



CARES Act Summary

For Individuals and Businesses With Less Than 500 Employees

Updated: March 28, 2020

Written by:

Sara Shikhman, Esq.

Managing Partner

Lengea

Contributing Authors:

Table of Contents

What's the CARES Act	4
CARES Act Summary	4
How the \$2 Trillion Breaks Down	4
For Individuals	6
Cash Payment of \$1200 Per Adult, \$500 Per Child	6
Use of Retirement Funds for Coronavirus Costs	7
Voluntary Distributions	7
Waiver of Required Minimum Distributions	8
Student Loans	8
Student Loan Deferment	8
Students Who Drop Out	8
Mortgages	9
Mortgage Forbearance	9
What's a Federally-Backed Mortgage?	9
How Do I Check If My Mortgage is Federally Backed?	9
If Your Mortgage Isn't Federally Backed	9
Foreclosures	10
Evictions	10
Credit Bureau Reporting During Forbearance	10
Extra Unemployment Benefits	11
Who's Covered?	11
For How Long?	11
How Much Are the Benefits?	11
When Do Benefits Begin?	11
How To Apply	11
Gig Workers, Part-Time Workers, Self-Employed People, Freelancers and Independent Contractors	12
If You Or a Family Member Has Coronavirus	12
If You've Been Advised To Quarantine or Stay Home	12
If Your Child's School/Daycare Shut Down	13
If You Don't Have A Sufficient Work History	13
Who's Not Covered	13
If Your Unemployment Recently Ran Out	13
Tax Returns	13
Extra FMLA Benefits	13

Payments for Covid-19 Testing and Treatment	14
Delay of Payment of Payroll Taxes for Self-Employed Individuals	14
For Small Businesses	15
Small Business Paycheck Protection Loans (7(a))	15
Who's Eligible?	15
Is The Less Than 500 Employees per Business Location?	15
What's the Loan Amount?	16
What's the Covered Period of the Loans?	16
What Can The PPL Loans Be Used For?	17
What Is The Interest Rate and The Term of the Loans?	17
When Can Small Businesses Begin To Apply For These Loans?	17
Links to Apply	17
The Biggest SBA Lenders	17
The table below displays the 100 most active SBA 7(a) lenders in the United States by lending volume through December 31, 2019.	17
Doctors, Medical Spas, And Other Professionals	20
Loan Forgiveness of Paycheck Protection Loans	20
Economic Injury Disaster Loans (7(b))	22
No Personal Guarantee for Loans Below \$200,000	22
How is the EIDL amount calculated?	22
Emergency \$10,000 Grant	22
Can a Business Apply for Both an EIDL and a PPL?	22
Can One Person Apply for Two PPLs?	22
How To Look Up Your Business' NAICS Code	23
Relief For Existing Loan Payments	23
Employee Retention Payroll Tax Credit	23
Employer Payroll Tax Delay	24
Increase of Interest Expense Deduction Limitation	26
Employers Who Pay Employees' Student Loans	26
Changes to AMT	26
Other Interesting Provisions In the CARES Act	27
Notes	27

What's the CARES Act

CARES Act Summary

The CARES Act (“the Act”) is a \$2 trillion 883-page new relief law that provides money to individuals and businesses in the form of checks, grants, tax breaks, loans, forbearance of payments and other economic measures.

The goal of the Act is to stimulate the US economy and help those individuals and businesses who are struggling as a result of the COVID-19 emergency. It got signed into law by President Trump on March 27, 2020.

The Act includes the following:

\$300 billion in **direct cash payments** to Americans earning \$0 to \$99,000 per year.

\$350 billion in **job retention loans for small businesses**, with loan forgiveness for small businesses that retain their workers.

\$260 billion in **expanded unemployment benefits**, raising the weekly benefit by \$600 and expanding the coverage to 4 months.

The full text of the CARES Act is at the link below.

<https://www.congress.gov/bill/116th-congress/senate-bill/3548/text>

The 3 main goals of this guide are to :

1. Summarize the key provisions of the Act and how they apply to individuals and businesses with less than 500 employees;
2. Provide actionable advice on how people and business could take advantage of the money and the programs created by the Act; and
3. Make the guide easy to digest for non-lawyers, but comprehensive enough for those looking for the details. This is why I've included the sections of the Act that correspond to each section in the guide.

How the \$2 Trillion Breaks Down

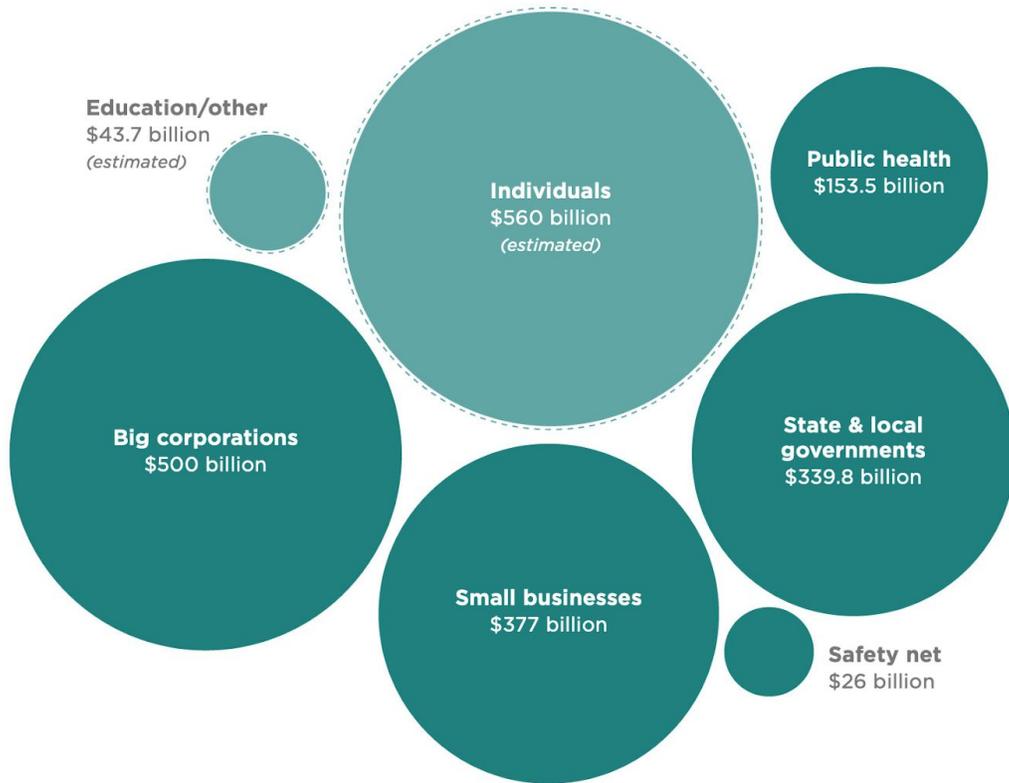
The chart below illustrates how the \$2 trillion in the Act breaks down.

This guide covers how the Act impacts individuals and small businesses.

This guide will not cover how the Act impacts big businesses, non-profits, public health, education, state and local governments or the military

How The \$2 Trillion Breaks Down

The CARES Act provides relief to several groups impacted by the coronavirus pandemic.



Source: Estimates for third relief bill based on bill text, committee and administration numbers.
Credit: Audrey Carlsen/NPR

For Individuals

Cash Payment of \$1200 Per Adult, \$500 Per Child

Law: CARES Act Section 6428

Once the IRS has either your 2019 return, 2018 return, or Social Security Benefit Statement, it will send you a check for \$1,200 (if single/\$2,400 if married filing jointly) plus \$500 for each child in the household under the age of 17, as long as you make \$75,000 or less. The payment is not limited to your tax liability and is not dependent on you having earned any minimum income.

Practical tip: Even if you had 0 income because you are retired, are a full time student, disabled, etc. you are still eligible to receive the \$1200 check from the IRS.

The IRS will look at your 2019 tax return, or 2018 return if you haven't yet filed for 2019. If you haven't filed a return for either year, the IRS will determine whether you are eligible based on your Form SSA-1099, the Social Security Benefit Statement ("SSB"). You don't need to send in any additional paperwork—the checks will be sent automatically to you by the IRS.

Those making more than \$75,000 will be phased out of the program because the payment gets smaller once your adjusted gross income ("AGI" — total income minus some small deductions) exceeds \$75,000 if single, \$150,000 if married. If you are single with no kids, you will not get any payment if your AGI exceeds \$99,000.

You can find your AGI on Line 8b of the 2019 1040 federal tax return, or line 7 of your 2018 1040 federal tax return.

*Example 1: If you are married with no kids and are due a payment of \$2,400, you are not eligible if your AGI exceeds \$198,000 (($\$198,000 - \$150,000$)*5% = \$2,400).*

Example 2: If you are married with two children and are eligible for the maximum payment of \$3,400, you won't lose all of your payment until your and your spouse's AGI exceeds \$218,000.

The payments will be made between now and December 31, 2020. They will be paid electronically if you have provided direct deposit information to the IRS when filing your tax returns.

Practical tip: If your 2018 income is above \$75,000 but your 2019 income is lower than your 2018 income and you haven't yet filed your tax return go ahead and file, this way you will become eligible for this check now.

Use of Retirement Funds for Coronavirus Costs

Voluntary Distributions

The Act allows a taxpayer to take a “coronavirus-related distribution” of up to \$100,000 in the year 2020, free from penalty from a qualified retirement plan before age 59 ½, as long as the taxpayer pays back the distribution within 3 years.

A “coronavirus-related distribution” is a distribution made during 2020:

- To an individual who is diagnosed with COVID-19 by a test approved by the CDC, or
- whose spouse or dependent is diagnosed, or
- who experiences adverse financial consequences as a result of being quarantined, furloughed, or laid off or having work hours reduced, or being unable to work due to lack of child care.

In addition, the amount an individual may borrow from his or her retirement plan is increased from \$50,000 to \$100,000 for the 180-day period beginning after the enactment of the Act (March 27, 2020).

Practical tip: It's usually a terrible idea to take out money early from your retirement fund, so think of doing this only as a last resort.

Plus, individuals with loans outstanding from their plan with a repayment due from the date of enactment of the Cares Act (March 27, 2020) through Dec. 31, 2020 can delay their loan repayments for up to one year.

Waiver of Required Minimum Distributions

Those required to withdraw a required minimum distribution (“RMD”) from their retirement plan should be aware that the Act temporarily waives this requirement for 2020.

Typically, you have to take your first RMD by April 1 of the year you turn 70½. Subsequently, you have to take RMDs by the end of each year, or pay a penalty of 50% of the RMD amount.

Because RMDs are calculated based off account balances as of the end of the prior year, the ability to defer them could help millions of retirees from having to withdraw them at a time when their stock portfolios are down sharply from near-record highs.

Student Loans

Student Loan Deferment

All federally-owed student loan and student loan interest payments are deferred through September 30, 2020 without penalty to the borrower.

Practical Tip: To check if your student loan is federally owned, contact your student loan lender using their online secure message center, since wait times on phone inquiries are currently extraordinarily long. This way you get an answer in writing and don't have to wait on hold. To request deferment of your student loan contact your lender via their online message center.

Students Who Drop Out

Students who dropout of school as a result of COVID-19 will not have that time away from school deducted from their lifetime limits on subsidized loan and Pell grant eligibility. Those students will also not be asked to pay back any grants or other aid they've already received.

Mortgages

Mortgage Forbearance

If a mortgage is Federally Backed, a borrower can request a forbearance with no fees, penalties or additional interest for 180 days because of financial hardship. After this, the borrower can ask for an additional 180- day forbearance.

This would mean 360 days of no mortgage payments. This is available regardless of the borrower's delinquency status, income, etc. No proof of financial hardship has to be provided. Financial hardship = inability to meet basic living expenses. No fees, interest (beyond the normal interest due), or penalties may be imposed on the borrower for this forbearance.

What's a Federally-Backed Mortgage?

Technically, not all mortgages are federally backed. Federally backed mortgages are those underwritten to VA, FHA, Fannie Mae, Freddie Mac or USDA guidelines. They're called government-backed because there is a level of guarantee to the lender in case of default. Conventional mortgages have no such guarantee. Conventional mortgages fall into one of two categories: conforming and nonconforming loans.

How Do I Check If My Mortgage is Federally Backed?

The Long Way To Check: contact your bank

The Short Way To Check:

check here: <https://www3.freddiemac.com/loanlookup/>

and here: <https://www.knowyouroptions.com/loanlookup>

***Practical Tip: Sample Message To Send To Your Mortgage Lender:
"Because of financial hardship due to the Covid pandemic, I am
requesting a 180-day forbearance of my mortgage." Since wait times
are currently very long, the fastest way to get this message to your
bank is to submit it via their online contact center.***

If Your Mortgage Isn't Federally Backed

If your mortgage isn't federally backed, you can still likely get some mortgage forbearance from your lender. You can go ahead and send them the message above and have them reply with their options.

Foreclosures

Unless the property is abandoned or vacant, the servicer of a federally backed mortgage loan may not start a foreclosure or proceed on a foreclosure between March 18, 2020 and May 18, 2020 (60 days).

Evictions

Tenants of borrowers who got a forbearance cannot be evicted. A multifamily borrower that receives a forbearance under the Act may not, for the duration of the forbearance, evict or initiate the eviction of a tenant for nonpayment of rent or other fees, or charge any late fees or penalties for late payment of rent to its tenants.

In addition, for 120 days from March 27, 2019 residential landlords cannot recover rental units or charge fees or penalties for non-payment of rent if the landlordage is insured, guaranteed or assisted in any way by Housing and Urban Development, Fannie Mae, Freddie Mac, or the rural housing voucher program of the Violence Against Women Act.

Practical Tip: If your landlord is trying to evict you or charge you fees, try to find out if your landlord got a forbearance on their loan from the government. Step 1 would be to see if their loan is federally backed, using the instructions in this guide.

Credit Bureau Reporting During Forbearance

Mortgage Co's cannot report missed mortgage payments to credit bureaus as missed payments.

All consumer credit transactions have to be reported as current during a time of mortgage forbearance, unless they were delinquent before the forbearance period started.

Practical Tip: Every person is eligible to receive a free credit report from each of the 3 major credit reporting agencies once a year. Use this link to do so: <https://www.annualcreditreport.com/index.action>

Extra Unemployment Benefits

The Act allocates \$250 billion in unemployment benefits to a wide variety of individuals who lost their jobs.

Who's Covered?

Those who are unemployed, including unemployed self-employed people, part-time workers, gig-workers, freelancers, and contractors, as long as the unemployment is connected to the COVID-19 emergency in some way.

For How Long?

Many states already provide 26 weeks of unemployment benefits, but the Act will provide all eligible workers with an additional 13 weeks. Those unemployed in states with 26 weeks would therefore be eligible for a total of 39 weeks of benefits. The total amount cannot exceed 39 weeks, but it may be shorter in certain states. The extra \$600 payment would last up to four months, covering weeks of unemployment ending July 31, 2020.

How Much Are the Benefits?

Eligible workers would get an extra \$600 per week on top of their state unemployment benefit. So if you were making \$2000/week prior to your unemployment and you're in New York, you'd get the maximum NY unemployment benefit of \$504 a week plus an additional \$600 of federal pandemic unemployment compensation per week.

When Do Benefits Begin?

States have been incentivized to waive the one usual one-week unemployment waiting period.

How To Apply

Apply via your state's unemployment website. This is the same place you would apply for regular unemployment benefits.

Practical Tip: Do not wait to apply and try to apply online and during off-peak hours, as many state unemployment websites are currently crashing.

Gig Workers, Part-Time Workers, Self-Employed People, Freelancers and Independent Contractors

Gig workers, part-time workers, self-employed people, freelancers and independent contractors affected by the coronavirus pandemic are now eligible for unemployment. You don't have to be physically ill from COVID-19 to get unemployment. Plus, self-employed workers would also be eligible for the additional \$600 weekly benefit provided by the federal government. Part-time workers would be eligible for benefits, but the benefit amount and how long they would last depend on your state. These workers would also be eligible for the additional \$600 weekly benefit.

If You Or a Family Member Has Coronavirus

If you've received a diagnosis, are experiencing symptoms or are seeking a diagnosis — and you're unemployed, are partly unemployed or cannot work as a result — you would be covered. This also applies if you must care for a member of your family or household who has received a diagnosis.

Practical Tip: You may also be eligible for paid FMLA in this case. Check to see if in your case the FMLA or the unemployment benefits are higher and if FMLA is higher, exhaust the FMLA benefits first.

However, if you quit your job yourself as a result of COVID-19 because of the fear that continuing to work puts you at risk of contracting coronavirus, and none of the other situations below applies, you would NOT be covered.

If the breadwinner of your household has died as a result of coronavirus and you're not working, you could get unemployment.

If You've Been Advised To Quarantine or Stay Home

People who must self-quarantine would be covered. The legislation also says that individuals who are unable to get to work because of a quarantine or a stay-at-home order imposed as a result of the outbreak would also be eligible.

Practical Tip: You may also be eligible for paid FMLA in this case. Check to see if in your case the FMLA or the unemployment benefits are higher and if FMLA is higher, exhaust the FMLA benefits first.

If Your Child's School/Daycare Shut Down

If you rely on a school, day care or another facility to care for a child, elderly parent or another household member so that you can work — and that facility has been shut down because of coronavirus — you would be eligible.

Practical Tip: You may also be eligible for paid FMLA in this case. Check to see if in your case the FMLA or the unemployment benefits are higher and if FMLA is higher, exhaust the FMLA benefits first.

If You Don't Have A Sufficient Work History

You would be covered if you were immediately laid off from a new job and did not have a sufficient work history to qualify for benefits under normal circumstances.

Who's Not Covered

Workers who are able to work from home and are still working, and those receiving paid sick leave or paid family leave would not be covered. New entrants to the workforce who cannot find jobs would also be ineligible.

If Your Unemployment Recently Ran Out

If you've exhausted your benefits, eligible workers could generally reapply. However, how much money you would receive and for how long would depend on the state where you worked. Everyone would get at least another 13 weeks, along with the extra \$600 payment.

Tax Returns

Law: CARES Act Section 2102; IRS Notice 2020-18

The filing deadline for tax returns has been extended to July 15, 2020. The IRS has also announced that it is going to pause collection activity during this emergency period. But, in the Act the IRS is getting an additional \$500 to increase operations and enforcement during the extended filing season.

Extra FMLA Benefits

Law: Emergency Family and Medical Leave Expansion Act

The below applies only to businesses with fewer than 500 employees.

Employers will now be required to provide employees with up to 10 weeks of paid family medical leave ("FMLA") if the employee is caring for children who's schools have closed due to COVID-19 and the employee cannot work remotely while caring for children.

Workers that were laid off after March 1, 2020, but then rehired are eligible for paid FMLA leave immediately, instead of needing to be an employee for 30 days.

Paid sick leave is capped at \$511 per day and \$5,110 total per employee who's sick. Paid sick leave is capped at \$200/day and \$2,000 total for sick leave for employees who take care of a family member in quarantine or a child who's school or day care has closed.

Practical Tip: If your business has fewer than 50 employees, you can apply for an exemption from the above from the Secretary of Labor if this would jeopardize the viability of your business.

Payments for Covid-19 Testing and Treatment

The Act requires all private insurance plans to cover COVID-19 treatments and vaccines, and to make all coronavirus tests free.

Delay of Payment of Payroll Taxes for Self-Employed Individuals

Law: CARES Act Section 2202

Self-employed individuals can delay the payment of their payroll taxes until 2021 and 2022. The payroll taxes that are allowed to be delayed to 2021 and 2022 are the 6.2% employer share of Social Security Taxes, not the employer share of Medicare Taxes.

The taxes would be payable over the next 2 years with half paid by Dec. 31, 2020 and half paid by Dec 31, 2021.

This payment delay is available to all self-employed people, regardless of income, BUT it is not available to those self-employed people who had a loan forgiven under the Act (see below for how and which loans can be forgiven).

For Small Businesses

Small businesses can apply for two main types of loans under the Act, Paycheck Protection Loans and Economic Injury Disaster Loans.

Small Business Paycheck Protection Loans (7(a))

Law: Section 1102

Companies with 500 or less employees that maintain their payroll during COVID-19 can receive up to 8 weeks of cash-flow assistance, in the form of a loan that doesn't have to be paid back and does not have to be personally guaranteed. It is also not taxed even though technically it can be considered a gift.

Companies can get a loan as long as they were operating on February 15, 2020, even without a personal guarantee or collateral.

Practical Tip: This helps workers stay employed even when a business may not have the revenue coming in to pay for payroll. But, this is just for 8 weeks, so a business needs to calculate how much runway this 8 week "gift" would provide and whether it would make sense to take advantage of this program. In addition, since the laid off workers are getting an additional \$600 in unemployment, for some workers it may be better to stay on unemployment while the economic situation re-stabilizes.

Who's Eligible?

- Businesses with fewer than 500 employees;
- Sole proprietors;
- Independent contractors;
- Self-employed individuals; and

- Nonprofits

Are eligible for paycheck protection loans (“PPLs”). PPLs are guaranteed by the federal government through December 31, 2020.

Is The Less Than 500 Employees per Business Location?

For businesses in the accomodation and food services sector, yes. For other business types, generally no, all employees, including part time and seasonal employee numbers will be aggregated.

What’s the Loan Amount?

The LESSER OF:

The sum of (1) (a) average monthly “payroll costs” for the 1 year period ending on the date the loan was made multiplied by 2.5, and (b) any disaster loan taken out after January 31, 2020 that has been refinanced into a paycheck protection loan, and (2) \$10 million.

Payroll costs ARE:

Wages, commissions, or salaries to an employee or independent contractor; cash tips or equivalent; vacation; parental, family, medical or sick leave; allowance for dismissal or separation; payment for group health care benefits, including premiums; payment of any retirement benefits; and payment of state or local tax assessed on the compensation of employees.

Payroll costs ARE NOT:

Compensation of any individual employee in excess of \$100,000/year; payroll taxes; any compensation of an employee whose principal place of residence is outside the U.S.; or any qualified sick leave or family medical leave for which a credit is allowed under the new law.

What’s the Covered Period of the Loans?

The “covered period” is your businesses’ anticipated expenses Feb. 15, 2020 through June 30, 2020.

There is almost no underwriting criteria for these loans. They will be relatively easy to obtain, but will take time to go into effect since so many businesses will be applying for these loans and there is currently no process for them yet.

*Example: Sara's Medical Spa applied for a PPL on April 15, 2020. The business had \$500,000 in payroll costs for the period April 15, 2019 through April 15, 2020, for a monthly average of \$41,666. Sara's Medical Spa is entitled to a loan equal to the LESSER OF \$104,166 ($\$41,666 \text{ in average payroll costs} * 2.5$) and \$10 million.*

What Can The PPL Loans Be Used For?

PPL loans may be used to cover payroll, mortgage payments, rent, utilities, and any other debt obligations that were incurred before June 30, 2020.

What Is The Interest Rate and The Term of the Loans?

Following loan forgiveness, the loans will have a maximum maturity of 10 years and an interest rate not to exceed 4%. If there is no loan forgiveness, the term of the loan may be up to 30 years. In any case, no personal guarantee and no collateral is required from the business owner. Repayment of the loan can be forboreed for a period of 6-12 months. There will be no prepayment penalties or fees.

When Can Small Businesses Begin To Apply For These Loans?

The Act requires that the SBA enact this loan program within 15 days of the Act being signed into law, so by April 11, 2020 applications for these loans will be available.

Links to Apply

This will be updated as we learn of new banks creating online links to apply for these loans:

<https://www.connectonebank.com/getattachment/Business/Custom-Banking-Solutions/SBA-Lending/SBA-Contact-Us/ConnectOne-Bank-CARES-Application.pdf?lang=en-US>

The Biggest SBA Lenders

The table below displays the 100 most active SBA 7(a) lenders in the United States by lending volume through December 31, 2019.

Lender Name	Approval Count	Approval Amount
Live Oak Banking Company	250	\$347,271,2
Newtek Small Business Finance, Inc.	253	\$205,579,500
Wells Fargo Bank, National Association	692	\$144,769,600
Byline Bank	108	\$126,171,900
The Huntington National Bank	762	\$124,924,100
Celtic Bank Corporation	142	\$114,060,900
JPMorgan Chase Bank, National Association	472	\$91,328,900
U.S. Bank, National Association	697	\$83,206,500
KeyBank National Association	105	\$77,272,900
ReadyCap Lending, LLC	63	\$73,215,400

First Home Bank	276	\$62,122,400
Truist Bank d/b/a Branch Banking & Trust Co	87	\$62,065,900
Bank of Hope	115	\$60,270,800
Seacoast Commerce Bank	55	\$60,255,900
Stearns Bank National Association	231	\$59,576,100
Citizens Bank	45	\$53,306,800
TD Bank, National Association	549	\$51,830,500
Bank of the West	103	\$51,620,500
Manufacturers and Traders Trust Company	344	\$49,768,500
Bank of America, National Association	101	\$46,762,400
Berkshire Bank	48	\$46,018,800
MUFG Union Bank, National Association	42	\$44,208,900
Umpqua Bank	39	\$44,102,100

United Community Bank	54	\$43,061,500
PromiseOne Bank	34	\$40,871,000
Pacific City Bank	37	\$40,759,000
United Midwest Savings Bank, National Association	153	\$38,218,000
Pinnacle Bank	34	\$37,891,500
CenterState Bank, National Association	29	\$37,798,200
Pacific Western Bank	26	\$37,672,800
First Bank	46	\$36,631,300
Hanmi Bank	53	\$34,812,000
First IC Bank	16	\$34,547,000
Cadence Bank, National Association	82	\$31,460,800
Five Star Bank	141	\$30,676,000
BBVA USA	53	\$30,376,600

Doctors, Medical Spas, And Other Professionals

Doctors, medical spas, and other professionals are eligible "small businesses" for the purpose of obtaining small business loans/grants under this Act.

Loan Forgiveness of Paycheck Protection Loans

Law: Section 1105

The first 8 weeks paid by the business of certain expenses beginning on the date of the PPL can be forgiven - meaning it doesn't have to be paid back as long as certain requirements are met and certain documentation is provided by the borrower to the lender. This forgiveness doesn't count as income and is on a tax-free basis. Any loan amount that is not forgiven after June 30, 2020 will amortize over 10 years.

The amount that could be forgiven is the sum of the following payments made by the business during the 8-week period beginning on the date of the loan:

- payroll costs (as defined above), not to exceed compensation to any individual employee in excess of \$33,333 during the covered period;
- mortgage interest;
- rent; and
- utility payments.

To seek forgiveness, a borrower must submit to the lender an application that includes documentation verifying the number of employees and pay rates, and cancelled checks showing mortgage, rent, or utility payments, and any other documentation the administrator of the loan deems necessary.

Example: Assume in the first 8 weeks after Sara's Medical Spa borrows \$104,166, the business pays \$80,000 in payroll costs, rent (and/or mortgage interest), and utilities, and has these payment amounts documented. Sara's Medical Spa is eligible to have \$80,000 of the loan forgiven. In addition, any payments on the remaining \$24,166 will not be due for 6-12 months. After the 6-12 months, the term of the loan will be 10 years, and the maximum interest will be 4% per year.

The amount forgiven will be reduced proportionally by any reduction in employees compared to the prior year, and reduced by the reduction in pay of any employee beyond 25% of their compensation the year prior.

To encourage employers to rehire any employees who have already been laid off due to COVID-19, employers who re-hire previously laid-off workers will not be penalized for having a reduced payroll at the beginning of the period.

Economic Injury Disaster Loans (7(b))

No Personal Guarantee for Loans Below \$200,000

Small businesses, sole proprietors, Employee Stock Option Plans, and independent contractors are now eligible to apply for Economic Injury Disaster Loans. Any loan made under this program before December 31, 2020 will not require a personal guarantee on loans below \$200,000. The Act allows a disaster loan to be taken out between January 31, 2020 and the date on which a PPL is available for reasons “other than paying payroll costs.”

EIDLs can be approved by the small business administration (“SBA”) based solely on an applicant’s credit score.

Note: EIDLs are not eligible for forgiveness unless they are wrapped into a 7(a) loan as a refinance.

How is the EIDL amount calculated?

It is calculated by the SBA based on your business needs.

Emergency \$10,000 Grant

The Act creates a new Emergency Grant to allow a business that has applied for a 7(b) disaster loan to get an immediate advance of the loan of up to \$10,000, that must be disbursed to the business within 3 days.

The advance can be used to maintain payroll, and is not required to be repaid, even if the borrower’s request for a EIDL 7(b) loan is denied. The advance can be forgiven if it’s spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or rent payments, or repaying obligations that cannot be met due to revenue losses.

Can a Business Apply for Both an EIDL and a PPL?

Yes, a business can apply and can get both an EIDL and a PPL as long as they don’t pay for the same expenses.

Can One Person Apply for Two PPLs?

If a person is a sole proprietor or self-employed we don't believe that the person can apply for two PPLs.

How To Look Up Your Business' NAICS Code

Look this up here: <https://www.naics.com/search/>

This is important to see if your business size and type meets the definition of small business under the SBA.

Relief For Existing Loan Payments

The Act also provides benefits to those with loans under Section 7(a) of the Small Business Act **other than** the new paycheck protection loans, in the form of a government subsidy whereby the SBA will pay six months of principal, interest and fees on qualifying loans. There is \$17 Billion allocated to this in the Act.

Proceeds from a 7(a) loan be used to prepay an equipment lease, if it was an existing lease obligation prior to February 15, 2020.

Employee Retention Payroll Tax Credit

Law: CARES Act Section 2301; Tax Code Section 3111

The Act establishes a fully refundable tax credit for businesses that are closed or distressed in order to help keep workers on the payroll. The credit covers up to 50% percent of payroll on the first \$10,000 of compensation, including health benefits, for each employee.

The Act provides for a 50% employee retention tax credit ("ERPTC") for employers closed, fully or partially, due to COVID-19.

The ERPTC is a one-year credit against the employer's 6.2% share of Social Security payroll taxes for any business that is forced to suspend or close its operations due to COVID-19, if this business continues to pay its employees during the shut-down.

A business is eligible for the ERPTC in one of two ways:

1. The operation of the business was fully or partially suspended during any calendar quarter during 2020 due to orders from an appropriate government authority resulting from COVID-19, or
2. The business remained open, but during any quarter in 2020, gross revenue for that quarter was less than 50% of what it was for the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where it has recovered sufficiently, which means that its revenue exceeds 80% of what it was for the same quarter in the previous year.

For each eligible quarter, the business will receive a credit against its 6.2% share of Social Security payroll taxes equal to 50% of the “qualified wages” paid to **each** employee for that quarter, ending on December 31, 2020.

What counts as “qualified wages” depends on the size of the business:

- **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 there were less than 100 employees for 2019**, qualified wages include not only those paid to employees during a shut-down, but also wages paid for each quarter that the business has suffered a 50% decline in year-over-year revenue, as described in #2 above.

In both cases above:

- The ERPTC is capped at \$5,000 (50% of \$10,000 qualified wages) per employee for ALL calendar quarters.
- Qualified wages include any “qualified health plan expenses” allocable to the wages, such as amounts paid to maintain a group health plan.
- The credit is refundable if it exceeds the business’s liability for payroll taxes.

BUT, if an employer takes out a payroll protection loan under Section 7(a), no ERPTC will be available.

Employer Payroll Tax Delay

Law: CARES Act Section 2302; Tax Code Sections 3111(a) and 1401(a).

The Act seeks to alleviate the burden on employers struggling to make payroll by allowing the employer’s share of the 6.2% Social Security tax that would otherwise be

due from March 27, 2020 through December 31, 2020, to be paid on December 31, 2021 (50%) and December 31, 2022 (50%).

This means an employer that incurs its 6.2% share of Social Security tax in 2020 may 1) defer payment of that tax until 2021 and 2020, and can 2) receive an immediate credit against those yet-to-be paid payroll taxes via the sum of the emergency medical leave credit, sick leave credit, and new employee retention credit.

Also note, this deferral is not available to any business that takes out a PPE that was forgiven in any amount.

Changes to the Net Operating Loss Rules

Law: CARES Act Section 2203; Tax Code Section 172

Net operating business losses (“NOLs”) from 2018, 2019 and 2020, will be permitted to be carried back for up to the five preceding years. In addition, a taxpayer will be permitted to forgo the carryback, and instead carry the loss forward.

Practical tip: This means that a company can take a loss from say 2020 or 2019 and use that to off-set income from 2018 or 2017, file amended returns for 2018 and 2017 and get a refund. This refund can be used for an immediate cash infusion into the company (or for any other use).

Losses carried to 2019 and 2020 will be permitted to offset 100% of taxable income.

Practical tip: Businesses considering purchasing equipment in 2020 can use the 2020 loss to offset prior years’ income in order to get a refund and use that money to purchase equipment in 2020.

Example:

In 2015 and 2016, SSTL Inc. broke even. In 2017, SSTL Inc. reported taxable income of \$1 million and paid federal income tax of \$350,000. In 2018, SSTL Inc. reported taxable income of \$2 million and paid tax of \$420,000. In 2020, SSTL Inc. recognizes a net operating loss of \$3 million. SSTL Inc. may carry \$1 million of the loss back to 2017 and recover the taxes paid (subject to the alternative minimum tax), and then carry the remaining \$2 million loss to 2018 and recover that \$420,000 it paid as well. SSTL Inc. will need to file amended returns for 2018 and then will get a tax refund.

Since 2018 businesses have not been allowed to use NOLs to fully offset their taxable income. But with the Act, NOLs can fully offset taxable income.

A taxpayer who had a business loss that was limited by Internal Revenue Code Section 461(l) in 2018 or 2019 can file an amended return to claim a refund.

Increase of Interest Expense Deduction Limitation

Law: CARES Act Section 2306; Tax Code Section 163(j)

In 2019 and 2020 corporations can deduct their borrowing costs (the interest expenses they pay on their loans) against up to 50% of the corporation's adjusted taxable income. This deduction used to be limited to 30%.

Practical tip: Since the Act allows corporations to elect to use their 2019 adjusted gross income for 2020, corporations can use this to get a bigger deduction for borrowing costs for 2019.

Employers Who Pay Employees' Student Loans

Employers can provide up to \$5,250 in tax-free student loan repayment benefits to employees . That means an employer could contribute to student loan payments of employees and workers wouldn't have to include that money as income. The payment would have to be made between March 27, 2020 and January 1, 2021.

Practical tip: Few small businesses may have the money to do this, but if a business does, it may be cheaper for the business and for the employee to receive money this way, as opposed to via wages, bonuses or commissions, provided that actual student loan obligations exist. The business would save on taxes, admin costs, etc. and the employee would save on taxes as well. But, note that the student loans paid by businesses on behalf of employees don't qualify as the types of payments can be in PPE loan forgiveness.

Changes to AMT

Law: CARES Act Section 2205

Businesses that were due to receive alternative minimum tax credits at the end of 2021 can get a refund now.

Practical tip: This is a great way to improve cash flow during COVID-19. Check with your accountant to see if your business is due to receive these credits.

Other Interesting Provisions In the CARES Act

State and local law enforcement is getting \$850M. I see this as a sign of the government anticipating a major surge in crime.

The National Guard is getting \$750M, and the Airforce, Army and Navy are also getting large amounts. Get ready to see more military all around you.

The Federal Bureau of Prisons is getting \$100M.

The Kennedy Center got \$25m. What does the Kennedy Center have to do with COVID-19?

Prisoners may soon be able to video-conference free of charge with their visitors thanks to the CARES Act.

Trademark and patent filing and response deadlines may get extended.

Lots of new government offices and committees are being created, notably the Pandemic Response Accountability Committee is a new committee that's tasked with making sure that the **\$2 trillion** goes to the places and people that it's supposed to go to.

Notes

There is no federal pre-emption here, so states can potentially come up with more restrictive state legislation.

We would recommend applying for all of the available resources as soon as possible.

This Act was done and passed quickly, we expect another federal aid package to be passed in the next few months.