

CARES Act - Quick Help for Small Businesses

This is obviously an unprecedented time in all of our personal and professional lives. The COVID-19 pandemic has forced many businesses, large and small, to make difficult choices that will impact their bottom lines for years to come. No company has been untouched by the mandated closures and shelter-in-place orders enacted by Illinois and other states, and businesses have to make hard decisions quickly about their finances.

On March 27, 2020, the United States government enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act is intended to help businesses survive this difficult time by offering them direct financial assistance – to allow them to continue to pay their employees, vendors and landlords when work isn't coming in during this pandemic.

For small businesses (defined as businesses with less than 500 employees), the bill provides funding for forgivable bridge loans and additional funding for grants and technical assistance. The CARES Act cuts out red tape for borrowers and increases the size of loans available through the U.S. Small Business Administration. These loans are designed to help businesses pay for the increased medical, family, and sick leave they are required to offer employees under the recently enacted Emergency Family and Medical Leave Expansion Act and Emergency Paid Sick Leave Act.

Through the end of 2020, the Act provides for Small Business Administration (SBA) loans, known as "7(a) loans," to businesses, private nonprofits, or public nonprofit organizations with fewer than 500 employees. Borrowers can receive loans equal to the lesser of 2.5 times their monthly combined payroll or \$10 million. The loan contemplates forgiveness of payroll costs, as well as qualified mortgage, rent, and debt payment expenses.

Below is an overview of the CARES Act and the ways we can help ensure that your business has properly applied for and documented the expenses that serve as the bases for the loan.

To receive loan forgiveness, the borrower must submit an application to the lender servicing the loan with appropriate verifying documentation, a certification by an authorized representative and other documentation required by the SBA. Loan forgiveness will not be provided in the absence of such documentation. Lenders must make a decision on

loan forgiveness within 60 days of receiving the borrower's application.

Loans applied to the following expenses are eligible for forgiveness: payroll costs; payments of interest on mortgage obligations incurred before February 15, 2020; payment on rent obligations under a lease in force before February 15, 2020; and utility payments for electricity, gas, water, transportation, telephone, or internet if the service began before February 15, 2020.

Under the CARES Act, payroll costs include the sum of payments of any compensation with respect to employees that is a:

- (i) salary, wage, commission, or similar compensation;
- (ii) payment of cash tip or equivalent;
- (iii) payment for vacation, parental, family, medical, or sick leave;
- (iv) allowance for dismissal or separation;
- (v) payment required for the provisions of group health care benefits, including insurance premiums;
- (vi) payment of any retirement benefit;
- (vii) payment of state or local tax assessed on the compensation of employees; or the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation in an amount not more than \$100,000 in one year, prorated for the covered period.

How to Document Expenses for Loan Forgiveness

Given the number of categories of expenses covered under the CARES Act, until the government provides clarification on necessary documentation, we suggest the following to support a request for loan forgiveness:

Payroll

- Monthly payroll registers "by employee", for the months January 2019 to March 2020
- Report should indicate gross wages, employer taxes, and employee withholdings for benefits (i.e., medical, etc.)
- 2019 annual payroll summary
- Copies of quarterly payroll tax returns for 2019 (2020 won't be ready yet) including all unemployment reports
- Accrued sick/PTO/vacation

- Include any unused accrued amounts by month
- Certified payroll reports
- Union reports indicating employer contribution to the specific union fund (H&W/pension/sick)
- Prevailing wage reports

Employee Benefits for the Period January 2019 to March 2020

- Monthly health and benefit invoices (health/dental)
- Provide separate employer contribution from employee, if any
- Schedule of monthly payments made for health insurance benefits
- Employer contributions, by month, to retirement plans/401K/profit sharing plans
- 2019 year-end plan census

Financial Information

- Financial operating results (profit and loss statements), by month, for the periods January 2019 to March 2020
 - Prepared on both the accrual basis and cash basis method of accounting
- Include lease and lease payments (include all “rent” payments such as base rent, common area maintenance, real estate taxes, and insurance payments made to a landlord)

Forgiveness and Key Points to Know

Borrowers are eligible for loan forgiveness equal to the amount spent during an eight-week period after the origination date of the loan on payroll costs, mortgage interest, rent or utilities. While the loan is in place, employers must maintain the same employment level within their company as they had on March 13, 2020.

The Act does not include forgiveness of compensation for individuals earning in excess of \$100,000. It also limits the

amount of compensation paid to the owner of the company until March 1, 2022, but borrowers that either maintain their employees during this crisis or rehire them will be eligible to have their loans fully forgiven by the federal government. Any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation will result in a reduction in the amount of the loan to be forgiven.

To encourage employers to rehire employees terminated due to the COVID-19 crisis, borrowers that re-hire workers will not be penalized for having a reduced payroll at the beginning of the period. Any loan amounts not forgiven at the end of one year will be carried forward as an ongoing SBA loan with a maximum term of 10 years, at maximum interest rate of 4%.

Process

We anticipate that applicants will apply directly to a To Be Determined government sponsored website (at the time of publication, the website has not been set up). Once approved, your banking institution will make the loan to your business. While your banking institution is the lender, the government will decide eligibility for and the amount of the loan.

Please continue to monitor this page. Swanson, Martin & Bell, LLP will provide continuous updates to this information as the process is clarified. Our business counseling and banking practice groups are available to walk you through your application process and any questions you have regarding the application and the CARES Act.

The attorneys at Swanson, Martin & Bell, LLP are dedicated to helping you, your business and your employees through this very difficult time and hope that you all are staying safe and healthy.

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