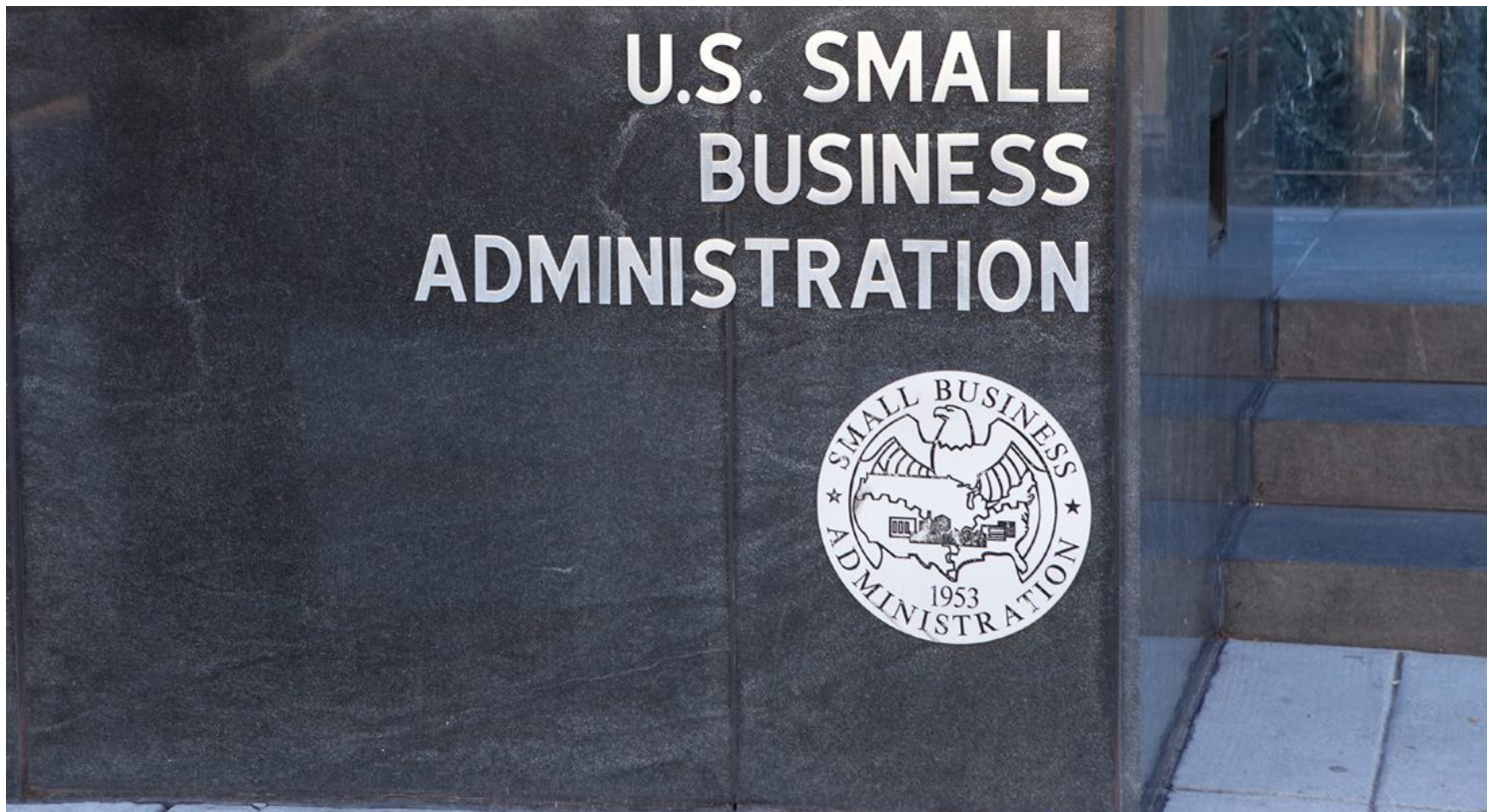


NEWS & INSIGHTS

Borrowers beware: understand CARES Act loan documents before signing

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APRIL 14, 2020



The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

Hand washing, social distancing, the Governor's shut down of non-essential businesses – the free fall resulting from COVID-19 was swift and had everyone's heads spinning, while clever memes crowded social media ("Yes, it is March 98th"). Businesses, and small businesses especially, went from historic highs to wondering if they will exist six months from now. Then came the Coronavirus Aid, Relief, and Economic Security (CARES) Act – the \$2 trillion rescue

package passed by Congress and signed into law by President Trump in record time on March 27. Small businesses are now flooding U.S. Small Business Administration (SBA)-approved lenders' portals and the SBA website to ensure they can access these first-come, first-served loans, including Payroll Protection Program (PPP) loans that are forgiven if funds are used for stated purposes, and Economic Injury Disaster Loans (EIDL) that come with an emergency grant of up to \$10,000 in "free money."

The rush for cash flow

Understandably, businesses are anxious to get through the applications, e-sign their documents and get the money flowing so they can make payroll, rent, utilities, debt service and other business expenses. In this warp speed environment where banks, too, are being asked to interpret and administer an unprecedented number of new loans, the process and documentation vary widely from lender to lender. Why? Perhaps caution for fear of lender liability or to create efficiencies to reduce the onslaught of different loan programs launched by the CARES Act (including PPP, EIDL, and mid-size business loans), lenders are requiring certifications and covenants from borrowers that are not specifically required by the Act or the subsequent guidance on the PPL and EIDL loans issued by the Treasury Department or the SBA.

Title IV of the CARES Act, entitled "Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy," provides assistance to "mid-sized businesses" defined as eligible businesses with between 500 and 10,000 employees. Under Section 4003(c)(3)(D), mid-sized businesses seeking these low interest (no greater than two percent), deferred payment (at least six months) loans must agree, among other things:

- Not to pay dividends while the loan is outstanding
- Not to outsource or off-shore jobs for the term of the loan and two years after completing repayment of the loan
- Not to abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan
- To remain neutral in any union organizing effort for the term of the loan

We are aware of at least one lender who is requiring its borrowers to make these certifications in connection with their PPP loans.

Borrowers beware

The moral of the story is that, in this "fast-forward" environment of seeking quickly evaporating funds, borrowers should make sure to push the "pause" button before signing (or likely, e-signing) the loan documentation to ensure that they are not undertaking unreasonable and unnecessary obligations. After signing, the proceeds must be spent and documented in a manner that preserves the best forgiveness and repayment options.

Saxton & Stump attorneys are working with clients to determine eligibility for the various economic and tax relief

provided by the CARES Act, and to otherwise navigate the regulation and documentation surrounding the loans. We understand the urgency and stress that businesses are experiencing and are here to serve the business community with a highly responsive, but steady hand. We are offering services related to the CARES Act at discount blended rates and flat fees. Should you have questions regarding the CARES Act or how it can best be applied for your business, please contact [Kathy Granbois](#) or [Erik Hume](#).

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