

CARES Act / SBA Loan Forgiveness

Late last night the Senate passed the \$2 trillion dollar economic stimulus package discussed in yesterday's alert, referred to as the "CARES Act" (Coronavirus Aid, Relief and Economic Security Act.) The House plans to pass this legislation tomorrow via remote voice vote. If the House does not unanimously approve it, then members would need to return to D.C. and passage would be delayed. These provisions are proposed legislation; and although they are expected to pass, they are subject to change.

The provision we're most excited about is the expansion of the SBA's 7(a) loan program. The SBA 7(a) relief loans would be significantly modified under this proposed legislation to provide small businesses (generally those with 500 or less employees) with quick relief. The maximum loan amount is 2.5X average monthly payroll costs (\$10MM maximum.) Some key differences from the SBA disaster loans and other features include:

- Loan forgiveness (following a detailed application, and subject to acceptance by the lender).
 - Expected loan forgiveness would be the actual amount spent during an eight-week period after the origination date of the loan on payroll costs, interest, rent, and utilities. Eligible payroll costs do not include compensation above \$100,000.
 - Forgiveness would be reduced in proportion to any reduction in employees retained compared to a baseline period and reduction in pay of any employee beyond 25% of prior year compensation. In other words, forgiveness is for businesses that retain employees or rehire ones that were laid off.
 - The canceled debt is not taxable.
- No personal guarantees or collateralization – should speed up the approval process (processing time expected to be 7-10 days)
- No fees or low loan fees
- No prepayment penalty – so if business turns around faster than anticipated, can just repay
- If you have credit elsewhere you are not precluded from this loan
- Payment deferral of six months to one year
- Low interest rate capped at 4%
- The "express loan" offered has been increased from \$350K to \$1MM

You should reach out to your bank now to discuss. Not all lenders have experience with SBA loans, so make sure you're working with a qualified SBA lender as the rules governing these loans can get quite complex. The SBA has a lender matching service on their website which can be found at <https://www.sba.gov/funding-programs/loans/lender-match>. Note that this provision is not law yet, so this expansion of the program will be brand new to everyone.

Other highlights of the proposed legislation include:

- One-time rebate check to individuals (\$1,200 per taxpayer plus \$500 per dependent child), subject to income limitations
- Expanded unemployment benefits from the federal government

- Employee retention credit against payroll taxes, for 50% of qualified wages paid to employees who were unable to work due to a full or partial suspension in operations (subject to certain limitations)
- Payroll tax deferral for the employer portion of FICA (50% due by 12/31/21, 50% due by 12/31/22)
- Required minimum distributions (RMDs) suspended for 2020
- Hardship withdrawals from retirement plans, up to \$100k without being subject to the 10% early withdrawal penalty
- Fixing the drafting error from the Tax Cuts and Jobs Act, which made qualified improvement property subject to 39-year depreciation instead of immediate write-off as bonus depreciation
- Increasing the section 163(j) interest limitation, from 30% of adjusted taxable income to 50% of adjusted taxable income
- Deferring the “excess business loss” limitation to 2021. This limitation capped business losses on individual tax returns to \$510k in 2019 and \$500k in 2018, so this may allow for amended 2018 returns if losses were higher.
- Allowing a 5-year corporate NOL carryback for losses from 2018-2020, and usage of NOLs carried to 2019-2020 against 100% of taxable income.

Once the CARES Act is passed in its final form, we will provide additional details. As always, please call us if you have any questions.

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