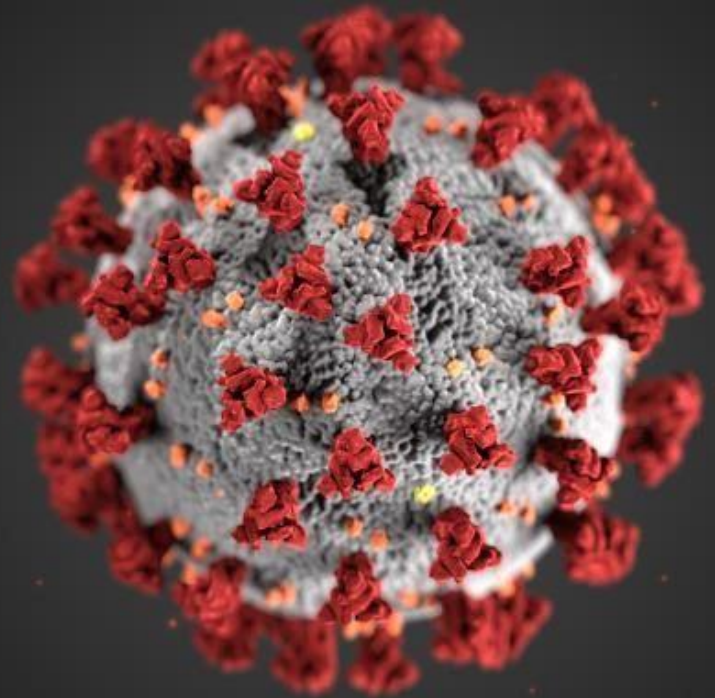


# COVID-19 CARES Act Implications

Act Details, Observations, and Perspectives

March 2020



# COVID-19 - CARES Act Federal stimulus overview

## Paycheck Protection Program (“PPP”)

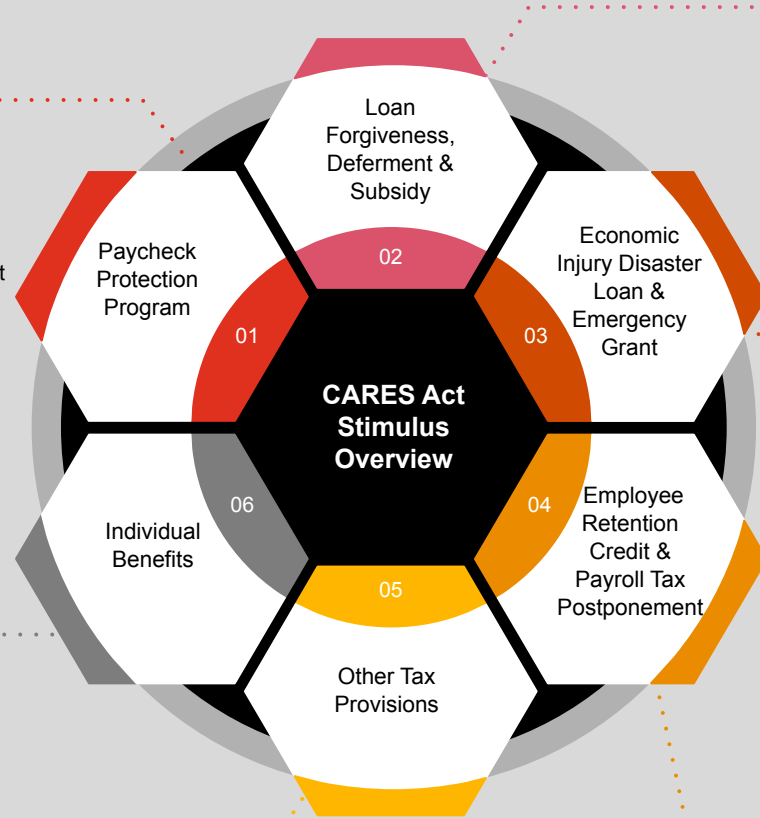
- \$350 billion in accessible loans towards small businesses during the “covered period” (February 15, 2020 through June 30, 2020)
- Maximum Loan Amount: \$10,000,000
- The size of the loans would equal 250 percent of an employer’s average monthly payroll for the last year (period ending on loan date)
- Proceeds may cover payroll costs, mortgage payments, rent, utilities, and any other debt service requirements

## Individual (Employee) Benefits

- Individual Stimulus Payments
- Retirement Fund Distributions Adjustment
- Charitable Contributions Adjustment
- Employer Paid Student Debt Exclusion
- Individual Business Losses

## Other Tax Provisions

- Net Operating Losses Adjustment
- Interest Limitations Adjustment
- Qualified Improvement Property Correction
- Alternative Minimum Tax Credit Acceleration
- Excise Tax Exemption



## Loan Forgiveness, Deferment & Subsidy

- Portions of the paycheck protection loans will be forgiven tax free from payments made by the borrower (limited to payroll costs, mortgage interest, rent, and covered utilities) during the first 8 week period beginning on loan origination date
- PPP loans will have automatic deferment of payment for 1 year with no prepayment penalties
- On existing Section 7(a) SBA loans (*other than payroll protection loans*), principal, interest, and fees will be paid for six months by the SBA

## Economic Injury Disaster Loan & Emergency Grant

- Economic Injury Disaster Loans (“EIDLs”) will provide small businesses with working capital loans of up to \$2,000,000
- Small business are eligible to receive a \$10,000 advance as part of the EIDL, treated as a grant
- The \$10,000 grant will be deducted from the available amount of loan forgiveness above

## Employee Retention Credit & Payroll Tax Postponement

- Not limited to small businesses - employee size does not factor into eligibility
- Those taking out a PPP loan will not be eligible
- One-year only credit against employee “qualified wages” (up to \$10,000 per employee)
- 6.2% share of Social Security tax payments can be postponed for 2020
- Deferred tax payments will be made on December 31, 2021 (50%) and December 31, 2022 (50%)

# CARES - 1) Paycheck Protection Program



## Eligibility



- Businesses and nonprofits with 500 or fewer employees are generally eligible for the loans
  - Exception e.g.: for restaurants, employee # is based on employees at the location, not across a chain
- Loans aren't restricted to companies: Self-employed workers and gig workers also qualify
- Qualified borrowers must have been in business before February 15, 2020 and must have paid employee salaries and payroll taxes or contractors.



## Determining Loan Value



Equal to whichever is less:

- The sum of 250% of the employer's average monthly payroll (limits include a cap of \$100,000 for any individual's compensation) for the last year - period ending at loan origination date AND any previously taken Economic Injury and Disaster Loan (EIDL) that has been refinanced into a paycheck protection loan
- OR \$10 million



## Payroll Cost Conditions



Payroll costs are defined through the sum of the following:

- Wages, commissions, salaries, and cash tips/equivalents
- Payments for vacation/family/medical/sick leave, allowances for dismissal, group health care benefits, retirement benefits, and state/local tax assessed for compensation of employees



## Covered Payments & Loan Criteria



Proceeds from the Paycheck Protection loans may cover the following expenses:

- All payroll costs (as defined above), mortgage payments, rent, utilities, and any other debt service requirements
- Additional Loan Criteria:
- Maximum loan maturity - 10 years; maximum interest rate - 4%; waives fees to borrowers & lenders; no prepayment penalties; no collateral required; government guarantees will be 100% through 12/31/20 then, 85% for loans less than/equal to \$150,000 and 75% for loans greater than \$150,000



## Loan Originators & Processing

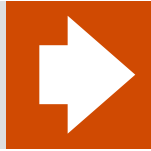


- Loans will be provided through banks, credit unions, and other lenders. Loan applications should be submitted through lenders who are partnered with the SBA.
- The loan process could become a same-day process as early as week of March 30, in which case loans would be signed and disbursed within 24 hours. The "covered" loan period is defined as starting on February 15, 2020 and ending on June 30, 2020, whereby loans will be 100% guaranteed by the SBA through 12/31/20

# CARES - 2) Loan Forgiveness, Deferment, & Subsidy



## Determining Loan Forgiveness



- Paycheck Protection Loans may be forgiven on a tax-free basis; the amount forgiven is determined by the following:
- The sum of payments made for payroll costs (as defined previously), mortgage interest (for mortgages made prior to 2/15/20), rent, and utility payments (for service that began prior to 2/15/20)
  - Duration - over the 8-week period beginning on the date of the Paycheck Protection Loan
  - Note: loan forgiveness amount may not exceed principal loan balance



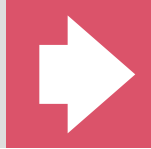
## Maintaining Eligibility



- Proportional reduction to the above loan forgiveness may occur in either of the following situations:
- Reducing workforce during the 8-week covered period when compared to other periods in either 2019 or 2020
  - Reducing the annualized salary or wages paid to any employee (who had earned less than \$100,000) by more than 25% during the covered period
  - Note: this reduction can be avoided if the employer rehires or increases employee pay within the allotted 8-weeks



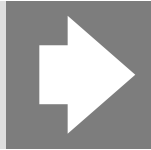
## Actions Needed



- To seek Loan Forgiveness, a borrower must submit to the lender and application that includes documentation verifying:
- Number of employees and their pay rates
  - The previous six weeks of payroll and later verify that they have paid employees for eight weeks after receiving the loan
  - Cancelled checks showing mortgage, rent, or utility payments



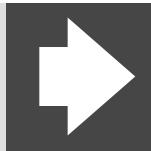
## Loan Deferment



- Participating in Paycheck Protection Program (“PPP”) automatically awards the following:
- Automatic PPP loan payment deferment for 1 year
  - No prepayment penalties



## Loan Subsidy



- The CARES Act also provides benefits to those with loans under Section 7(a) of the Small Business Act:
- For loans OTHER THAN the new Paycheck Protection loans, the SBA will pay six months of principal, interest, and fees on qualifying loans through the form of a government subsidy
  - Loans already on deferment will receive six months payment by the SBA beginning with the first payment after the deferral period

# CARES - 3) Economic Injury Disaster Loan & Grant

Apply here:



## Eligibility



The CARES Act expands access to the Economic Injury Disaster Loans (“EIDLs”) under Section 7(b)(2) of the Small Business Act:

- Includes not only businesses with fewer than 500 employees, but also sole proprietors, cooperatives, and ESOPs



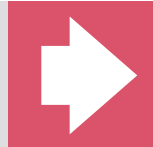
## Considerations



- For any loan made under this program before December 31, 2020, no personal guarantee will be required on loans below \$200,000
- Allows the disaster loan to be taken out during the covered period (between January 31, 2020 and December 31, 2020) for reasons “other than paying payroll costs”
- During this covered period, CARES allows the SBA to approve EIDL loans based solely on applicant’s credit score



## Requirements

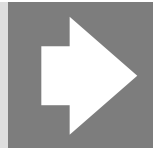


Complete and upload the following applicable [business forms](#):

1. Business Loan Application (Form 5)
2. Home or Sole Proprietor Loan Application (SBA Form 5C)
3. Economic Injury Disaster Loan Supporting Information (Form P-019)
4. Any additional forms requested per the assigned Disaster Assistance loan officer



## Limitations & Refinancing

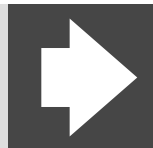


There is a limitation on a borrower to receive assistance from the Paycheck Protection Program (“PPP”) and an EIDL through the Small Business Administration for the same purpose:

- If the borrower has an EIDL loan unrelated to COVID-19, they can apply for a PPP loan with an option to refinance that loan into the PPP loan



## Emergency Grant



The Act creates a new Emergency Grant for EIDLs:

- The advance of up to **\$10,000** does not require repayment (even if the borrower’s request for a the loan is denied) and would be received within three days of application submission
- It can be used to maintain payroll, cover paid sick leave and service other debt obligations

**Note:** The EIDL grant award would be subtracted from the amount forgiven under the Paycheck Protection Program.

# CARES - 4a) Employee Retention Credit



## Eligibility



To qualify for the one-year only credit against employee wages, 1 must apply (*no employee size limitations apply*):

- Operation of the business was fully/partially suspended during any calendar quarter during 2020 due to orders from an appropriate government authority resulting from COVID-19
- The business remained open, but during any quarter of 2020, gross receipts were less than 50% of what they were for the same quarter in 2019



## Maintaining Eligibility



Meeting the above requirements, the business will then be entitled to a credit for each quarter until:

- Recovery is sufficient in that receipts exceed 80% of what they were for the same quarter in the previous year



## Limitations



Small businesses that opt to claim this credit will not be allowed to apply for the new Paycheck Protection Loans and employers that apply for small-business loans would not receive the credit.

- **Note:** The credit is limited to 50% of “qualified wages” with a maximum amount of \$10,000 of compensation per employee (including health benefits paid to the employee)



## Qualified Wages

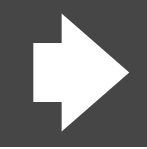


“Qualified Wages” depend on business size:

- If there were more than 100 employees during 2019, the qualified wages are limited ONLY to those wages that were paid by the employer during the quarter for the period of time the business was shut-down
- If less than 100 employees for 2019, qualified wages include all compensation (wages paid during the shut-down or when still in business with diminished gross receipts - mentioned above)



## Other Considerations



The credit is refundable, meaning if it exceeds the business’ liability for payroll taxes any remaining amount would still be paid in full

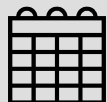
# CARES - 4b) Payroll & Self-Employment Tax Postponement



## Eligibility



As with the Employee Retention Credit, the 6.2% Social Security tax postponement will extend to larger businesses as well (*no employee size limitations apply*)  
Similarly, a self-employed taxpayer can defer 50% of his or her self-employment tax that would be due



## Covered Period



The “covered period” will include the 6.2% social security tax to be paid from the date of CARES enactment through December 31, 2020



## Due Dates

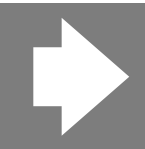


Payments for the social security tax during the covered period will be deferred accordingly:

- 50% to be paid December 31, 2021
- 50% to be paid December 31, 2022



## Other Considerations

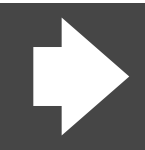


Despite payroll taxes not being paid until the above due dates, eligible parties will still receive an immediate credit against them via the sum of:

- The emergency medical leave credit, sick leave credit, and new employee retention credit



## Limitations



Similarly, the constraints placed on the Employee Retention Credit will apply here:

- Those taking out a Payroll Protection Loan and receiving loan forgiveness will not be eligible to receive the payroll tax deferral

# CARES - 5) Additional Tax Provisions

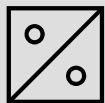


## Net Operating Losses



Reversal of Tax Cuts and Jobs Act (TJCA) revisions:

- Losses from 2018, 2019, and 2020 will be permitted to be carried back for up to five years; as previously, the taxpayer is also permitted to forgo the carryback and instead carry the loss forward
- Losses carried TO 2019 and 2020 will be permitted to offset 100% of taxable income (as opposed to the revised 80%)



## Interest Limitations



Reversal of Tax Cuts and Jobs Act (TJCA) revisions of Section 163(j):

- Increasing the limit of deductible interest expense to 50% (up from 30%) of adjusted taxable income (ATI)
- Given likely reduced revenue, ATI from 2019 can be used to calculate the interest limitation for 2020
- Note: a partnership does get to use the 50% limit of ATI from 2019; rather, any disallowed interest will be passed and suspended at the partner level



## Qualified Improvement Property



Addresses a technical error made in the TJCA for “qualified improvement property” (QIP - generally defined as any improvement made to the interior portion of a nonresidential building after the building was placed in service):

- Note: the provision in TJCA allows immediate depreciation deduction for property with a life of 20 years or less
- Changes QIP depreciable life to 15 years (down from 39)
- Changes to QIP depreciable life are retroactive to January 1, 2018 → taxpayers may file an amended return



## AMT Credits



Modifies TJCA repeal for the credit for prior year minimum tax liability of corporations:

- The provision now accelerates the ability of companies to recover AMT tax credit, permitting companies to claim the refund now for additional cash flow (originally refundable over several years, ending in 2021)



## Excise Tax



Temporary exemption from excise tax for alcohol used to produce hand sanitizer:

- Waiving any federal excise tax on distilled spirits that are used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance by the FDA
- Effective only for calendar year 2020



# CARES - 6) Individual Benefits



## Individual Stimulus Payments



The “2020 recovery rebate for individuals”:

- \$1,200 if single, \$2,400 if married filing jointly PLUS \$500 for each child under the age of 17
- Eligibility & Phase-Outs:
- Determining those receiving payment will be through your 2019 return, 2018 return or social security statement
  - You will lose \$5 of your payment for every \$100 over AGI thresholds (\$75,000/single, \$150,000/married)



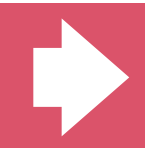
## Retirement Fund Distributions



- Allows the taxpayer to take a “coronavirus-related distribution” of up to \$100,000 in 2020 free from the (10%) penalty
- Coronavirus-related distributions” are confined to an individual: who is diagnosed with COVID-19 or SRS-COV-2 by a test approved by the CDC, whose spouse or dependent is diagnosed with the diseases, or who experiences adverse financial consequences through being quarantined/furloughed/laid-off/reduced work hours
  - Allows the distribution income to be spread over 3 tax years (2020, 2021, 2022) OR
  - Repayment of the distribution before 3 years to avoid income recognition



## Charitable Contributions



The CARES Act allows individuals to make a cash contribution (up to \$300) to qualifying charities as an “above-the-line” deduction in computing adjusted gross income (AGI):

- Only available to taxpayers who take the standard deduction rather than itemize
- For those who itemize, the Act temporarily lifts the limits on charitable giving for 2020 - up to 100% of AGI (up from 60%) with any excess available to be carried forward over the next five years



## Student Loan Exclusions

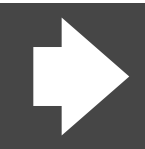


Generally, debt paid on your behalf is taxable income (“Cancellation of Debt” - COD); as part of CARES, employers can pay up to \$5,250 in 2020 of an employee’s student loan obligation tax free

- Modifies Section 127 - which permits an employer to pay up to \$5,250 of an employee’s qualified educational expenses (e.g. getting a Masters) and now combines the limit for both
- Note: to the extent interest is paid tax-free on a student loan, the employee may not deduct that interest



## Individual Business Losses



Temporary and retroactive removal of Section 461(l) of the TJCA:

- Removing the limitation of using business losses to offset other sources of income (TJCA placed the cap at \$250,000/single and \$500,000/married)
- Retroactive to January 1, 2018 → Taxpayers originally limited may now file amended returns
- Note: For 2021 and beyond, wages will NOT be considered business income

# Thank you

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