

CARES Act Provides Additional Relief for Businesses

On Friday, March 27, 2020, Congress passed and President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide emergency assistance for individuals, families and businesses affected by the 2020 coronavirus pandemic.

Among numerous other provisions, the Act offers significant relief to small business, including by: (i) enhancing the Small Business Administration's (SBA) existing Section 7(a) loan program; (ii) expanding the availability of the SBA's Economic Injury Disaster Loans; and (iii) establishing the funding and basic framework for additional lending programs to follow.

I. Enhanced 7(a) Lending Program

Title I of the Act expands – and loosens the restrictions under – the SBA's existing lending program under Section 7(a) of the Small Business Act. The Act allows the SBA, for the period from February 15, 2020 through June 30, 2020, to provide loans of up to \$10 million that are fully federally-backed to qualifying businesses to help pay certain expenses, including payroll support, employee salaries, insurance premiums and debt obligations (the Enhanced 7(a) Lending Program). The Enhanced 7(a) Lending Program is separate from Economic Injury Disaster Loans (EIDLs) under Section 7(b) of the Small Business Act, which is addressed below; however, EIDLs may be refinanced as part of loans under the Enhanced 7(a) Lending Program (Enhanced 7(a) Loans).

General Terms

Enhanced 7(a) Loans may be made directly by the SBA or through authorized private lenders via SBA guarantees. Those private lenders currently authorized to make loans under the SBA's existing loan programs will automatically be eligible to make Enhanced 7(a) Loans.

Enhanced 7(a) Loans will not require collateral or personal guarantees. Interest rates for such loans will not exceed 4 percent.

Eligible businesses may receive Enhanced 7(a) Loan funds up to the lesser of:

- 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers the average monthly payroll costs for the 12 weeks beginning February 15, 2019, or from March 1, 2019 to

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June 30, 2019), plus the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020, and the date on which such loan may be refinanced as part of this Enhanced 7(a) Lending Program;

- Upon request, for businesses that were not in existence during the period from February 15, 2019 to June 30, 2019, 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020, plus the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this Enhanced 7(a) Lending Program; or
- \$10 million.

There are very few borrower requirements for Enhanced 7(a) Loans. For example, unlike EIDLs available prior to the Act, there is no requirement that the applicant has used all reasonably available funds of the business. Rather, the applicant must make a good-faith certification that:

- The loan is needed to continue operations during the COVID-19 emergency;
- Funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments;
- The applicant does not have any other application pending under the program for the same purpose; and
- From February 15, 2020 to December 31, 2020, the applicant has not received duplicative amounts under the SBA's program.

The Act directs the SBA to give preference to small business concerns, entities in underserved and rural markets (including veteran communities), small business concerns owned by socially and economically disadvantaged individuals, women and businesses in operation for less than two years.

Eligible Businesses and Allowed Uses

Businesses that qualify as a "small business concern" under the SBA's existing Section 7(a) Lending Program are eligible for an Enhanced 7(a) Loan. In addition, businesses may apply for Enhanced 7(a) Loans if they (i) were operating and had employees or independent contractors on February 15, 2020; and (ii) employ not more than 500 employees (including part-time employees) or, if greater, the size



standard in number of employees established by the SBA in the applicable industry. For businesses in the hospitality or dining industries assigned to sector 72 (accommodation and food services) of the North American Industry Classification System (NAICS), the 500 employee requirement is measured on a per-location basis.

For purposes of determining eligibility under the foregoing requirements, a business must include the employees of its affiliates. Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management or other relationships or interactions between the parties. The SBA considers the totality of the circumstances when determining whether businesses are affiliates.

However, for businesses in sector 72 under the NAICS with 500 or fewer employees, franchise businesses with SBA franchisor identifier codes or any business that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act, employees of affiliates do not need to be counted.

The permissible uses of Enhanced 7(a) Loans include:

- Those uses already allowed under the SBA's Business Loan Program;
- Payroll costs (including compensation to employees, such as salary, wage, commissions, paid leave, severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) up to \$100,000 per year, prorated for the covered period;
- Group health care benefits during periods of paid sick, medical or family leave, and insurance premiums;
- Payments of interest on mortgage obligations;
- Rent/lease agreement payments;
- Utilities; and
- Interest on any other debt obligations incurred before the covered period.

Loan Deferral and Forgiveness

The Act provides that any business that was operating on February 15, 2020, and that has a pending or approved loan application for an Enhanced 7(a) Loan on or after today's date, is presumed to qualify for complete payment deferment relief for between six months and one year. Lenders are required to provide such relief during the covered period, and if secondary market investors decline to approve a lender's deferral request, the SBA must purchase the loan. The SBA is expected to provide guidance to lenders on this process within 30 days.

The Act further contains broad loan forgiveness provisions. Specifically, indebtedness is forgiven in an amount (not to exceed the principal amount of the loan) equal to the costs incurred and payments made during the covered period for payroll, interest payments on mortgages, rent and utilities. However, forgiveness amounts will be reduced for any reduction in number of or wages paid to employees. For loan recipients that have laid off workers between February 15, 2020 and April 1, 2020, such employees may be re-hired prior to June 30, 2020, without counting toward the reduction in loan forgiveness. The SBA is expected to provide guidance on the forgiveness provisions within 30 days. Amounts forgiven are not included in taxable income as "cancellation of indebtedness income".

II. Expanded Availability of Economic Injury Disaster Loans

The Act temporarily modifies the SBA's EIDL loan program until December 31, 2020 (the EIDL Covered Period), by expanding the list of businesses eligible for such loans and allowing the SBA to provide grants of up to \$10,000 to applicants for EIDL loans within three days of application submission. These grants are not required to be repaid, even if the application for an EIDL loan is denied. These grants may be used for providing sick leave, maintaining payroll, addressing increased material costs, making rent or mortgage payments, or repaying obligations that cannot be met due to losses of revenue.

During the EIDL Covered Period all of the following are eligible for EIDL loans relating to COVID-19:

- Businesses, cooperatives, ESOPs or tribal small businesses with 500 or fewer employees.
- Any individual who operates as a sole proprietorship (with or without employees) or as an independent contractor.

- Private nonprofit organizations (501(c) entities) and small agricultural cooperatives.
- Small business concerns (The SBA's definition of "small business concern" is based on annual receipts or number of employees and varies by industry—use this [SBA tool](#) for determining the applicable standard for your business).

During the EIDL Covered Period, the SBA will have a more relaxed application process. During the EIDL Covered Period, applicants for EIDL loans will not need to show that they are unable to obtain credit elsewhere. The SBA may also approve applications based solely on credit scores or alternative appropriate methods to determine an applicant's ability to repay.

The SBA may provide additional clarification on when they will use credit scores or other methods to make EIDL decisions. The SBA is required to issue additional regulations relating to the Enhanced 7(a) Loan Program and changes to EIDLs within 15 days after the enactment of the Act.

III. Additional Lending Programs

Title IV of the Act further allocates \$454 billion for the purpose of allowing loans and loan guarantees to programs or facilities yet to be established.

The Act does not provide details on application procedures or minimum requirements, but requires the Secretary of the Treasury to implement a program to provide financing to lenders that make direct loans to eligible businesses with between 500 and 10,000 employees. Interest rates under such direct loans may not exceed 2 percent, with no principal or interest being due for six months. Applicants for such loans must make a good-faith certification as to the following:

- 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;
- 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;
- 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 four 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;

- The recipient is an entity or business that is domiciled in the United States with significant operations and employees located in the United States;
- The recipient is not a debtor in a bankruptcy proceeding;
- 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;
- 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 date of the Act;
- The recipient will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan;
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan; and
- The recipient will remain neutral in any union organizing effort for the term of the loan.

As of the time of this posting, no additional guidance has been provided by the Treasury.

The Act also provides that the Federal Reserve shall be free to establish a Main Street Lending Program or similar program to support small and mid-size businesses, but does not provide details on application procedures or minimum requirement. As of the time of this posting, no additional guidance has been provided by the Federal Reserve. We will continue to monitor the lending program and will provide additional updates as they become available.

If you have questions regarding how the CARES Act impacts your business or about the CARES Act's various business assistance programs, please contact your Reinhart Attorney.

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