



What You Need to Know About the CARES Act for Your Construction Company

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On March 27, 2020 President Trump signed the CARES Act¹ (“the Act”) into law. This roughly \$2 trillion aid package—amounting to approximately half the United States government budget for 2021— included aid for workers, families, businesses, and other interests. This article summarizes four key elements of the Act with respect to contractors—the Paycheck Protection Program, the Economic Injury Disaster Loans, delay of payment of employment taxes, and the employee retention credit.

Paycheck Protection Plan

The element of the legislation receiving the most attention—and deservedly so—is the Paycheck Protection Program² (aka “PPP” aka “SBA forgivable loan” aka “SBA grant”). This is a loan that is eligible for forgiveness of the debt if certain conditions are met.

This is a compelling opportunity—one that I strongly recommend eligible businesses consider applying for.

Key elements of the Paycheck Protection Plan include the following, which is not exhaustive, and does not include all applicable limitations and exclusions:

- Eligible businesses must have fewer than 500 employees
- Interest rate is 1.0%³
- Loan amount is the lesser of 1) \$10,000,000, or 2) 2.5 times the average monthly payroll for the year 2019
- Loan is eligible for forgiveness in the amount of the cost of maintaining “covered” items during the covered period: payroll, payroll taxes, rent, utilities, and interest on loans
- Covered period is 8 weeks following the origination of the loan
- Loan forgiveness amount will be reduced by reductions in employee wages or a reduction in the number of employees
- Income from loan forgiveness will be excluded from taxable income

In order to apply for the PPP loans, businesses must work through a bank or credit union that is approved for SBA 7a loans.

Economic Injury Disaster Loan

¹ <https://www.congress.gov/bill/116th-congress/house-bill/748>

² CARES Act §1102

³ <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>



While not technically part of the Disaster Loan Program⁴ (“EIDL”) is program is a low interest, non- is different from the Act’s PPP program.

CARES Act, the SBA’s Economic Injury referenced in the Act. The EIDL forgivable loan offered by the SBA. It

⁴ <https://disasterloan.sba.gov/ela/>

Eligible businesses can get both an EIDL and a PPP loan as long as the loans are not used to pay for the same expenses.

Key elements of the EIDL program include the following, which is not exhaustive, and does not include all applicable limitations and exclusions:

- Loan size can be up to \$2,000,000
- Eligible businesses must be affected by the COVID-19 virus (impact presumed upon application)
- Interest rate is 3.75% for small businesses
- Term lengths will vary, but will be up to 30 years
- Acceptable usage includes accounts payable, fixed debts, payroll, and other bills due to the virus
- An emergency grant of \$10,000 can be provided even before loan approval if used to cover certain payroll and supply chain expenses
- Businesses can apply directly to the SBA

While not as compelling as the PPP loans, the EIDL is a worthwhile option for business owners and managers who anticipate capital needs as a result of COVID-19.

Delay of Payment of Payroll Taxes

50% of Social Security taxes due to the IRS through the end of 2020 can be deferred but must be repaid.⁵ Half of the deferred taxes are due in December 2021, with the remainder due in December 2022. Taxpayers who apply this delay will be treated as having timely made all required deposits during the period.

Taxpayers that had indebtedness forgiven under the PPP are not eligible for this benefit.

Because most businesses will apply for—and likely receive—debt forgiveness as part of the PPP program, I don't believe many businesses will be eligible for this benefit.

Employee Retention Tax Credit

The Employee Retention Tax Credit⁶ ("Credit") is available for employers that close or have significantly reduced revenues due to COVID-19. The purpose of the credit is to encourage businesses to keep employees on their payroll. The benefit consists of a refundable tax credit of 50% of up to \$10,000 in wages paid by an eligible employer (with some limitations for companies with >100 employees).

The Credit is available to all employers regardless of size. Qualifying businesses must meet one of two criteria. First, the business is partially or fully suspended by government due to COVID-19 during the calendar quarter. Second, the employer's revenues are below 50% of the comparable calendar quarter in 2019.

Because businesses that receive PPP loans are not eligible for a Credit, I do not anticipate many businesses will be eligible for this benefit.

⁵ CARES Act §2302

⁶ CARES Act §2301

Conclusion

Given both the pace of change and the volume of material about the Act, I recommend you consult with your trusted advisors prior to making decisions about the best course of action for you and your business.

About the author

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