was already in deferment:

- For loans taken prior to March 27, 2020 and not already in deferment, the six-month period begins with the next payment due
- For loans taken prior to March 27, 2020 and in deferment, the six-month period begins the next payment due after the already scheduled deferment
- For loans taken within six months after March 27, 2020 the six-month deferral period begins with the date of the first payment

PAYROLL TAX CREDITS AND PAYROLL TAX DEFERRAL

CARES Act Provision

Tax credits for employer's portion of social security payroll taxes.

Deferral of the due date for depositing the employer's portion of social security payroll taxes.

Explanation

CARES creates a new payroll tax credit for eligible businesses that have partially or fully suspended operations as a result of revenue decreases or governmental orders. It applies to payroll taxes payable on or after March 12, 2020 through December 31, 2020.

CARES §2302 allows employers and the self-employed to delay the due date for depositing the employer's share of payroll taxes related to Social Security.

To which taxes does the CARES payroll credit and deferral apply?

It applies to the employer's portion of the Social Security payroll tax (6.2%). For the self-employed, it applies to 50% of the Social Security portion of Self-Employment taxes (limited to 6.2%: equivalent to employer share of Social Security payroll tax).

Which businesses are eligible for the credit and the deferral?

Business must have fully or partially suspended operations as a result of either: a) a governmental order, or b) as a result of a 50% or more decrease in revenue (from the same quarter in 2019). The decrease relates to revenue, not profit. A business does not have to prove specifically that COVID-19 was the cause of a revenue decrease.

Can a business receive PPP loans and receive a payroll tax credit?

A business that has had indebtedness forgiven with respect to a loan made under the PPP loan program is not entitled to any deferment to payroll taxes and self-employment taxes.

If my business is not subject to a government ordered closure, can it still qualify for the credit?

Yes, but only under the decreased revenue calculation.

What are the limits on the amount of credit available?

The credit is a maximum of 50% of wages up to \$10,000 per employee. For this calculation businesses with 100 or fewer employees may include all of the wages of all employees, regardless of whether they work. For larger employers, only wages paid to those not working may be included. "Wages" includes qualified health care expenses.

Does the credit apply for all of 2020?

The payroll tax credit applies (at most) to payments through and including March 12, 2020 to December 31, 2020. While the credit can apply throughout 2020, a business will cease to qualify earlier than that if it has a quarter in which it is no longer under a government required suspension of business or if has gross revenues that exceed 80% of gross revenue from same quarter in 2019.

When must deferred payments be made?

The deferred amounts must be paid over the next two years, with 50% paid by the end of 2021 and 50% paid by the end of 2022.