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## WHAT ARE THE TERMS OF THE BUSINESS LOANS UNDER THE CARES ACT

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The Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") was passed by the U.S. Senate on Wednesday night, March 25. As of this writing at 1:35 on March 27, 2020, the CARES Act was just approved by the U.S. House of Representatives and is on its way to the President. A general summary of the most relevant provisions regarding the loan available under it is provided below:

### 1. Who is Eligible:

- a. Employers of 500 employees or fewer
  - a.i. Employee count based on full time, part time or any other basis; it is a head count, not a full time equivalent count as is used in other federal laws.
  - a.ii. Limit applies per locations for businesses under NAICS Code 72 which are comprised of businesses providing lodging and/or preparing meals, snacks, and beverages for immediate consumption.
  - a.iii. There is also a waiver of the SBA rules re: combining of companies who are under common control or deemed affiliated for NAICS Code 72 businesses and for business operating as a franchises (which have franchise identifier codes).
  - a.iv. Waiver of the credit elsewhere test, *i.e.* it does not matter whether you could get credit elsewhere.
  - a.v. No personal guaranty requirement.
  - a.vi. No recourse against business owners unless loan such owner allows use of the proceeds for an unauthorized purpose.
- b. Lender Considerations :
  - b.i. Whether the business was in operation on February 15, 2020;
  - b.ii. Whether the business had employees for whom the business paid salaries and payroll taxes or paid independent contractors on a Form 1099.
  - b.iii. Whether the Borrower has certified that:
    - b.iii.1. Uncertainty of economic conditions makes the loan request necessary to support ongoing operations;
    - b.iii.2. Funds will be used to retain workers and maintain payroll, make mortgage payments, lease payments and utility payments;
    - b.iii.3. The business does not have a duplicate application pending for the same purpose under these provision; and that
    - b.iii.4. The business has not received payments under these provisions for the same purpose.

### 2. How Much Can a Business Get:

- a. Loans are for the covered period which means February 15, 2020 through June 30, 2020.
- b. For businesses that were in business in February 2019, the amount to is the lesser of
  - b.i. \$10 million dollars or
  - b.ii. the average monthly payroll costs incurred for the 1 year period prior to the date the loan is made multiplied by 2.5 plus

- b.ii.1. the amount of any outstanding SBA loan made after January 31, 2020 and the date the new loan is made available – but it does not appear to include a refinance of loans made by the SBA for the same purpose as the new loans.
- c. For businesses that were not in business for the period from February 15, 2019 through June 30, 2019, the amount is the lesser of
  - c.i. \$10 million dollars or
  - c.ii. the average monthly payroll costs incurred for the period between January 1, 2020 and February 29, 2020 multiplied by 2.5 plus
    - c.ii.1. the amount of any outstanding SBA loan made after January 31, 2020 and the date the new loan is made available – but it does not appear to include a refinance of loans made by the SBA for the same purpose as the new loans.
- d. Payroll costs means:
  - d.i. Salary, wages, commissions or similar compensation;
  - d.ii. Cash tip or equivalent;
  - d.iii. Payment for vacation, parental, family, medical or sick leave;
  - d.iv. Payment due dismissal or separation;
  - d.v. Payments for group health insurance benefits, including premiums;
  - d.vi. Payments for any retirement benefits;
  - d.vii. Payment of state or local tax on compensation of employees;
  - d.viii. Payments related to sole proprietors and independent contractors that are wages, commission, income, or net earnings from self-employment up to \$100,000 prorated for the covered period.
- e. Payroll costs does not include things such as:
  - e.i. Compensation to any individual employee in excess of \$100,000, as prorated for the covered period.
  - e.ii. OASDI (Social Security), RR Retirement and federal taxes on income.
  - e.iii. Compensation of employees who do not reside in the U.S.

### 3. **Repayment:**

- a. Forgiveness of Loan:
  - a.i. Portions eligible for forgiveness
    - a.i.1. Payroll costs
    - a.i.2. Payment of interest on a covered mortgage (does not include prepayment or payment of principal)
    - a.i.3. Payment of covered debt;
    - a.i.4. Payment of covered utilities.
  - a.ii. Forgiveness cannot exceed amount the loan.
  - a.iii. Forgiveness reduced by things such as:
    - a.iii.1. amounts received in payroll tax credits or otherwise compensated under the Families First Act.
    - a.iii.2. reduction in compensation of any employee greater than 25%;
    - a.iii.3. reduction in number of full time equivalent employees compared to the period from February 15, 2019 through June 30, 2019.
- b. Repayment of Balance:
  - b.i. Deferral of payments for at least 6 months but not longer than a year.
  - b.ii. To be paid over 10 years
  - b.iii. Rate not to exceed 4%
  - b.iv. No prepayment penalty