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## Relief for Small Businesses under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

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**By: David M. Morosan**

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) became law. The CARES Act provides economic assistance to various segments of the economy impacted by COVID-19, including various provisions directed at providing relief for small businesses.

In addition to appropriating an additional \$349 billion for the Small Business Administration’s (“SBA”) Section 7(a) loan program, the CARES Act created a new Paycheck Protection Program under Section 7(a) (“PPP Loans”) in order to provide emergency relief to small businesses. As further detailed below, PPP Loans are available in an amount equal to 2.5 times a business’s monthly average payroll cost for the one-year period prior to the closing of the loan, up to a maximum of \$10 million, and may be used to fund various operating expenses of a business. Most significantly, the PPP Loans may be forgiven, provided that certain conditions are met related to employee rehiring and retention.

### **Eligibility for PPP Loans**

Any business that employs 500 or fewer employees, or the maximum number of employees established by the SBA for the industry in which the business operates, is eligible for a PPP Loan. Many of these SBA limits exceed 500 employees and range as high as 1,500 employees in some instances. In addition, eligible businesses must (1) have been operating on February 15, 2020, and (2) had employees for whom it paid salaries and payroll taxes (or independent contractors whom it paid).

The CARES Act creates a presumption that all businesses applying for PPP Loans have been adversely impacted by COVID-19. A business will not need to show that it could not obtain credit elsewhere. However, businesses will be required to certify that (1) the PPP Loan is necessary due to economic

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conditions caused by COVID-19, (2) that the PPP Loan proceeds will be used for a permitted purpose, and (3) that the business is not receiving funds from another SBA program for the same uses.

### **PPP Loan Terms**

**PPP Loan Amount:** PPP Loans will be available in an amount equal to 2.5 times a business's monthly average payroll cost for the one-year period prior to the closing of the loan, up to a maximum amount of \$10 million. In addition, the amount necessary to refinance any outstanding Economic Injury Disaster Loan ("EID Loan") may be included in the amount of the PPP Loan. Special rules apply to calculating the loan amount for seasonal businesses and businesses that have been operating for less than one year.

**Use of Proceeds:** PPP Loan proceeds may be used to pay employee salaries (excluding the compensation of any employee in excess of a \$100,000 annual salary), group health care benefits, paid sick leave, medical leave, or family leave, interest on any mortgage obligation, rent, utilities, and interest on any other debt obligations incurred before February 15, 2020. PPP Loan proceeds may also be used to refinance any EID Loans made on or after January 31, 2020. The CARES Act specifically allows businesses to obtain both PPP Loans and EID Loans, provided that the funds from the EID Loan are not used to pay for allowed uses under a PPP Loan.

**Term of PPP Loan:** Up to ten (10) years.

**Interest Rate:** No more than four percent (4%) per annum.

**Deferment:** Principal and interest payments will be deferred from between 6 months to 1 year if the PPP Loan is not otherwise forgiven, as detailed below.

**Collateral and Guarantees:** No collateral or personal guarantees will be required for a PPP Loan.

### **PPP Loan Forgiveness**

PPP Loans are eligible for forgiveness in an amount (not to exceed the principal amount of the PPP Loan) equal to the amount spent by the business during the eight-week period after the date on which the PPP Loan was originated on (1) payroll costs, (2) interest payments on debt incurred prior to February 15, 2020, (3) rent payments under any lease in effect before February 15, 2020, and (4) utility payments for services in place before February 15, 2020 (the "Base Loan Forgiveness Amount").

Once the Base Loan Forgiveness Amount is determined, it will be subject to reduction by:

(1) Any reduction in the average number of full-time equivalent employees employed by the business during the eight-week period after the origination of the PPP Loan, as compared to either: (a) the

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average number of full-time employee equivalents employed by the business per month from February 15, 2019 to June 30, 2019, or (b) the average number of full-time employee equivalents employed by the business per month between January 1, 2020 and February 29, 2020; and

(2) The amount of any reduction in total salary or wages of any employee during the eight-week period after the origination of the PPP Loan that is in excess of twenty-five percent (25%) of the total salary or wages of the employee during the most recent full quarter during which the employee was employed prior to such eight-week period. Employees who receive compensation greater than \$100,000 per year are excluded from this calculation.

In order to receive PPP Loan forgiveness, businesses will be required to submit a detailed loan forgiveness application to lenders. Lenders will then have sixty (60) days within which to make a determination on the PPP Loan forgiveness.

If all or any portion of the PPP Loan is forgiven, a business will not be required to recognize any cancellation of indebtedness income for tax purposes.

If any portion of the PPP Loan is not forgiven, payments on any unforgiven part of the PPP Loan will be deferred for a minimum of six (6) months, and a maximum of one (1) year. In addition, the remaining PPP Loan balance will have a maturity date of not more than 10 years, and will accrue interest at not more than four percent (4%) per annum.

### **Where to Apply for PPP Loans**

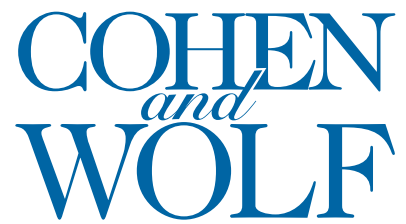
Businesses may submit applications for PPP Loans to existing lenders that are enrolled in the SBA 7(a) program (or other lenders that the SBA approves). Since many lenders are already enrolled in the SBA 7(a) program, businesses can contact their current lenders to determine whether they are qualified to provide PPP Loans. The SBA also offers lender referral services in order to refer businesses to qualified lenders.

The SBA's sample application form for PPP loans can be found [here](#).

### **Additional Guidance**

It is expected that the SBA will adopt administrative rules, and will issue further guidance, in order to provide clarity on various provisions of the CARES Act and the requirements of the PPP Loans. We will continue to provide updates as details become available.

Our experienced attorneys are here to assist clients in applying for and obtaining PPP Loans and other forms of relief available under the CARES Act. Please contact us with any questions.



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**ATTORNEYS**

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Business & Corporate

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