

THE CARES ACT

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- Legislation aimed at providing relief for individuals and businesses that have been negatively impacted by the coronavirus outbreak.
- Passed by the Senate on March 25, 2020
- Passed by the U.S. House of Representatives on March 27, 2020
- Signed by President Trump on March 27, 2020

THE CARES ACT

A. DIVISION A—KEEPING WORKERS PAID AND EMPLOYED, HEALTH CARE SYSTEM ENHANCEMENTS, AND ECONOMIC STABILIZATION

TITLE I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

TITLE II—ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

TITLE III—SUPPORTING AMERICA'S HEALTH CARE SYSTEM IN THE FIGHT AGAINST THE CORONAVIRUS

TITLE IV—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY

TITLE V—CORONAVIRUS RELIEF FUNDS

TITLE VI—MISCELLANEOUS PROVISIONS

B. DIVISION B—EMERGENCY APPROPRIATIONS FOR CORONAVIRUS HEALTH RESPONSE AND AGENCY OPERATIONS

THE PAYCHECK PROTECTION PROGRAM ELIGIBILITY FACTORS

- Covered period: February 15 to June 30, 2020.
- Loan program available to businesses with fewer than 500 employees
- Also available to businesses with NAICS Code 72 with more than 500 employees if not more than 500 employees per “physical location.”
 - i.e. restaurant franchisee with 3,000 employees eligible for loans if individual store locations have fewer than 500 employees.
- “Employee” any individual employed on a FT or PT (or other) basis.

THE PAYCHECK PROTECTION PROGRAM TRADITIONAL SBA AFFILIATION RULES APPLY

- Why do affiliation rules matter? These are the rules by which the SBA determines whether an entity qualifies as a small business for loans (i.e. additional eligibility factors).
- “Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.”
- SBA considers factors such as ownership, management, and contractual relationships, in determining whether affiliation exists.
- These rules can limit an employer’s ability to receive loan under the new Paycheck Protection Program.

THE PAYCHECK PROTECTION PROGRAM WAIVER OF SBA AFFILIATION RULES

Affiliation Rules Waived *may* be waived for eligible loans made between February 15 and June 30. Rules waived for:

- 1) an NAICS business with not more than 500 employees
- 2) a franchise business; and
- 3) businesses that receive financial assistance from a small venture investment company licensed under the SBA

See Affiliation Rules at

<https://www.law.cornell.edu/cfr/text/13/121.103>

PAYCHECK PROTECTION PROGRAM

WHAT CAN LOANS BE USED FOR?

Loans may be used for “Payroll Costs,” defined as:

- Salary, wages, commission or similar compensation
- Cash tips or equivalent
- Payments for vacation, parental, family, medical or sick leave
- Group health care benefits
 - including insurance premiums
- Retirement benefits
- State or local tax assessed on the compensation of employees (Not federal)
- Certain sole proprietor and independent contractor compensation

PAYCHECK PROTECTION PROGRAM ADDITIONAL PERMITTED USAGE

- Payments of interest on any mortgage obligation (but not prepayments)
- Rent, lease, or utility costs
- Interest on any other debts obligations incurred before February 15, 2020

PAYCHECK PROTECTION PROGRAM

WHAT LOANS CANNOT BE USED FOR

- “Payroll Costs” do not include the compensation for any employee in excess of \$100k
- The compensation for any employee whose principal place of residence is outside the US
- Qualified sick leave payments under the EPLSA
- Qualified sick leave payments under the EFMLA

PAYCHECK PROTECTION PROGRAM DETERMINING LOAN AMOUNT

Maximum loan amounts based on formula:

- Average monthly payroll costs from 12-month period preceding the loan date x 2.5; or
- \$10 million

Whichever is *lesser* amount.

Example: if business had an average monthly payroll of \$900,000 over the prior year, it would be eligible for a loan of \$2.25 million (\$900,000 average monthly payroll x 2.5).

PAYCHECK PROTECTION PROGRAM CONTINUED

- Application Deadline is June 30, 2020
- Loans are 100% guaranteed
- Borrowers are not disqualified if available credit from other sources
- No application fees or closing costs
- No collateral or personal guarantees
- Max interest rate is 4%
- Max loan term of 10 years
- First six-months of payments (principal and interest) are deferred

PAYCHECK PROTECTION PROGRAM LOAN FORGIVENESS

Recipient shall be eligible for forgiveness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the forgiveness period:

- (1) Payroll costs as previously defined;
- (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);
- (3) Any payment on any covered rent obligation; and
- (4) Any covered utility payment.

PAYCHECK PROTECTION PROGRAM LOAN FORGIVENESS

The amount of the loan forgiveness will be reduced by:

- The reduction of the workforce during the 8 week period compared with either 1) the average number of employees during the period of February 15 - June 30, 2019, or 2) January 1 – February 29, 2020.
 - For reduction in employees, the borrower can use either comparison time period above.
- The amount of any reduction in total salary or wages of any employee in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
 - Reductions to employees who make more than \$100k do not affect forgiveness analysis.

LOAN FORGIVENESS EXAMPLE

- **EXAMPLE**

- Acme Corp manufactures widgets. It has potential debts of \$250k of payroll costs, \$40k of rent obligations, \$5k of utility obligations and \$5k of interest obligations. Acme begins with a maximum eligible forgiveness amount of \$300k.
- Acme had 25 full-time equivalent employees during the covered period, which is the 8-week period beginning on the date of his loan, which he took out on March 30, 2020.
- Acme divides 25 by 30, which is the average number of full-time equivalent employees during the Choice Period (February 15, 2019 to June 30, 2019). This results in a quotient of 0.833. Multiply 0.833 by \$300k, which equals \$250k.
- Acme's forgiveness amount has been reduced by \$50k because of the 5 employee reduction.

LOAN FORGIVENESS EXAMPLE

- **EXAMPLE**

- Acme pays all of its employees the same average wage and salaries, except that it has decreased John Doe's salary by 50% because it decreased some of his duties.
- John Doe's salary goes from \$40k for the Forgiveness Period to \$20k as measured during the most recent full quarter.
- 50% reduction. Recall that wage reductions above 25% reduce loan forgiveness.
- Excess 25% reduction = \$10k.
- The \$250k loan forgiveness amount is reduced by another \$10k, resulting in a final forgiveness amount of \$240k.

AVOIDANCE OF LOAN FORGIVENESS REDUCTIONS

- **BRINGING BACK EMPLOYEES OR RESTORING WAGES**
 - Any reduction in the amount of loan forgiveness will be completely avoided if the employer re-hires all employees laid off (going back to February 15, 2020), or increases their previously reduced wages, no later than June 30, 2020.
 - These provisions are designed to provide an incentive to employers to not lay off workers (or rehire them) and to not decrease wages and instead utilize the loan amounts to pay payroll and other expenses.

EMERGENCY EIDL GRANTS

- New grant program under the SBA's Office of Disaster Assistance
- Provides quick relief for applications awaiting processing of SBA Economic Injury Disaster Loans ("EIDL").
- Loan applicants can get up to \$10,000 to cover immediate payroll, mortgage, rent, and other specified expenses.
- Grant does not have to be repaid. A business that receives an EIDL can apply for, or refinance its EIDL into, the forgivable loan product.

EMERGENCY EIDL GRANTS

- **May be used for**

- Providing sick leave to employees unable to work due to direct effect of COVID-19
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns
- Meeting increased costs to obtain materials unavailable from original source due to interrupted supply chains
- Making rent or mortgage payments
- Repaying obligations that cannot be met due to revenue loss

EMPLOYEE RETENTION TAX CREDIT

- Tax credit not available to employers that receive the small business “paycheck protection” loans
- Tax credit for 50% of first \$10,000 in qualified wages paid during COVID-19 crisis, March 13, 2020 to end of year
- Available to employers whose:
 - Operations were fully or partially suspended due to COVID-related “shut down” orders, OR
 - Gross receipts declined by more than 50% when compared to the same quarter in previous year

DELAY OF EMPLOYER PAYROLL TAXES

- Allows employers to defer payment of their share of Social Security tax on wages paid beginning on March 27, 2020 and ending on December 31, 2020
- A deferral is also permitted for the equivalent portion of self-employment taxes
- Deferred amounts are payable in two installments, with 50% due on December 31, 2021, and the remainder due on December 31, 2022
- Deferral is not permitted where the employer has had a covered loan forgiven, as previously discussed

BENEFITS/HEALTH CARE ISSUES

- Revises healthcare coverage for virus testing, preventive services, and benefits
- Still requires group health plans and health insurers to cover:
 - Certain state-developed COVID-19 diagnostic testing (in addition to current federally approved diagnostic testing)
 - Diagnostic testing pursuant to developer requested emergency use authorizations
 - Any other test the Secretary determines appropriate in guidance.
- Law deletes specific language about diagnostic testing performed in qualifying clinical labs.

BENEFITS/HEALTH CARE ISSUES

- Secretaries of HHS, Labor, and Treasury to require group health plans and health insurers to cover any “qualifying coronavirus preventive service.”
 - Items, services and immunizations qualifying as preventive or mitigating must be covered “rapidly,” - meaning for immunizations within 15 days of recommendation
- High deductible health plans will not be disqualified for failure to have a deductible for telehealth and other remote care services. There will be a safe harbor exemption for telehealth services provided in plan years beginning on or before December 31, 2021.

THE CARES ACT – INDIVIDUAL BENEFITS

• INDIVIDUAL BENEFITS & TAX REBATES

- Additional unemployment benefits or tax rebates
- Direct financial assistance
- Access to distributions from certain defined contribution plans, such as 401(k) plans, 403(b) plans and profit sharing plans, without penalty
- Eligibility for 401(k) plan and 403(b) plan participant loan relief
- Student loan deferment or mortgage forbearance

UNEMPLOYMENT COMPENSATION BENEFITS

- **Pandemic Unemployment Assistance Program**
 - Expands unemployment assistance through from January 27, 2020 through December 31, 2020
 - Covered individuals not eligible for other unemployment benefits
 - Eligible to receive a weekly amount determined by state law plus an additional \$600 per week until July 31, 2020
 - Maximum entitlement of unemployment benefits expanded from 26 weeks to 39 weeks

UNEMPLOYMENT COMPENSATION BENEFITS

- **Covered individuals** – who provide self-certification that the individual is otherwise able to work and available to work, and is unemployed, partially unemployed, or unable to work because:
 - Diagnosed with COVID-19 or experiencing symptoms and seeking medical diagnosis
 - Member of household diagnosed with COVID-19
 - Care for a member of family or household diagnosed with COVID-19
 - Care for a child or person individual has primary caregiving responsibility because school or another facility that is closed as direct result of COVID-19 public health emergency

UNEMPLOYMENT COMPENSATION BENEFITS

- Unable to reach place of employment because of a quarantine imposed as a direct result of COVID-19 public health emergency
- Unable to reach place of employment because a health care provider advised individual to self-quarantine due to COVID-19 related concerns
- Scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19 public health emergency
- Became breadwinner or major support because the head of household died from COVID-19
- Individual quit as a direct result of COVID-19
- Place of employment closed as a direct result of COVID-19 public health emergency
- Additional criteria established by Secretary of Labor

UNEMPLOYMENT COMPENSATION BENEFITS

- Specifically includes those who traditionally are not eligible to receive unemployment benefits
 - Self-employed
 - Independent contractors
 - Those seeking part-time employment
 - Those with insufficient work history
- **EXCLUDES**
 - Individual who has ability to telework with pay
 - Individual who is receiving paid sick leave or other paid leave benefits

THE CARES ACT – INDIVIDUAL BENEFITS

- **DIRECT FINANCIAL ASSISTANCE TO INDIVIDUALS**

- Tax credit of \$1,200 for individual taxpayers or \$2,400 for joint taxpayers, plus \$500 for each child of the taxpayer
- Not taxable income for the recipients because they are a credit against tax liability
- Tax returns from 2019 will generally be used to calculate these rebates, but tax returns from 2018 will be used to calculate these rebates if the individual has not filed a tax return for 2019
- Those who may be eligible for a larger rebate based on their 2020 income would receive it in the 2020 tax season

DIRECT FINANCIAL ASSISTANCE TO INDIVIDUALS

- Rebates are reduced based on the taxpayer's adjusted gross income
 - Reduced by 5% per dollar of qualified income when the adjusted gross income exceeds \$150,000 for joint taxpayers, \$112,500 for a head of household, and \$75,000 for all other taxpayers
 - Completely phased out when the adjusted gross income exceeds \$198,000 for joint taxpayers with no children, \$146,500 for head-of-household taxpayers with one child, and \$99,000 for single taxpayers

DIRECT FINANCIAL ASSISTANCE TO INDIVIDUALS

- Tap into retirement accounts due to waiver of some early withdrawal penalties for COVID-19 related purposes
 - Waives the 10% early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for COVID-19 related purposes made on or after January 1, 2020
 - Income attributable to such distributions may be subject to tax over three years and the taxpayer may recontribute the funds within three years without regard to that year's cap on contributions
 - Flexibility for loans from certain retirement plans for COVID-19 relief

MID-SIZE BUSINESS LOAN

- The Secretary shall endeavor to seek the implementation of a program or facility described in subsection (b)(4) that provides financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees, with such direct loans being subject to an annualized interest rate that is not higher than 2 percent per annum. For the first 6 months after any such direct loan is made, or for such longer period as the Secretary may determine in his discretion, no principal or interest shall be due and payable. Any eligible borrower applying for a direct loan under this program shall make a good-faith certification that—

MID-SIZE BUSINESS LOAN

- (I) the uncertainty of economic conditions as of the date of the application makes necessary the loan request to support the ongoing operations of the recipient;
- (II) the funds it receives will be used to retain at least 90 percent of the recipient's workforce, at full compensation and benefits, until September 30, 2020;
- (III) the recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than 4 months after the termination date of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, under section 319 of the Public Health Services Act (42 U.S.C. 247d) in response to COVID-19;
- (IV) the recipient is an entity or business that is domiciled in the United States with significant operations and employees located in the United States;
- (V) the recipient is not a debtor in a bankruptcy proceeding;

MID-SIZE BUSINESS LOAN

- (VI) the recipient is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States;
- (VII) the recipient will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security that is listed on a national securities exchange of the recipient or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of this Act;
- (VIII) the recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan;
- (IX) the recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan; and
- (X) that the recipient will remain neutral in any union organizing effort for the term of the loan.