

NEWS & INSIGHTS

President Trump signs \$2 trillion coronavirus relief bill - what it means for businesses

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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.

President Trump signed the [Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#) which provides \$2 trillion in

relief, including large sums of cash to hospitals and broader access to testing for individuals. The 880-page Act includes economic stimulus money ranging from individual rebates and small business loans to increased unemployment support and tax breaks. The U.S. House of Representatives passed the bill on the same day, March 27.

In an effort to keep small businesses afloat during and after the crisis, the CARES Act provides financial support for businesses with fewer than 500 employees, including non-profits and sole proprietorships, in the form of loans, loan forgiveness and tax relief.

Loans

There are specific loans available for small businesses during a “covered period” from February 15, 2020 through June 30, 2020. These loans, called “paycheck protection loans,” are fully guaranteed by the federal government through December 31, 2020 and provides for an 85% guarantee for loans greater than \$150,000 after that date.

- Limited by the LESSER of:
 - The sum of 1) average monthly “payroll costs” for the 1-year period ending on the date the loan was made multiplied by 2.5 and 2) any disaster loan taken out after January 31, 2020 that has been refinanced into a paycheck protection loan, and \$10 million
- Payroll costs are the sum of a series of payments and benefits to employees or independent contractors. These do not include:
 - The compensation to any individual employee in excess of an annual salary of \$100,000
 - Payroll taxes
 - Any compensation of an employee whose principal place of residence is outside the U.S.
 - Any qualified sick leave or family medical leave for which a credit is allowed under the Coronavirus Relief Act

The loans will have a maximum term to maturity of 10 years and the interest rate cannot exceed 4%. Proceeds may be used to pay payroll, mortgages, rent, utilities and any other debt service requirements. Importantly, many standard fees are waived, and no personal guarantee is required by the business owner. There is an additional provision that provides for deferment of repayment of the loans for a period of at least six months, not to exceed a year.

Loan forgiveness of paycheck protection loans

A unique feature of the loans is loan forgiveness on a tax-free basis. The amount forgiven is the sum of the following payments during the 8-week period beginning on the date of the loan:

- Payroll costs
- Mortgage interest
- Rent
- Certain utility payments

To seek forgiveness, a borrower must submit an application to the lender that documents the number of employees and pay rates and cancelled checks showing mortgage, rent and utility payments.

Emergency Government Disaster Loan and Grant

The CARES Act also broadens access to Economic Injury Disaster Loans under Section 7(b)(2) of the [Small Business Act](#) to include not only businesses with fewer than 500 employees, but also ESOP's and sole proprietors. For any loan below \$200,000 made by December 31, 2020, no personal guarantee will be required. A disaster loan can be taken out between January 31, 2020 and the date on which a paycheck protection loan is available for reasons other than paying payroll costs. A loan made under the [SBA's Disaster Loan Program](#) on or after January 31, 2020 may be refinanced as part of a covered loan under this new program as soon as these new loans are made available. In addition, the Act creates a new Emergency Grant to allow a business that has applied for a disaster loan to get an immediate advance of up to \$10,000. The advance can be used for payroll and is not required to be repaid, even if the borrowers request for a 7(b) loan is denied.

Eligibility

The Act provides for guidance to lenders and agents to ensure that processing and disbursement of covered loans prioritizes:

- Small business concerns
- Entities in underserved and rural markets (including veteran communities)
- Small business concerns owned by socially and economically disadvantaged individuals
- Businesses owned by women
- Businesses in operation for less than two years

There is a special eligibility rule for businesses in the hospitality and dining industries. For businesses with more than one physical location, if it employs 500 or fewer employees per location and is assigned to the "accommodation and food services" sector (Sector 72) under the [North American Industry Classification System \(NAICS\)](#), the business is eligible to receive a loan.

There are very few borrower requirements to obtain a loan under the new program. Those requirements include a good-faith certification that:

- The loan is needed to continue operations during the COVID-19 emergency
- Funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments
- The applicant does not have any other application pending under this program for the same purpose
- From February 15, 2020 to December 31, 2020 the applicant has not received duplicate amounts under this program

Tax Provisions

The CARES Act contains business tax provisions in three general categories: direct tax relief to businesses, relief from certain Tax Cuts and Jobs Act of 2017 (TCJA) provisions and technical corrections to the TCJA. These provisions are designed to improve liquidity during the COVID-19 crisis.

The Act contains a new tax credit to incentivize firms to retain their workforce, which is available through the end of the year. This provision gives employers a refundable tax credit equal to 50% of employee compensation (including health insurance) up to \$10,000 per employee. Employers with more than 100 employees are eligible to receive the credit if they have been closed due to the coronavirus. Employers with fewer than 100 employees may receive the credit whether they are closed or not.

The Act allows employers (including the self-employed) to delay payment of the employer portion of the Social Security payroll tax. The current law requires employers to pay a 6.2% rate on covered employee payroll. Under the new law, employers could defer the payment for the remainder of the year and pay back the liability over the next two years.

The treatment of net operation loss (NOL's) under the Act is enhanced to allow firms to carry-back an NOL from 2018, 2019 or 2020 for five years. For example, a firm with an NOL in 2020 could reduce a tax liability as far back as 2015. The Act also eliminates the income limitation on the deduction for losses in 2020.

The CARES Act also allows corporations to accelerate the recovery of past corporate alternative minimum tax (AMT) payments. The corporate AMT was eliminated under the Tax Cuts and Jobs Act (TCJA) and these payments generated a credit against future payments. Lastly, the Act allows firms to deduct interest on loans up to 50% of the firm's taxable income for tax years 2019 and 2020, which expands the TCJA's limitation of 30%.

In the TCJA, Congress intended to speed up the depreciation on "qualified improvement property" (QIP) which is generally defined as any improvement made to the interior portion of a non-residential building any time after the building was placed into service. The depreciable life of QIP was to be reduced from 39 to 15 years, and bonus depreciation available for all assets with a depreciable life of 20 years or less. However, the TCJA did not give QIP a 15-year life, thus taxpayers were stuck depreciating these assets over nearly four decades. The CARES act corrects this by giving QIP its intended 15-year life while making the change retroactive to January 1, 2018. This allows taxpayers to file amended returns and reap the benefits of accelerated depreciation in 2018 and 2019.

Saxton & Stump attorney [Kathy Granbois](#) is available to further discuss the CARES Act and how our [Business and Corporate](#) team can help you determine your options for economic relief.

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