



**Cornelius & Cohanghadosh, APC**

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April 3, 2020

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**NEWSLETTER: AN OVERVIEW OF THE CORONAVIRUS AID,  
RELIEF, AND ECONOMIC SECURITY (CARES) ACT**

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As discussed in our March 27, 2020 Newsletter, the CARES Act was recently signed into law by President Donald J. Trump. This Newsletter provides an overview of the information from the CARES Act that we believe will be relevant for business owners. Our firm's focus is on real estate and business transactions and litigation and bankruptcy, but we have included information related to tax provisions and individual relief as well. As always, feel free to reach out to us with any questions you have regarding the information provided herein.

**I. Small Business Association (“SBA”) & Federal Reserve Resources**

**A. The Paycheck Protection Program**

Section 1102 of the CARES Act allows for expedited loans of up to \$10 million to be available to existing small businesses until June 30, 2020, for the purpose of covering payroll, mortgage, rent, debt obligations or refinancing, or utility payments incurred from February 15, 2020 through June 30, 2020.

- Payroll expenses may include employee salaries, paid sick or medical leave, and insurance premiums.
- Businesses may be eligible for a maximum loan amount equaling 2.5 months of regular payroll expenses (subject to a cap of \$100,000 annual salary per employee)
- The loans are provided through approved lenders that are 100% guaranteed by the U.S. government.

Eligible businesses include the following business entities with not more than 500 employees: sole proprietors, independent contractors, self-employed individuals, small businesses, 501(c)(3) nonprofits, 501(c)(19) veteran's organizations, and tribal businesses. Hotels, motels, restaurants, and franchises with fewer than 500 employees at each physical location will be eligible without regard to affiliation rules. Similarly, businesses that receive financial assistance from the Small Business Investment Company Act may also be eligible without regard to affiliation rules.

If all employees are kept on payroll for eight weeks after the origination of the loan, the SBA will forgive the portion of the loans used for (a) payroll costs, (b) interest payments on any mortgage incurred prior to February 15, 2020, (c) payment of any rent on any lease in force prior to February 15, 2020, and (d) payment on any utility for which service began before February 15,



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2020. These payments must be documented, but up to 100% of the loan is forgivable. Any forgiven amounts will not be included in the borrower's taxable income.

These loans will be subject to the following terms:

- The maximum interest rate is 4%
- Loan maturity can be as long as 10 years
- No prepayment fees will be charged
- Borrower and lender fees are waived, along with collateral and personal guaranty requirements
- Loan payments may be deferred for 6-12 months

Lenders will determine eligibility based on whether the business was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid an independent contractor. Eligibility will not be based on repayment ability. However, borrowers must make good faith certifications that they have been impacted by COVID-19, will use the funds to retain workers and maintain payroll and other debt obligations, and are not receiving duplicative funds for the same uses from another SBA program. The SBA provides a Lender Match service at this [LINK](#) to connect small businesses with participating, approved lenders and the Department of the Treasury will continue to approve new lenders. *Please let us know if you need assistance or would like to discuss applying for a Paycheck Protection Program loan.*

***Please be advised that you must apply online through a commercial lender that is SBA approved (NOT THE SBA WEBSITE) to obtain the Paycheck loans. As of April 3, 2020, the only lender that we are aware of that is set up to process Paycheck loans is Bank of America, other lenders are indicating that in the next week they will be set up.***



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**B. Economic Injury Disaster Loans**

Section 1110 expands the type of entities eligible to receive up to \$2 million in direct loans from the SBA and loan guarantees for substantial economic injury caused by the COVID-19 pandemic. This authority expires on December 30, 2020. Loan proceeds may be used for working capital, expenditures necessary to alleviate specific economic injury, paid sick leave for employees, maintaining payroll, meeting increased costs, rent or mortgage payments, or repaying obligations that cannot be met due to revenue losses.

Eligible businesses include the following business entities with not more than 500 employees: sole proprietors, small businesses, tribal businesses, cooperatives, ESOPs, and private non-profits with exemptions under sections 510(c), (d), or (e) of the Internal Revenue Code. Please note that this section **does not** waive the affiliation rules for Accommodation and Food Services or Franchise businesses.

The interest rate for small businesses is 3.75% and for non-profits is 2.75%. Loan maturity can be as long as 30 years and will be determined on a case-by-case basis. Eligibility is based on credit history or ability to repay, which will be gauged by alternative methods. You can apply for this loan using the form found at this [LINK](#) or online [HERE](#). An applicant may also apply for and receive a \$10,000 emergency advance within 3 days of submitting an application, while the application is pending. The SBA will not require repayment of this advance, even if the loan is subsequently denied. *If you would like to discuss eligibility for an Economic Injury Disaster Loan, or need assistance applying for the same, please contact our office.*

***Please note that the SBA has indicated that if you applied any time before March 31, 2020, for a Disaster Loan through the SBA, you must reapply through their new website below:***

[covid19relief.sba.gov/#/](https://covid19relief.sba.gov/#/)



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**C. Subsidy for Certain Loan Payments**

Section 1112 requires the SBA to pay the principal, interest, and any associated fees that are owed on a covered loan for a six-month period starting on the next payment date. Covered loans include existing SBA 7(a) loans, 504 loans, or microloans. Paycheck Protection Program loans (discussed above) are not covered for this subsidy. Covered loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment of the CARES Act may also receive a full six months of loan payments by the SBA. *Please let us know if you need to determine your eligibility for this subsidy or whether you have a covered loan payment.*

**D. Federal Reserve Facility for Mid-Sized Businesses**

The CARES Act encourages the Treasury Secretary to work with the Federal Reserve to establish a new facility that would provide financing to banks and other lenders to make direct loans to businesses with between 500 and 10,000 employees. These loans will have an annualized interest rate no greater than 2% and no principal or interest would be due for at least six months. Borrowers must certify the following:

- “Uncertainty of economic conditions” requires a loan to support ongoing operations
- The funds received will be used to retain 90% of the recipient’s workforce, at full compensation and benefits, until September 30, 2020
- The borrower intends to restore 90% of the workforce that existed as of February 1, 2020 and to restore all compensation and benefits to workers no later than four months after the termination of the current public health emergency
- The borrower is domiciled in the U.S. and has significant operations and a majority of employees in the U.S.
- Borrowers will not engage in stock buybacks, unless contractually obligated, or pay dividends until the loan obligation is satisfied
- The borrower will not outsource or offshore jobs for the term of the loan plus an additional two years



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- The borrower will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years
- The borrower will remain neutral in any union organizing effort for the term of the loan

*If you need assistance in putting a package together to address these required certifications, please contact our office.*

## **II. Tax Provisions**

### **A. Employee Retention Tax Credit**

The CARES Act provides eligible employers with a payroll tax credit in an amount equal to 50% of the qualified wages paid to each employee for each calendar year. The amount of qualified wages considered is capped at \$10,000 per employee, inclusive of payments for certain health benefits. The credit amount is capped at the amount of employment taxes on the wages paid to the employees, less certain other credits. The credit is provided for wages paid or incurred from March 13, 2020 to December 31, 2020.

Eligible employers are those that were operating in the year 2020 and (a) whose operations were suspended or partially suspended because of COVID-19 or (b) have seen a significant decline in gross receipts. Finally, the credit is not limited to employers of any certain size, but the type of wages eligible for consideration in the credit varies based on employer size:

- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order
- For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are **not** providing services due to the COVID-19 related circumstances.

Unfortunately, this tax credit is not available to businesses that receive an SBA 7(a) loan.



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**B. SSI Tax Deferral**

In addition to the Employee Retention Tax Credit, employers and self-employed individuals may defer the 6.2% employer share of Social Security tax on employee wages. The deferred payment must be paid over the following two years with at least half paid by December 31, 2021. This deferment is likely not available to businesses that had a covered loan forgiven.

**C. Net Operating Losses**

Net operating losses arising in tax years 2018, 2019, or 2020 can be carried back five years and may fully offset income. The loss-limitation applicable to pass-through entities and sole proprietors was also modified to allow businesses to access cash flow by utilizing business losses.

**D. Cost Write-off for Improving Facilities**

Businesses, especially in the hospitality industry, may immediately write off costs associated with improving facilities, rather than having to depreciate those improvements over the 39-year life of the building.

**E. Suspended Early Withdrawal Penalties from Retirement Accounts**

The CARES Act suspends the 10% early withdrawal penalty for distributions after January 1, 2020 and up to \$100,000 from qualified retirement accounts for COVID-19 related purposes. Related purposes include distributions made to an individual (a) who is diagnosed with COVID-19, (b) whose spouse or dependent is diagnosed with COVID-19, or (c) who experiences adverse financial consequences as a result of the pandemic.

**F. Individual Financial Assistance/Refunds**

Individuals with income up to \$75,000 will receive a \$1,200 assistance check/refund, which increases to \$2,400 for married couples with income up to \$150,000. Each individual or married couple will receive an additional \$500 per child. Amounts will adjust for anyone over the designated income levels. This is an automatic benefit. The government will use data from 2019 or 2018 tax returns to send the refunds through a check or direct deposit. You do not need to do anything to receive this benefit.



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**III. Bankruptcy & Credit Protection**

Section 1113 increases the eligibility threshold to file under Chapter 11, subchapter 5 of the U.S. Bankruptcy Code to businesses with less than \$7,500,000 of debt. This increase will expire after one year and the eligibility threshold will return to \$2,725,625. Additionally, any coronavirus-related payments from the federal government will not be treated as “income” for the purposes of filing bankruptcy and will not be included in disposable income calculations for Chapter 13 plans. Anyone currently in Chapter 13 bankruptcy should seek payment plan modifications if they are experiencing financial hardships due to the pandemic.

For any and all borrowers who have fulfilled forbearance or modified payment requirements, lenders must report “current” (or the same status reported prior to the accommodation unless the borrower becomes current) to credit reporting agencies. This credit protection is available beginning January 31, 2020 and ends at the later of 120 days after enactment or 120 days after the date the national coronavirus emergency declaration is terminated.

*Please let us know if you need to discuss Bankruptcy as an option or if you need assistance contacting or coordinating with the U.S. Bankruptcy Courts, U.S. Bankruptcy Trustees, Credit Reporting Agencies, or your Creditors.*

**IV. Evictions and Foreclosures**

The CARES Act enables payment forbearance for federally backed mortgages, requiring a foreclosure and eviction moratorium for homeowners with such mortgages. Additionally, the Act imposes an eviction moratorium for renters in federally supported housing. *If you need to determine if your mortgage lender is federally backed or need assistance in negotiating with your lender or tenants, please contact our office and we can assist you with the same.*

**V. Updates to California and Los Angeles Eviction procedures.**



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The State of California has placed a moratorium on evictions through May 31, 2020. On March 27, 2020, Governor Newsom issued the following press release about the order:

*The order is effective immediately and will apply through May 31, 2020*

*Builds on the Governor's previous executive action authorizing local governments to halt evictions*

SACRAMENTO – Governor Gavin Newsom today issued an executive order banning the enforcement of eviction orders for renters affected by COVID-19 through May 31, 2020. The order prohibits landlords from evicting tenants for nonpayment of rent and prohibits enforcement of evictions by law enforcement or courts. It also requires tenants to declare in writing, no more than seven days after the rent comes due, that the tenant cannot pay all or part of their rent due to COVID-19.

The tenant would be required to retain documentation but not required to submit it to the landlord in advance. And the tenant would remain obligated to repay full rent in a timely manner and could still face eviction after the enforcement moratorium is lifted. The order takes effect immediately, and provides immediate relief to tenants for whom rent is due on April 1<sup>st</sup>.

Today's action builds on Governor Newsom's previous [executive order](#) authorizing local governments to halt evictions for renters impacted by the pandemic.

A copy of the Governor's executive order can be found [here](#) and the text of the order can also be found [here](#).

In addition, the City of Los Angeles issued an order on March 28, 2020 that provides that residential tenants have twelve (12) months to repay any rent that is deferred from March, April and May 2020.

**VI. Conclusion.**

In conclusion, the CARES Act does provide assistance for small business owners to get through these difficult times. Many commercial landlords are requesting that their commercial tenants apply for the SBA 7(a) Paycheck Protection Program and some are attempting to condition any rent forbearance of deferment on the tenant actually applying for the SBA 7(a) loan. We are





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here to assist you with these matters. If you need assistance understanding or accessing any benefits of the CARES Act, you should contact us or, if you wish to discuss anything else related to the impact of COVID-19 on your life or your business, please feel free to reach out to us.

Thank you,

Alex Cornelius and Justin Cohanghadosh