

Small Business Assistance Under the CARES Act



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PC

The Coronavirus Aid, Relief, and Economic Security Act, or “CARES Act” was signed into law on March 27, 2020 in response to the Coronavirus (COVID 19) pandemic. The CARES Act provides financial assistance to small businesses impacted by COVID-19. In order to assist our clients in understanding what benefits may be available through this legislation, we have prepared a brief summary of the key features that many of our clients will find helpful.

SBA loan programs:

New “Paycheck Protection Program” authorized through existing SBA 7(a) program – The CARES Act relaxes eligibility and provides favorable terms for loans to assist small businesses that have been affected by COVID-19 and who will use loan funds to retain workers and maintain payroll and other debt obligations. The SBA is providing a 100% guaranty of these loans through December 31, 2020. These PPP loans are available until June 30, 2020. Key features of the PPP include:

- Loan amount equal to 250% of the business’s average monthly payroll in last 12 months. Calculation of average payroll must exclude employee compensation in excess of \$100,000.
- Interest rate of not more than 4% per annum
- SBA pays all borrower and lender loan fees
- No personal guaranty or collateral will be required
- Maximum term of loan is 10 years for any amount not forgiven (see below)
- Payments are deferred for up to 1 year
- No prepayment penalty
- Loan funds may be used for:
 - Payroll Support (including paid sick or medical leave)
 - Employee salaries
 - Mortgage, rent and utility payments
 - Health insurance premiums; and
 - Other existing debt obligations

PPP Loan Forgiveness Feature – Borrowers can receive loan forgiveness equal to the amount spent during the eight-week period after the origination date of the loan on:

- Payroll costs (not to exceed compensation over \$100,000 annually)
- Interest payment on any mortgage incurred before February 15, 2020;
- Rent on any lease in place before February 15, 2020; and
- Utility costs
- The amount eligible for forgiveness will be reduced proportionally by any reduction in employees during the eight-week period compared to certain prior periods and reductions in compensation exceeding 25%.
- To encourage employers to rehire employees already laid off and to discourage employers from making further layoffs, borrowers that re-hire workers before June 30, 2020 will not be penalized for having reduced payroll after February 15, 2020 and the payroll costs of any such employees are eligible for loan forgiveness.

Applying for a loan under Paycheck Protection Program – Any existing SBA lender can handle and process Paycheck Protection Loans. We anticipate that lenders will not be ready to process PPP loans for at least a week if not two. Not all lenders are approved by the SBA. You should contact your bank to see if it is an SBA approved lender.

Existing SBA 7(a) Loans – If you currently have a loan from a bank partially guaranteed by the SBA, you are eligible for payment deferment of 6 months. Contact your lender to discuss deferment.

SBA Economic Impact Disaster Loans (EIDL) – Currently available through the SBA. Loans of up to \$2,000,000 at 3.75% interest charged to for-profit businesses and 2.75% charged to non-profit organizations. The loans are repaid over 30 years. Businesses are not eligible for an SBA guaranteed loan under CARES Act if already have an EIDL loan for the same purpose. However, EIDL Borrowers may refinance that loan into the PPP loan.

- CARES Act provides emergency grant of up to \$10,000 available within 3 days of application for an EIDL.
- The SBA has just attempted to streamline the application process for EIDLs. Go to <https://covid19relief.sba.gov> to start the application process.

Employee Retention Tax Credit

As an alternative to the forgivable Paycheck Protection loans discussed above, employers who suffer a significant loss or had their operations partially or fully suspended due to COVID 19 may be eligible for a fully refundable payroll tax credit equal to 50% of the first \$10,000 in wages paid by the employer during the COVID-19 crisis. For employers with 100 or fewer employees, all wages paid qualify for the credit, whether or not the employee is working. For employers with more than 100 employees, only wages paid to those employees who are not currently working will qualify. The credit is available in any calendar quarter of 2020 where the employer's gross receipts declined by more than 50% as compared to the corresponding calendar quarter of the prior year, and covers wages paid from March 13, 2020 through the end of the year. Importantly, the credit is not available to employers who take advantage of the Paycheck Protection loans described above and does not apply to paid leave provided per tax credits offered under the Families First Coronavirus Response Act ("FFCRA").

Unemployment Insurance

Workers unemployed or unable to work due to COVID-19 after January 27, 2020 are eligible for additional compensation to supplement benefits provided under Oregon's unemployment insurance fund. Workers will typically receive an additional \$600 per week through July 31, 2020. Benefit eligibility is also expanded to cover self-employed individuals.

Retirement Plan Provisions

- **Penalty-Free Distributions.** The CARES Act permits employers to amend eligible retirement plans (including 401(k) and 403(b) plans) to allow plan participants to receive coronavirus-related distributions of up to \$100,000 during 2020 without incurring the 10 percent early distribution penalty tax that normally applies to distributions made prior to age 59 ½. A coronavirus-related distribution is a distribution made to a "qualified individual," which is defined as an individual (or spouse or dependent of an individual) who: (i) is diagnosed with COVID-19; or (ii) has experienced adverse financial consequences as a result of being quarantined, being furloughed or laid off, or having a reduction in work hours due to the virus/disease, closing or reducing hours of a business owned or operated by the individual due to the virus / disease, or is unable to work due to lack of childcare on account of the virus/disease. The plan administrator may rely on an employee's certification that he or she is a qualified individual. Coronavirus-related distributions would need to be made between January 1 and December 31, 2020.

- **Repayment of Coronavirus-Related Distributions.** The CARES Act allows participants to repay coronavirus-related distributions during a three-year repayment period. Participants may repay the amounts back to the plan that made the distribution or to any other eligible retirement plan or IRA. Coronavirus-related distributions that are repaid within the three-year period will be treated as having satisfied the general 60-day rollover requirement, thus avoiding taxation.
- **Income Inclusion Over Three Years.** The CARES Act provides that coronavirus-related distributions will be included in an individual's taxable income ratably over a three-year period, unless the individual elects otherwise. Coronavirus-related distributions will not be treated as eligible rollover distributions, thus the mandatory 20 percent Federal income tax withholding and direct rollover rules will not apply (though they are still eligible for rollover).
- **Temporary Increase in Plan Loan Limits.** The CARES Act increases the maximum amount that a qualified individual (as defined above) may borrow from a qualified retirement plan from \$50,000 to \$100,000 during the first 180 days following enactment. The CARES Act also temporarily allows qualified individuals to borrow up to 100 percent of their vested account balance, rather than the 50 percent limit under current rules. Thus, qualified individuals may now borrow the lesser of \$100,000 or 100 percent of their vested account balance between March 27 and September 23, 2020.
- **Loan Repayments Extended.** The CARES Act provides qualified individuals with a one-year extension to repay a retirement plan loan if the due date for the payment(s) occurs between March 27 and December 31, 2020. Any subsequent repayments, plus applicable interest, will be re-amortized over the extended repayment period.
- **Waiver of 2020 Required Minimum Distributions.** The CARES Act allows individuals who otherwise would have been required to take a minimum distribution in 2020 from their qualified plan or IRA to waive the distribution.
- **Delayed Payment of Minimum Required Contributions.** The CARES Act delays any minimum funding contributions to defined benefit plans that otherwise would be due during calendar year 2020 (including quarterly contributions due in 2020 for the 2019 plan year) until January 1, 2021. The CARES Act also allows plan sponsors to treat a defined benefit plan's adjusted funding target attainment percentage (AFTAP) for the last plan year ending before January 1, 2020 as the AFTAP for 2020.

Health & Welfare Plan Provisions

- **COVID-19 Diagnostic Testing.** The CARES Act requires group health plans and health insurance issuers to cover testing for a diagnosis of COVID-19. No cost-sharing can apply to these tests.
- **COVID-19-Related Preventive Services.** The CARES Act expands the definition of "preventive benefits" under the Affordable Care Act to include items, services, or immunizations that are intended to prevent COVID-19. No cost-sharing can apply to these benefits.
- **Telehealth.** The CARES Act amends the Health Savings Account (HSA) rules to provide that a high-deductible health plan ("HDHP") with an HSA can cover telehealth services prior to an HSA-eligible individual reaching the deductible under the HDHP.
- **Over-the-Counter Products & Medications.** The CARES Act provides that over-the-counter products and medications, including those needed in quarantine and social distancing for the prevention of COVID-19, are now reimbursable through an HSA or flexible spending account without a prescription from a physician.

Given the almost daily changes this pandemic creates for business and non-profit leaders, making decisions remains extremely challenging. As the situation and programs are better defined, the Saalfeld Griggs team of lawyers will provide additional updates and information to you. Sign up to receive our regular communications and check updates on our firm web page dedicated to COVID 19 legal issues at www.sglaw.com.

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