

Small Business Relief in the CARES Act

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The Coronavirus Aid, Relief, and Economic Security (CARES) Act is currently under negotiation in the US Senate. As written, the CARES Act would provide significant relief for small businesses, including \$300 billion for Small Business Administration (SBA) loan guarantees and subsidies and additional funding for SBA resources.

IN DEPTH

On March 19, 2020, Senate Majority Leader Mitch McConnell (R-KY) unveiled the Coronavirus Aid, Relief, and Economic Security (CARES) Act—the third emergency supplemental bill that Congress is preparing in response to the Coronavirus (COVID-19) pandemic.

Negotiations between Leader McConnell, Senate Minority Leader Chuck Schumer (D-NY), US House of Representatives Democrats and the Trump administration continued over the weekend of March 21 and hit roadblocks on March 22, largely due to Democratic concerns that the bill does not provide proper oversight for provisions to benefit larger businesses, and that it does not provide enough funding for hospitals and others working on the front lines of the pandemic.

As of the morning of March 23, negotiations are ongoing.

Among its many provisions, the CARES Act as currently written would provide significant further relief for small businesses, including \$300 billion for Small Business Administration (SBA) loan guarantees and subsidies and additional funding for SBA resources. Read on for a discussion of specific provisions.

7(a) Loan Program

The 7(a) loan program is the SBA's primary program for providing financial assistance to small businesses. The CARES Act would increase the maximum 7(a) loan amount to \$10 million and would expand allowable uses of 7(a) loans to include payroll support (including paid sick or medical leave), employee salaries, mortgage payments, insurance premiums and any other debt obligations.

Under the CARES Act, the loan period for this program would begin on February 15, 2020, and end on December 31, 2020. The program would cover businesses with fewer than 500 employees

(unless the covered industry's SBA size standard allows more than 500 employees).

To determine a small business's eligibility, the CARES Act would require lenders to determine: (1) whether a business was operational on February 15, 2020, and (2) whether the business had employees for whom it paid salaries and payroll taxes, or paid independent contractors, and (3) whether the business has been substantially impacted by COVID-19. The legislation would also delegate more authority to lenders on eligibility determinations without requiring them to go through all of the usual SBA channels.

The entities eligible for 7(a) loans under the CARES Act include small businesses, nonprofits and veterans organizations with 500 or fewer employees (or the applicable size standard for a particular industry). The legislation as currently drafted:

- Excludes nonprofit organizations that receive Medicaid reimbursements from eligibility
- Includes sole proprietors, independent contractors and other self-employed individuals as eligible
- Provides eligibility for businesses in certain industries with more than one physical location and with no more than 500 employees per physical location
- Waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company program.

Additional details include the following:

- A borrower that receives a 7(a) loan for employee salaries, payroll support, mortgage payments and/or other debt obligations would not be able to receive an SBA economic injury disaster loan (EIDL) for the same purpose, or co-mingle funds from another loan for the same purpose.
- Eligible borrowers would be required to make good faith certification that they have been affected by COVID-19 and will use funds to retain workers and maintain payroll and other debt obligations.
- Both borrower and lender fees for 7(a) loans would be waived.
- The "credit elsewhere" test and collateral and personal guarantee requirements would be waived during the covered period.
- Government guarantee of 7(a) loans would be increased to 100% through December 31, 2020. After that date, guarantee percentages would return to 75% for loans exceeding \$150,000 and 85% for loans equal to or less than \$150,000.
- A complete deferment of 7(a) loan payments would be allowed for not more than one year and would require SBA to disseminate guidance on the deferment process within 30 days.
- Any statutory limitations on SBA's 7(a) lending authority would be removed through

December 31, 2020.

- The maximum loan for an SBA Express loan would be increased from \$350,000 to \$1 million through December 31, 2020, after which point the Express loan would have a maximum of \$500,000.

Other Provisions

- **Loan Forgiveness** – Provides a process by which borrowers would be eligible for loan forgiveness in an amount equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on the following items:
 - Payroll costs
 - Interest payment on any mortgage incurred prior to February 15, 2020
 - Payment of rent on any lease in force prior to February 15, 2020
 - Payment on any utility for which service began before February 15, 2020.
- The amount forgiven would be reduced in proportion to any reduction in employees retained compared to the prior year and to the reduction in pay of any employee beyond 25% of her prior year compensation.
 - Borrowers that rehire workers previously laid off will not be penalized for having reduced payroll at the beginning of the period.
- **Emergency EIDL Grants** – Establishes an emergency grant to allow an eligible entity that has applied for an EIDL loan to request an advance on that loan of no more than \$10,000, which the SBA must distribute within three days.
 - An applicant would not be required to repay such an advance payment, even if it is subsequently denied an EIDL loan.
 - Eligible entities would include startups, cooperatives and ESOPs with fewer than 500 employees, and any individual operating as a sole proprietor or an independent contractor.
 - For EIDL loans made in response to COVID-19 before December 31, 2020, the SBA must waive any personal guarantee on advances and loans below \$200,000, as well as the requirement that an applicant be in business for the one-year period before the disaster and the “credit elsewhere” requirement.
- **Entrepreneurial Development** – Authorizes the SBA to provide additional financial awards to resource partners (including Small Business Development Centers and Women’s Business Centers) to provide counseling, training and education on SBA resources and business resiliency to small business owners affected by COVID-19.
- **Waiver of Matching Funds Requirement Under the Women’s Business Center Program**

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- Eliminates the non-federal match requirement for a period of three months.
 - **Minority Business Development Agency** – Authorizes \$10 million for grants to Minority Business Centers for the purpose of providing counseling, training and education on federal resources and business response to COVID-19 for small businesses.
 - Eliminates the non-federal match requirement for three months.
 - **Contracting** – Requires federal agencies to extend contract performance time by no fewer than 30 days for small business affected by COVID-19 until September 2021, unless the agency considers the contract mission critical.
 - Also requires the federal government to continue to pay small business contractors and revise delivery schedules, holding them harmless for being unable to perform because of COVID-19 until September 2021.
 - Federal agencies must first consult with the director of the Office of Small and Disadvantaged Business Utilization before seeking to cancel a small business prime contract due to a failure to meet terms of the contract caused directly or indirectly by COVID-19.
 - **Waiver of Prepayment Penalty** – Removes prepayment penalties for loans made under this title on or before December 31, 2020.
 - **US Treasury Program Management Authority** – Allows the Department of Treasury (in consultation with the SBA and other federal financial regulatory agencies) to establish a process by which lending institutions that are not currently authorized to offer SBA loan products are able to provide SBA small business interruption loans for the length of the president's national emergency declaration.
 - Allows Treasury to determine the eligibility criteria and terms for the lenders it approves to disseminate small business interruption loans, and to write regulations outlining these criteria and terms.
 - **Subsidy for Certain Loan Repayments** – Requires the SBA to pay the principal, interest and any associated fees that are owed on the defined loans for a six-month period starting on the next payment due date. Loans that are already on deferment would include an additional six months of payment by the SBA beginning with the next payment. Loans made during this period until six months after the enactment of the legislation would also qualify for six months of deferral payment by the SBA.
 - Defines eligible loans as existing 7(a) (including Community Advantage), 504 and microloan products.

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