

## The Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

An Overview of the Paycheck Protection Program and Economic Injury Disaster Loan Program

### INTRODUCTION

Following the announcement of unprecedented assistance packages, designed to help individuals and businesses weather the COVID-19 storm, many are now asking the same questions: Are we entitled to recovery? And, if so, how do we apply for assistance? This summary provides an overview of the loan programs available, as well as guidance with respect to steps that businesses should take in the immediate future with a view towards receiving relief under such programs.

### PAYCHECK PROTECTION PROGRAM

Created pursuant to the CARES Act, this program, to be administered by the Small Business Administration (SBA) under its business loan regime, is primarily designed to aid businesses in retaining workers and paying related costs throughout this challenging period. Borrowers can receive loans until June 30, 2020.

**Eligibility:** Generally, small business concerns, non-profit organizations, veteran organizations, tribal concerns, sole proprietorships, self-employed individuals, and independent contractors with 500 or fewer employees are eligible.

**Qualified Lenders:** Those lenders that are already authorized to issue loans under the SBA's existing loan regime are automatically eligible to issue loans under this program, as well as additional lenders that are or become enrolled in the SBA's program. Further, the Treasury Department may extend eligibility to additional lenders.

**Loan Highlights:** Those eligible can receive a loan based on a formula essentially equal to up to two months of your average monthly "payroll costs" from the last year plus an additional 25% of that amount, up to \$10 million. No collateral or personal guarantees are required, and there is no penalty for prepayment of the loan.

#### → Payroll Costs:

For purposes of this program, "payroll costs" include compensation to employees in the form of salaries, wages, commissions, cash tips, payments for leave, severance, group health care benefits, retirement benefits, and state or local taxes assessed on employee compensation. Payroll costs do not include compensation to any employee in excess of an annual salary of \$100,000.

#### → Use of Proceeds:

The loan proceeds can be used for payroll costs, health care benefits, mortgage interest, rent, utilities, interest payments on other debt obligations incurred before February 15, 2020, and refinancing of an SBA Economic Injury Disaster Loan made between January 31, 2020 and April 3, 2020. At least 75% of the loan proceeds must be used for payroll costs.

#### → Loan Forgiveness:

- Borrowers can apply for forgiveness for all or a portion of such loans. Generally, the portion of the loan that may be forgiven is equivalent to the sum that the borrower paid in the eight weeks following origination of the loan (without extending beyond June 30, 2020) for payroll, mortgage interest, rent, and utilities. Not more than 25% of the forgiven amount may be for non-payroll costs.

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- The loan forgiveness may be reduced in the event that the business conducts layoffs or implements salary reductions. The amount of the loan forgiveness is not included in gross income for federal tax purposes.
- To the extent that portions of the loan are not forgiven, such non-forgiven portions will convert into a 100% SBA guaranteed loan with a two-year term and interest at 1.00%. All payments are deferred for six months, during which time interest will accrue.
- » Family medical leave pay for each employee.
- » State and local taxes assessed on the employee's compensation for each employee.
- 1099s for 2019 for independent contractors that would otherwise be an employee of your business. (Do not include 1099s for services.)
- Documentation showing total of all health insurance premiums paid by the company owner under a group health plan, to include all employees and the company owners.
- Document the sum of all retirement plan funding that was paid by the company owner (do not include funding that came from the employees out of their paycheck deferrals).
  - Include all employees, including company owners.
  - 401K plans, Simple IRA, SEP IRAs.

### HOW TO APPLY

- Per SBA guidelines, you can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating, as well as certain other financing providers.
- Lenders may begin processing applications starting April 3, 2020. The SBA has created a form that highlights what information will be requested from you when applying for a loan, and published such form on its website at <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.
- In anticipation of filing an application, you should gather the following information and/or documents:
  - 2019 IRS Quarterly 940, 941 or 944 payroll tax reports.
  - Last 12 months of Payroll Reports beginning with your last payroll date and going backwards 12 months. Payroll Reports must show the following:
    - » Gross wages for each employee, including the officer(s) if paid W-2 wages.
    - » Paid time off for each employee.
    - » Vacation pay for each employee.

### ECONOMIC INJURY DISASTER LOAN PROGRAM

The CARES Act also expanded the ways in which businesses can receive disaster assistance loans. Borrowers can receive loans until December 31, 2020.

**Eligibility:** Generally, small businesses, small agricultural cooperatives, private non-profit organizations, as well as sole proprietorships, independent contractors, businesses, cooperatives, employee stock ownership plans, and tribal small business concerns with 500 or fewer employees are eligible. Applicants must have suffered "substantial economic injury" from COVID-19.

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**Qualified Lenders:** The SBA issues these loans directly.

**Loan Highlights:** Borrowers can receive unforgivable loans up to \$2 million with a maturity of up to 30 years. Interest rates for COVID-19 are 3.75% for businesses and 2.75% for non-profit organizations. While payments can be deferred for up to a year, interest accrues during the deferment period. There is no penalty for prepayment of the loan.

→ **Loan Amount:**

Loan amounts are generally based on companies' prior gross revenues and cost of goods sold, with the total amount to be determined by the SBA.

→ **Personal Guarantee:**

Personal guarantees are not required for loans up to \$200,000; however, personal guarantees by owners of more than 20% of the borrower are required for loans in excess of that amount.

→ **Emergency Grant:**

Applicants can receive an advance of up to \$10,000 within three days after the SBA receives the application, provided that the application is related to COVID-19. This advance does not need to be repaid, even if the SBA ultimately denies the loan application.

→ **Use of Proceeds:**

Among other things, the loans may be used to fund payroll and other costs, as well as obligations that cannot otherwise be met due to revenue loss.

### HOW TO APPLY

The SBA is using an online application form for this program, which can be found on the SBA's website at <https://www.sba.gov/page/disaster-loan-applications>.

In anticipation of filing an application, you should gather the following information and/or documents:

- Gross revenues for the 12-month period before January 31, 2020;
- Cost of goods sold for the 12-month period before January 31, 2020;
- Lost rent for residential and commercial properties due to COVID-19;
- Non-profit cost of operation for the 12-month period before January 31, 2020;
- Combined annual operating expenses for the 12-month period before January 31, 2020 for all secular social services provided by faith-based entities; and
- Compensation from other sources received as a result of COVID-19.

**Note:** Businesses may receive loans under both the Paycheck Protection Program and the Economic Injury Disaster Program, provided that the loans are not used for the same purpose.

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### WHAT YOU CAN DO NOW & HOW HJ SIMS CAN HELP

#### **Analyzing Your Eligibility and Interplay with Existing Financing Obligations**

To the extent possible, HJ Sims will gladly aid in your analysis of potential recovery under these programs, as well as how participation in one or both programs could impact or be impacted by your existing financing arrangements.

#### **Start Gathering Relevant Information and Documents**

In anticipation of applying for loans under the Paycheck Protection Program and/or the Economic Injury Disaster Loan Program, you should begin to gather the information and documents detailed in the sections above.

#### **Finding a Qualified Lender**

With respect to the Paycheck Protection Program, loans are given on a first-come, first-served basis. As such, you should contact your bank as quickly as possible to determine if it is an SBA-approved lender. HJ Sims can help connect you with an eligible lender.

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*This summary has been created based on information available to date, and the information provided herein may change in accordance with additional government and/or regulatory interpretation and guidance. For additional information about these programs, please visit <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources> and <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>*

# Priorities

Sensible, essential financial wisdom.

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