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CARES ACT: DO YOU QUALIFY FOR NEW SMALL BUSINESS STIMULUS FUNDS?

On Friday, March 27, the President signed the CARES Act into law, a \$2 trillion emergency stimulus package aimed at helping businesses, people, and states devastated by the coronavirus pandemic.

The Act includes a new program administered by the SBA providing “loans” to qualifying small businesses that will not need to be repaid if used for payroll and other expenses. The key provisions are as follows.

Purpose

To apply, you must certify that the uncertainty of current economic conditions make the loan request necessary to support your ongoing operations.

Eligibility

Available to small businesses, 501(c)(3) nonprofits, 501(c)(19) veteran’s organizations, and Tribal business concerns. Includes sole-proprietors, independent contractors, and other self-employed individuals as eligible for loans.

Small business is defined as not more than 500 employees, or the applicable standard for the industry as provided by SBA if higher. (For certain industries, larger businesses with up to 500 employees per physical location also qualify.)

Affiliation rules (i.e. joint employer rules) do not apply for businesses in the hospitality and restaurant industries, certain franchises, and small businesses that receive financing through the SBIC program.

Terms

A business may borrow the total of: its average total monthly payments for payroll costs (including salary, wages, commission, tips, paid time off for vacation, medical or sick leave, paid family leave, health insurance costs, retirement benefits, and state or local tax assessed on employee’s compensation) for the one year period before the date the loan is made; multiplied by 2.5, up to \$10 million. (**Different calculation for seasonal workers.*)

The loan proceeds may only be used for payroll costs, costs related to health care benefits during periods of paid sick, medical or family leave, mortgage interest, rent, utilities, and interest on any other debt obligations incurred prior to the time period for this program.

Any SBA loan made from January 31, 2020, to the date of the new loan may be refinanced as part of a covered loan.

The applicant is no longer required to show it was unable to obtain credit elsewhere, and the SBA will not charge its usual administrative fees.

Loan Forgiveness

Congress included provisions allowing for forgiveness of the loan, with the amounts reduced if the employer ceases to employ workers or decreases wages in the next few months.

Generally, the SBA will forgive the repayment of loan amounts spent by the borrower during the 8 week period after the origination date of the loan for: payroll costs, mortgage interest, rent, or utilities, up to the total amount of the principal of the loan.

The total amount of forgiveness will be significantly reduced proportionally by a reduction in full-time equivalent employees, and additionally by a reduction in any employee's salary or wages (if the reduction in compensation during the eight week period commencing on the loan origination date is more than 25% of the employee's total salary or wages during the preceding quarter).

To encourage employers to re-hire employees who have been laid off and restore pre-pandemic wages, borrowers that re-hire workers previously laid off and eliminate wage reductions will not be penalized.

Cancelled indebtedness will not be included in the borrower's taxable income.

Any loan amount not forgiven at the end of one year is carried forward as an ongoing SBA loan with terms of up to 10 years, at a maximum of 4% interest.

No Personal Guarantee or Collateral

The personal guarantee requirement for SBA loans is waived, there is no collateral requirement, and no individual shareholder, member, or partner of a recipient of a covered loan may be liable for non-payment of the loan (unless the individual misuses funds for unauthorized purposes).

**For more information, contact Stacey Trien
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