Insights

The CARES Act: Benefits for Small Businesses

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[UPDATED April 17, 2020] The Coronavirus Aid, Relief, and Economic Security Act (the "Act") provides significant economic benefits to small businesses. One change will significantly expand the Section 7(a) loan program to include the Payroll Protection Program ("PPP") administered by the Small Business Administration ("SBA"). Another expands the SBA's Economic Injury Disaster Loan program ("EIDL"). Of the more than $2T for the CARES Act, the PPP portion has been allocated about $350B, and the EIDL portion has been allocated $10B. In addition, $265M has been allocated for grants to resource partners who support entrepreneurial development through small business development centers and women's business centers. Please note that as of April 16, 2020, the funds allocated for the PPP and the EIDL have all been used.

Section 7(a) Loan Changes

The Act expands the ability of businesses, sole proprietors and independent contractors that meet certain size limits to receive Section 7(a) loans and allows for portions of these loans to be forgiven. For these changes, the relevant time period runs from February 15, 2020 until June 30, 2020 ("7(a) Covered Period").

Under the Act, and during the 7(a) Covered Period, any business operational on February 15, 2020 with fewer than 500 employees that has been economically harmed by the uncertainty of the current economic conditions due to COVID-19 and needs additional funds to maintain payroll and make mortgage payments on a mortgage in place as of February 15, 2020, lease payments on a lease in place as of February 15, 2020, and utility payments under arrangements in place as of February 15, 2020 may borrow up to the lesser of (a) $10 million or (b) the business' average monthly payroll costs incurred during the previous year, multiplied by 2.5. For purposes of the Act, payroll costs are defined as salaries, wages, commission, cash tips, payments for vacation, parental, family, medical, or sick leave, insurance premiums, retirement benefits, and state or local payroll taxes paid with respect to US-based employees. Compensation of employees in excess of an annual salary of $100,000 are not permitted to be included in the calculation of payroll costs for determining the amount that can be borrowed under this program. A business may use the loan proceeds for purposes already permitted under the SBA's Business Loan Program and for payroll costs, group healthcare benefits insurance premiums, salaries, commissions, cash tips, payments of interest on mortgage obligations, rent payments, utilities, and interest on any other debt obligations incurred before the 7(a) Covered Period. For information on how self-employment income is calculated please click **here**.

Additionally, during the 7(a) Covered Period, the Act relieves an applicant from demonstrating it sought credit elsewhere prior to filing an application, waives all personal guarantees and collateral requirements, caps interest rates on the loans at 1%, and eliminates loan fees.

Companies are also eligible for loan forgiveness equal to the amount spent on payroll costs, interest on mortgage payments, rent payments, and utility payments for the 8-week period after the loan closing date up to the entire principal of the loan.

The total forgiveness amount will be reduced in proportion to the reduction of employees retained compared to the prior year and any reduction in pay for an employee beyond 25% of his or her prior year compensation. Any employees that were laid off from February 15th until June 30th and then rehired by the business, do not count against the business in determining the reduction in loan forgiveness. The loan forgiveness provisions set forth in the Act work towards achieving a policy objective of employers retaining their employees while stay-at-home and social distancing policies remain in place.

EIDL Changes

The Act expands the parties that are eligible for a disaster loan and allows eligible entities to request an emergency advance (which does not need to be repaid). For these changes, the relevant time period runs from January 31, 2020 until December 31, 2020 ("EIDL Covered Period").

Under the Act, in addition to currently eligible entities, businesses with fewer than 500 employees, sole proprietorships, independent contractors, cooperatives with fewer than 500 employees, ESOPs with fewer than 500 employees, and tribal small business concerns are eligible to apply for a disaster loan up to $2 million with a maximum interest rate of 3.75%. The disaster loan may be used to pay, along with other purposes already authorized under the EIDL, payroll expenses, increases in supply chain costs, debts that cannot be paid due to lost revenue, and sick leave to employees that are unable to work due to COVID-19.

Additionally, during the EIDL Covered Period, the Act waives the requirement to be in business one year prior to the disaster, rules related to personal guarantees on loans of $200,000 or less, and the requirement that the applicant is unable to find credit elsewhere. The Act also allows lenders to approve applicants based solely on credit scores and relieves an applicant from demonstrating it sought credit elsewhere prior to filing an application.

Eligible entities that are applying for a disaster loan may request an emergency advance of up to $10,000 ($1,000 per employee up to ten employees). The applicant can self-certify it is eligible for a disaster loan. The SBA is required to award the emergency advance within "days"[1] of an application. If the applicant does not receive the loan, it does not need to be repay the grant.

These changes will also coordinate with the ongoing EIDL program. Loans contemplated by the Act cannot be used for the same purposes as other EIDL loans the business may have.

Finally, the Act deems all states and their localities to have sufficient economic damage to qualify for economic assistance under the EIDL.

Entrepreneurial Support

The Act also provides funding for support of small business development centers and women's business centers. Grants are available to resource partners or resource partner associations that will help a small business concern adversely impacted by COVID-19. This includes those who have experienced supply chain challenges, staffing challenges, decrease in gross receipts or a closure. The grants are to be used for education, training and providing advice to covered small business concerns.

Krieg DeVault is committed to helping you and your business during these unprecedented times. With your needs in mind, we have established a **COVID-19 Resource Center** to assist you through this process.

If you have any further questions, comments or concerns, please feel free to contact **Robert A. Greising**, **Corben A. Lee** or a member of our **Business, Acquisitions & Securities team**.

[1] While the CARES Act requires that advances be paid in three days, the SBA has changed its stance on delivery of the advances to be within days due to the demand for the program.