

**Live Webinar:
Business Continuity Webinar Series**

**How to Obtain
CARES Act Tax Relief, Loans
and Employment Assistance**



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Thursday April 2, 2020

Agenda

- **COVID-19 Tax Updates** — Chris Migliaccio, Sandy Weinberg
- **Families First Coronavirus Response Act** — Dawn Perri, Brett Settles
- **SBA Loans** — Bruce Blasnik

The CARE Act program details discussed in the presentation are current as of 12:00 PM , 4/2/20. Due to the current environment, the CARE Act and its interpretations are subject to change without notice. Please connect to our COVID-19 Resource Center for the most up to date information at a point in time.



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COVID-19 Tax Updates

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COVID-19 Tax Updates

- CARES Act - Current Relief for Tax Filings and Payments
- CARES Act - Economic Stimulus through Tax Refunds
- CARES Act - Other Provisions for Individuals in 2020
- State and Local Status
- Trust and Estate
- What to Do Now

CARES Act - Current Relief for Tax Filings and Payments

- All persons with a U.S. federal income tax return AND payment due April 15, 2020 for the 2019 tax year now have a due date of July 15, 2020. This includes first quarter estimated payments.
 - There is no cap on the amount of payments that can be postponed.
 - In addition, there is no requirement to file an extension and taxpayers do not have to be sick or quarantined to qualify for the relief.

CARES Act - Current Relief for Tax Filings and Payments

- Payment of Social Security taxes due through January 1, 2021 is delayed for employers and self-employed individuals; taxes for this period will be due in equal installments on December 31, 2021 and December 31, 2022.
 - No requirement to prove business impacted by COVID-19.
 - Deferral ends if SBA PPP loan is **forgiven**.
- Employers whose business is closed because of COVID-19 or who experience a significant decline in gross receipts are allowed a payroll tax credit of 50% of qualified wages.
 - Credit applies to Social Security taxes. The credit is refundable to the extent it exceeds Social Security taxes.
 - The maximum amount of qualified wages is \$10,000 per employee over the year (a total of a \$5,000 credit).
 - Only applies to quarters in which a business is affected.
 - Fully or partially shut down because of government order.
 - Gross receipts reduced by at least 50% compared to same quarter in prior year (eligibility continues until quarter in which gross receipts are 80% of quarter in prior year).
 - The credit can be claimed on Form 941 for the relevant quarter in which the business is affected. **However, employers can also request an advance refund on Form 7200. This form can be filed multiple times throughout the quarter.**
 - For businesses with more than 100 employees, the credit is only allowed for employees not providing services. For businesses with 100 or fewer employees, the credit applies to all employees.
 - **Credit not allowed if employer receives SBA PPP loan.**

CARES Act - Economic Stimulus through Tax Refunds

- Net operating losses (NOLs) incurred in 2018, 2019, and 2020 can be carried back five years and fully offset taxable income.
 - The Tax Cuts and Jobs Act (TCJA) passed in 2017 limited NOL usage to 80% of taxable income and prevented carrybacks.
 - The Act also provides elections to avoid the NOL applying to Section 965 amounts, thus increasing the likelihood of the carryback leading to a refund.
- The excess business loss limitation would be suspended for 2018, 2019, and 2020 and may now be used in full to reduce a taxpayer's current or prior year (2018 only) income tax liability.
 - Previously, the TCJA changed the amount of business losses a noncorporate taxpayer may deduct, limiting that amount to \$250,000 (\$500,000 in the case of a joint return). Losses above those amounts had to be carried forward.
 - For 2021 and beyond, wage income is not included in excess business loss calculation.
- Any unused corporate AMT credits remaining are fully refundable (either on a 2019 tax return or a 2018 amended return).
- A fix to the bonus depreciation rules, retroactive to the beginning of 2018, allows a 100% write-off for qualified improvement property (correcting an error in the TCJA).
- The Section 163(j) business interest expense deduction limitation is 50% of adjusted taxable income for 2019 and 2020, up from 30% as outlined by the TCJA. Taxpayers may also elect to use 2019 adjusted taxable income to calculate the 2020 limitation.

CARES Act - Other Provisions for Individuals in 2020

- For individuals affected directly by COVID-19, the 10% early withdrawal penalty is eliminated for IRA and workplace-based retirement plan distributions up to \$100,000 in 2020.
 - In addition, tax on the distribution is due over the next 3 years.
 - The withdrawn funds can be recontributed over the next 3 years without regard to yearly caps.
 - This relief applies for anyone diagnosed with COVID-19, who has a spouse or dependent diagnosed, or who experiences financial hardship as a result of being quarantined, laid off or having reduced work.
 - There is also an increase to the amount that may be taken as a loan from an IRA and workplace-based retirement plan up to \$100,000 (previously \$50,000) and a delay in repaying loans from such plans.
- There will be no limitation on cash charitable contribution deductions for individuals in 2020. For corporations, the 10% limit is increased to 25% for 2020.
 - These changes do not apply to donations to donor advised funds.
 - Individuals who do not itemize can deduct up to \$300 of charitable deductions, in addition to their standard deduction.
- Individuals are eligible to receive rebate checks of \$1,200 (\$2,400 for joint filers). Each dependent claimed would increase the amount by \$500.
 - Eligibility is based on 2018 adjusted gross income unless 2019 return is filed
 - The amount begins to phase down at \$75,000 of income (\$150,000 for joint filers, \$112,500 for heads of households), down to zero at \$99,000 of income (\$198,000 for joint filers) for those with no dependents.
- The Act temporarily suspends the required minimum distribution rules for 2020.
- Employer payments of employee student loans will not be included in income for 2020.

State and Local Taxes

- State tax implications of CARES Act
 - NOLs
 - Section 163(j)

- If employees stay at home in another state, does that create nexus?
 - Are filing obligations triggered?
 - New Jersey

State and Local Taxes – Deadline Extensions

- New York – As of Sunday
 - Deadline extended to July 15, 2020 for personal income tax and corporation tax returns and payments, originally due on April 15, 2020.
 - Amounts owed for 2019 tax year and 2020 estimated payments are also due July 15, 2020.
 - Automatic extensions to file to October 15, if requested by July 15, 2020
- New York City
 - For business and excise taxes, penalties will be waived if taxes due from March 16, 2020 - April 25, 2020, interest will still be imposed from the original due date.

State and Local Taxes – Deadline Extensions

- New Jersey – **Deadline Extended to July 15, 2020 as of yesterday**
- Connecticut – Deadline extended to July 15, 2020 for personal income tax only
 - Business taxes have different deadline extensions
- MA, MD, PA, RI, MA, VT – Deadline extended to July 15, 2020
- NH – Not extending the filing and payment due dates for business tax, interest and dividends tax. Need to pay tax liability for 2018 by 4/15.
 - No penalties or interest if taxpayers file and pay balance due within the automatic 7-month extension

Trusts and Estates

- U.S. Income Tax Return for Estates and Trusts Return (Form 1041) and payment deadlines extended from April 15, 2020 to July 15, 2020.
 - Estimated payments extended as well
- Gift tax
 - Form 709s and their balances due are now extended at the federal level to 7/15/20
 - Automatic 6 month extension of time (Form 8892) to file Form 709 is only until 10/15/20.
- Estate tax
 - No relief provided. Returns/balances due are still due on 9 month anniversary of decedent's death.
 - Application for Extension of Time to File A Return and/or Pay U.S. Estate (and Generating-Skipping Transfer) Taxes (Form 4768) , can be filed to request automatic 6 month extension.
 - With reasonable cause, an extension of time to pay may also be requested.
- State Estate and Trust Returns – Generally following federal tax extensions.

What to Do Now

- Review clients' 2018 returns and 2019 provided information to see if they have:
 - Unused or limited NOLs from 2018 or predict one in 2019
 - An excess business loss limitation from 2018
 - Large 2019 overpayments that would be credited to 2020 estimated tax obligations
 - Qualified improvement property placed in service in 2018 or 2019
 - Unused business AMT credits
 - 2019 business interest expense limitation



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Families First Coronavirus Response Act

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Topics

- Emergency Paid Sick Leave Act
- Emergency Family Medical Leave Act

Emergency Paid Sick Leave Act

- The Act applies to employers with fewer than 500 employees, and remains in effect until December 31, 2020.
- Covered employers must provide full-time employees with up to 80 hours of paid sick leave if the employee cannot work or telework due to COVID-19. Part-time employees are entitled to paid sick leave based on the number of hours the employee works, on average, over a two-week period.

Qualifying Reasons for Emergency Paid Sick Leave

1. is subject to federal, state or local quarantine or isolation order related to COVID-19;
2. has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
3. is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19;
5. is caring for a child whose school or daycare has been closed, or when a child care provider is unavailable, due to COVID-19 precautions; or
6. is experiencing any other substantially similar conditions specified by the Secretary of Health and Human Services.

What are the pay requirements?

- Paid sick leave taken for reasons 1-3 above must be paid at the employee's regular rate of pay, or minimum wage, whichever is greater, up to a maximum of \$511/day. An employee taking paid sick leave for reasons 4-6 must be compensated at two-thirds of their regular rate of pay, or minimum wage, whichever is greater, up to a maximum of \$200/day.

Continued – Emergency Paid Sick Leave

Employers should also note that they cannot:

- Require an employee to use other paid leave before using the paid sick time provided in the new legislation.
- Require an employee to find a replacement to cover their scheduled work hours.
- Retaliate against any employee who takes leave in accordance with the Act.
- Retaliate against an employee who files a complaint or participates in a proceeding related to the Act—including a proceeding that seeks to enforce the Act.

Emergency Family Medical Leave Act

- The Emergency Family and Medical Leave Expansion Act (EFMLA) amends the current Family and Medical Leave Act (FMLA), allowing leave for eligible employees who can't work (or telework) because their minor child's school or childcare service is closed due to a COVID-19 emergency declared by a federal, state or local authority.
- Eligible employees include employees who work for an employer with fewer than 500 employees and who have been on payroll for at least 30 calendar days.
- The first 10 days of this leave may be unpaid; however, employees may elect to substitute available paid time off, such as vacation, personal or sick leave, during this time.
- After the initial 10 days, employers must pay eligible employees at least two-thirds of an employee's regular rate of pay (as defined under the Fair Labor Standards Act) based on the number of hours the employee would otherwise have been scheduled to work. These paid-family-leave benefits are capped at \$200 a day (or \$10,000 total).
- Importantly, the DOL confirms that if an employee is on unpaid administrative leave/furlough/temporary layoff, the employee is **NOT** eligible for paid sick leave or EFMLA. This applies whether the unpaid administrative leave/furlough/temporary layoff occurred before or after April 1, 2020. Only when the employee returns to work would they be eligible for paid sick leave or EFMLA.

Potential Exemptions

- The legislation allows the Secretary of Labor to exclude health care providers and emergency responders from the definition of employees who are allowed to take leave. Additionally, employers with fewer than 50 workers can ask the Secretary of Labor for an exemption from providing paid family and medical leave and paid sick leave if it "would jeopardize the viability of the business."
- The EFMLA leave generally requires employers to reinstate employees in the same job or an equivalent position when they return to work, but there is an exception for employers with fewer than 25 employees if the position no longer exists due to economic conditions or operational changes that are made because of the public health emergency.
- Paid Sick Leave benefits will be immediately available when the law takes effect, regardless of how long the worker has been employed. Under the legislation, paid sick leave is limited to \$511 a day (and \$5,110 total) for a worker's own care and \$200 a day (and \$2,000 total) when the employee is caring for someone else. An employer can require the worker to follow reasonable notice procedures to continue receiving the benefit after the first workday that an employee receives paid sick time under the Act.

Unemployment Insurance

- Pandemic Unemployment Assistance Program created to help those not traditionally eligible for Unemployment Insurance (UI), including self-employed individuals, independent contractors, those with limited work history and those who are unable to work as a result of the coronavirus public health emergency.
- An additional \$600/week payment to each UI or Pandemic Unemployment Assistance recipient through the end of July 2020.
- Provides funding for the 1st week of unemployment for states to waive the traditional “waiting week” before benefits begin.
- Provides an additional 13 weeks of unemployment to help those who remain unemployed after weeks of state unemployment are no longer available.

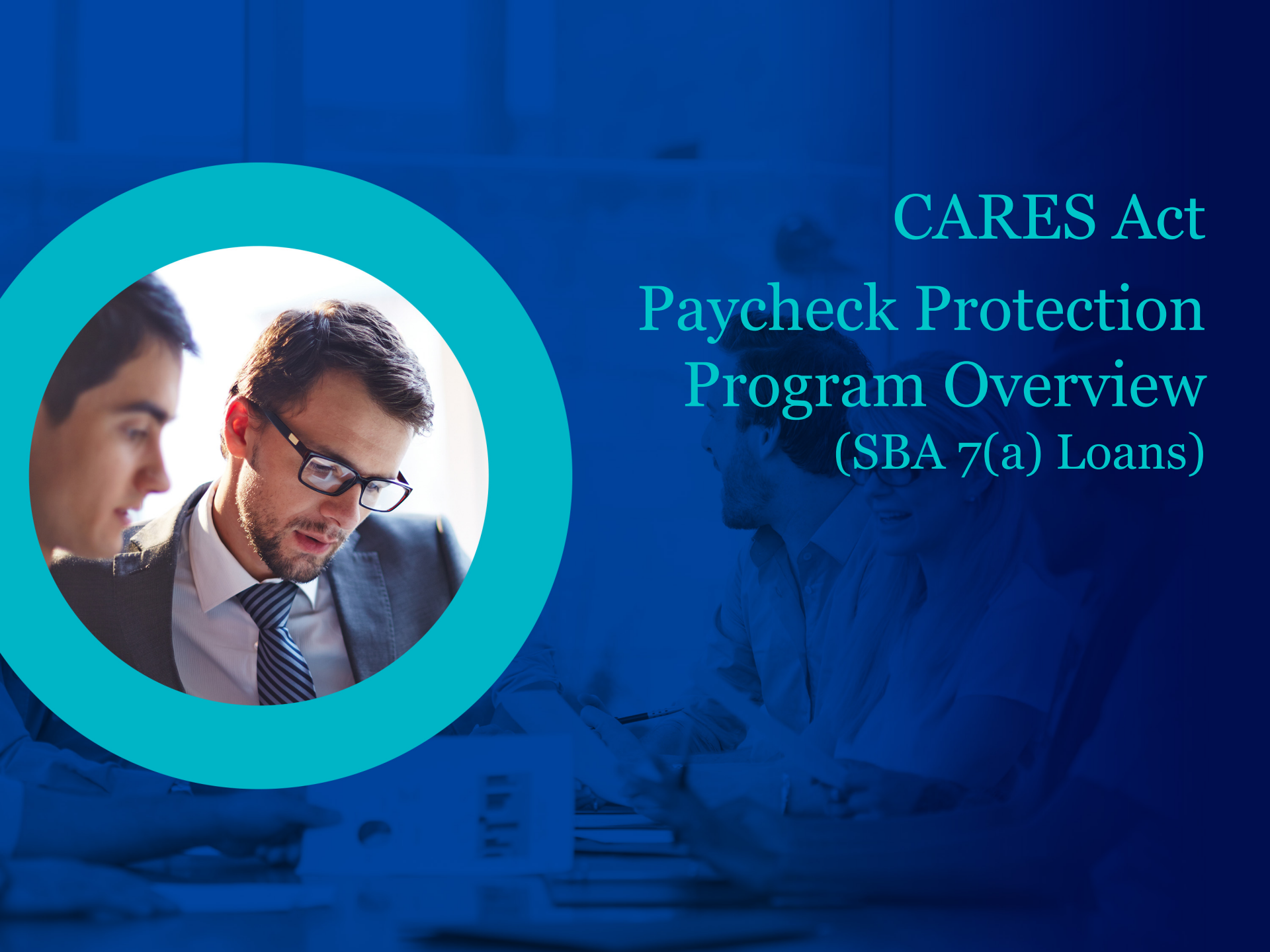


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SBA Loans

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CARES Act Paycheck Protection Program Overview (SBA 7(a) Loans)



What is it?

The *Paycheck Protection Program* is the section of the CARES Act that temporarily modifies the already existing *SBA 7(a) Loan Program* in order to meet the current, urgent financial needs of *small businesses*.

Eligibility is expanded; requirements are relaxed; approval processes are expedited; and forgiveness provisions were added.

Eligible Businesses

- Any business or nonprofit (exempt under IRC Sec. 501(c)(3) or 501(c)(19) – e.g. charitable or veteran’s organizations) with 500 or fewer employees.
- Other “small businesses” under SBA size standards (13 CFR Part 121)
- Be careful of the Affiliation Rules

Affiliation

- Companies under common control will be aggregated for purposes of determining the number of employees and revenue
- Control can be achieved by:
 - Majority voting control
 - Managerial control
 - Economic and contractual control
 - Significant influence, but less than majority control
- Close family member holdings are aggregated
- *Foreign affiliates are counted as affiliates*

Special Rules for Hotels and Restaurants

- Covers businesses with NAICS codes beginning with **72**
 - Hotels, restaurants, caterers, etc.
- Affiliation rules are waived.
- Any business concern with a NAICS code beginning with 72 that employs not more than 500 employees per physical location is eligible to receive a PPL.

Loan Amount

- Lesser of:
 - 2.5x average monthly payroll for the prior year
 - \$10 million
- Payroll costs include salaries, wages, tips; vacation, medical or sick leave health and retirement benefits and state and local wage taxes.
- Payroll costs exclude compensation over \$100,000 for any individual employee and employee social security and Medicare taxes withheld.

Special Provisions

- No personal guarantees
- No collateral
- No requirement to obtain credit elsewhere
- Maximum loan maturity is 10 years (SBA is now saying 2 years)
- Interest will not exceed 4 percent per annum (SBA is now saying 0.5 percent)
- Loan repayment will be deferred for 6 months
- Loan proceeds can be used for payroll costs, rent, mortgage interest and utilities

Loan Forgiveness

- The amount eligible for forgiveness is based on a ratio:
$$\frac{\text{Avg \# FTEs per month for 8 wks after loan date}}{\text{Avg \# FTEs per month 2/15/19 to 6/30/19}^*}$$
- Forgiveness is reduced by any wage reductions in excess of 25% per employee
- A temporary reduction in head count or salary/wage rates made between 2/15/20 and 4/26/20 will not reduce forgiveness if corrected by 6/30/20
- The amount forgiven is excluded from taxable income

* A borrower can alternatively choose to use the period 1/1/20 to 2/29/20

Economic Injury Disaster Loans (EIDLs) (SBA 7(b) Loans)



What are they?

Economic Disaster Assistance Loans are one of several disaster loan programs authorized under Title 15, Chapter 14, Section 636(b) (*7(b) Loans*) overseen by the SBA.

The loan program has been temporarily enhanced by the CARES Act.

Eligible Businesses

- Located in a “Disaster Area”
- Qualified small business (under SBA size standards)
- *Private* nonprofit organizations (exempt under 501(c), (d) or (e))
- Small agricultural cooperatives
- Affiliation rules apply in determining size

EIDL Waivers Under CARES

- Personal guarantees on loans up to \$200,000 – WAIVED
- 1-year in business requirement – WAIVED
- Ability to obtain credit elsewhere – WAIVED
- Applicants can be approved based on credit score alone without the need to submit tax returns

Loan Terms

- Amounts up to \$2 million
- Interest rate of 3.75% for small businesses and 2.75% for nonprofits
- Up to 30-year amortization
- May receive an immediate advance (3-days) of up to \$10,000
 - This advance does not have to be repaid (even if the loan is denied)
- Ability to transfer into a 7(a) loan

Use of Funds

- Ordinary and necessary business expenses
- Can't be used for:
 - Refinancing existing debt
 - Paying other federal agency loans
 - Paying federal, state or local tax penalties or fines
 - Repairing physical damage
 - Making distributions to owners other than reasonable remuneration



Other Matters



Ineligible Businesses (not an all inclusive list)

- Those engaged in lending, multi-level sales distribution, speculation or investment (except for certain real estate investments)
- A consumer or marketing cooperative
- Certain types of agri-businesses
- Businesses not qualifying as “small”
- Entities deriving more than one-third of its revenue from gambling activities
- Entities principally engaged in teaching, instructing, counseling or indoctrinating religious beliefs
- Entities principally engaged in political or lobbying activities

Applications

- Paycheck Protection 7(a) Loans
 - Apply through an approved SBA lender, generally your regular bank
 - Need to certify that the loan is necessary to support operations due to uncertain economic conditions and will be used to retain workers and support authorized expenses.
- EIDL's
 - Apply directly with the SBA
- We recommend you submit your applications ASAP.
- We are available to provide guidance and assistance.

Which Program to Use

- The 7(a) and EIDL programs are not mutually exclusive, but how they will be coordinated is unclear.
 - The 7(a) program looks like the better program for eligible entities, as it is a grant, not a loan.
- Businesses with an immediate need should be able to apply for both and, at the very least, receive the \$10,000 EIDL grant very quickly.
- Large nonprofits (with > 500 employees) will not qualify for the 7(a) program. They appear to be eligible for the EIDL.