



## **CARES ACT: RELIEF FOR BUSINESSES AND WORKERS**

**April 10, 2020**

The purpose of this memorandum is to provide a general summary of the overall relief but focuses on more detailed information regarding the relief for small businesses as provided by the federal Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) which was signed into law on March 27, 2020.

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### **OVERVIEW**

The CARES Act provides much needed relief to individuals, businesses, and hospitals who are all experiencing financial and economic hardships as a result of the spread of the novel coronavirus (COVID-19). The relief is packaged in several forms including, but not limited to:

- \$349 million in grants and loan programs, which include loan forgiveness for small businesses;
- \$130 billion in relief to the medical/hospital industry for shortages of drugs, medical supplies, and medical devices;
- Payments of up to \$1,200 directly to individuals (\$2,400 for married couples), plus \$500 for each child;
- Expanded eligibility to unemployment and provides \$600 in additional unemployment payments per week over and above each state’s unemployment amount;
- \$500 billion to support severely distressed sectors of the economy through loan programs for states, municipalities, and businesses; and
- Expanded the Defense Production Act, which allows the government to use private industry to correct resource shortfalls for up to 2 years and without regard for the current limit of \$50 million.

For more information on any one of these specific areas not addressed by this memorandum, please contact Chestnut Cambronne PA attorneys **William Torhorst** at (612) 336-1281 or [wtorhorst@chestnutcambronne.com](mailto:wtorhorst@chestnutcambronne.com) and **Jennifer Crancer** at (612) 767-3612 or [jcrancer@chestnutcambronne.com](mailto:jcrancer@chestnutcambronne.com).

## **SMALL BUSINESS RELIEF**

Title I of the CARES Act provides financial relief to small businesses by offering several loan programs, including the Paycheck Protection Program, Economic Disaster Loans (EIDL), and Emergency SBA Loan Payment Subsidies, as well as several smaller initiatives including State Trade Expansion Program (STEP), Entrepreneurial Development, and bankruptcy relief.<sup>1</sup> Title II of the CARES Act provides additional relief for unemployment insurance and a variety of tax credits and rebates for both individuals and businesses. This memorandum addresses only the unemployment insurance relief part of Title II.

### *Paycheck Protection Program*

Companies suffering significant business disruption as a result of COVID-19 may be eligible to receive “Business Interruption Loans” (also referred to as “PPP Loans”) with no application costs through the Small Business Administration (SBA).

To qualify the business must meet the following criteria:

- Employ with 500 or fewer workers;
- If a business has more than 500 employees, it may still qualify if it meets the SBA industry-based size standards requirements per NAICS code. The NAICS code requirements are generally based on number of employees or annual receipts. The number of employees is determined by aggregating all employees including those of affiliates, subsidiaries, and portfolio companies. However, certain businesses, such as any business with a NAICS Code that begins with 72 (Accommodations and Food Services) that has more than one physical location and employees less

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<sup>1</sup> This memorandum focuses on two of the Act’s six titles, including Title I – Keeping American Workers Paid and Employed Act, and portions of Title II – Assistance for American Workers, Families, and Businesses specifically relating to Unemployment Benefits. Tax relief for individual businesses, and relief available for sectors of the U.S. economy deemed severely distressed (*e.g.* municipalities, cities, states, and the airline industry) and the health care industries are not addressed in this memorandum. Please contact Chestnut Cambronne PA for more information on any of the areas not discussed in this memorandum.

than 500 per location may qualify. Other qualifying businesses may include independently owned franchises and businesses already receiving financial assistance from a Small Business Investment Company (SBIC).

- Sole proprietors, independent contractors, gig economy workers, and in most cases, self-employed individuals can qualify as well.

#### Terms of PPP Loan:

- *Loan Amount:* 2.5x the business's average monthly payroll costs (up to \$10 million)
- *Interest Rate:* 1.0% fixed (the rate was originally 0.5% fixed, but on April 2, 2020, the SBA came out with guidelines changing the rate). Any unforgiven loan amounts may be charged interest not to exceed 4.0%.
- *No Collateral or Personal Guarantees Required*
- *Loan Period:* No payment for first 6 months. Maturity of 2 years.
- *Forgiveness:* Up to 100% with approval. To obtain approval all loan proceeds must be used for "covered payments" and all "covered payments" must be made within the 8-week period commencing on the date of loan's origination.
- *No Prepayment Penalties*
- *Restrictions on Use of Loaned Funds:* The loaned funds will only be forgiven if they are used for in compliance with the following requirements:
  1. The loaned funds must be used during the "covered period," which is from February 15, 2020 through June 30, 2020.
  2. The loaned funds must be used exclusively within the 8-week period commencing on the date of the loan's origination.
  3. 75% of the loaned funds must be used for "Payroll Costs," which include the following:
    - Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
    - Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
    - State and local taxes assessed on compensation; and
    - For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.
  4. Up to 25% of the loaned funds may be used for either (i) interest on any mortgage obligation that existed prior to February 15, 2020 (not including any form of principal payment); (ii) rent due under a lease in existence prior to February 15, 2020; or (iii) utility payments (gas, water,

electric, transportation, phone, internet access incurred in the ordinary course of business before February 15, 2020).

- *Restrictions on Amount of Loan Forgiveness:* If you use loaned funds for any purpose other than the above-listed permitted expenses or you use the funds for approved purposes outside of the 8-week period, the loaned funds will not be forgiven. Because the purpose of the PPP is to keep employees employed and paid their current salaries, the amount of loan forgiveness a business can receive, will be reduced if the business either (i) lays off or fires employees, or (ii) fails to pay employees their prior salaries/reduce employee salaries. There are specific equations that the government will use to calculate how a reduction in the number of employees on staff or reduction in employee salaries will reduce the amount of loan forgiveness.

Businesses should be mindful to track their use of the loaned funds in order that there is no question as to whether the use of loaned funds qualifies for loan forgiveness. Any amounts not used for qualified expenses will not be forgiven.

These unsecured loans are available until June 30, 2020 through local lenders who currently offer SBA 7(a) lending programs, or lenders who have been approved by the Department of Treasury. Lenders will be reimbursed by the SBA for origination or underwriting fees depending on the size of the loan, which should allow the lender to offer no fee (or low fee) origination.

Businesses interested in obtaining a PPP loan should contact their local lender and request more information as soon as possible. The amount of funds available for the Paycheck Protection Program are limited and going fast. If the business' lender is not an approved SBA lender, the business can search for approved lenders in its area by using the [SBA's online Lender Match tool](#). After receiving the loan, work with the local lender to determine the expenses that qualify for forgiveness. The business will also work with the local lender to submit an application in support of loan forgiveness. The lender will make a determination within 60 days of receipt of the application, and the portion of principal (and interest on such principal) subject to forgiveness will be forgiven at the end of the eight (8) week period following origination of the loan. The business will be responsible for making payments (principal and interest) on the principal balance of the loan that is determined not to be eligible for forgiveness upon the expiration of the deferral period.

Please note that a loan under the Paycheck Protection Act is not the same as an Emergency Injury Disaster Loan (EIDL). If a business has already received an EIDL, it may be refinanced into the Paycheck Protection Program for the purpose of loan

forgiveness. However, if the business has already received an EIDL, the expenses paid by an EIDL grant will not qualify for loan forgiveness under the Paycheck Protection Program. More information on EIDL's can be found below.

### ***Emergency Economic Injury Disaster Loan (EIDL) and \$10,000 Grant***

The CARES Act expanded the eligibility requirements for businesses to obtain a disaster loan. An EIDL is a low-interest, fixed-rate loan that can provide up to \$2 million in assistance for a borrower.

EIDL funds come directly from the federal government, so applicants do not go through a lender to apply. A business interested in an EIDL should apply directly to [SBA's Disaster Assistance Program](#). The amount a business can receive in EIDL is based on the amount of economic injury. An EIDL will apply to covered expenses during the period of January 31, 2020 through December 31, 2020. If you apply for an EIDL loan, in the process, you can apply for an immediately advance of \$10,000, which will become a grant that is not required to be repaid if your EIDL loan is approved.

To qualify, businesses must meet the following criteria:

- The business must have been in operation on January 31, 2020.
- The business must have 500 or fewer employees. Cooperatives, ESOPs, and tribal small business concerns with 500 or fewer employees may also be eligible.
- Any individual who operates as a sole proprietorship, with or without employees, or as an independent contractor may be eligible.

The terms of the EIDL include the following:

- *Loan Amount:* Up to \$2 million available
- *Interest Rate:* 3.75% for small businesses (2.75% for nonprofits)
- *Loan Period:* Up to 30 years. Payments on Coronavirus EIDL loans are deferred for 1 year.
- *Security:* No collateral is required for loans or \$25,000 or less. Up to \$200,000 can be approved without a personal guarantee.
- *Forgiveness:* 0%
- *Permitted Uses of Loan Proceeds:* Payroll, fixed debts (rent, etc.), accounts payable, and bills that could have been paid had the disaster not occurred
- *Ineligible Uses of Loan Proceeds:* Bonuses, disbursements to owners, expansion of facilities, infrastructure improvements, repair or replacement of physical damages, refinancing long term debt, paying loans from another federal agency or small business investment company, etc.
- *Eligibility:* Based on size, type of business, and financial resources

To access the \$10,000 emergency grant, you must apply for an EIDL loan. In the process of applying for the EIDL loan, you can apply for an emergency \$10,000 grant, which if approved, will come to you within 3 days of your application. There is no obligation to repay the grant. However, please note that if you secure a PPP loan, the \$10,000 grant will be subtracted from the loan forgiveness amount.

As noted in the Paycheck Protection Act section above, if a business receives an EIDL but later refinances to a program under the Paycheck Protection Act for the purpose of applying for loan forgiveness, the SBA approved lender will work with the business to determine the expenses that qualify for loan forgiveness. The amount determined to qualify for loan forgiveness will be reduced by any EIDL grant received.

### **Debt Relief Program for Existing Non-Disaster SBA Loans**

Businesses who have existing SBA 7(a), 504, and microloans will also receive aid from the CARES Act. For six (6) months following enactment, the SBA will automatically pay the principal, interest, and fees for the current borrowers of 7(a), 504, and microloan programs. The SBA will also pay the principal, interest and fees for new borrowers of 7(a), 504, or micro loans issued prior to September 27, 2020. Additionally, the SBA is providing automatic deferments through December 31, 2020 for all disaster loans that were in repayment as of March 1, 2020. However, if you have such a loan and have set up automatic payments or debits, the SBA will not act to cancel those payments on the borrower's behalf. For more information about these programs visit the [SBA's Debt Relief](#) webpage, or click the provided link.

### **GRANTS, EDUCATION, TRAINING, & SUPPORT FOR SMALL BUSINESSES**

In addition to the programs discussed above, the CARES Act introduces relief and stimulus to help new business ideas grow and provides additional resources to expand the reach of programs designed to encourage minority business, women's business, and entrepreneurial business efforts. The following are examples of other sources of relief provided by the CARES Act:

- State Trade Expansion Program (STEP). This SBA program is designed to provide financial assistance to small businesses in export development through federal grants awarded to state and territory governments. The CARES Act has extended the availability of federal grant funds in 2018 and 2019 to remain available through December 31, 2020.

The CARES Act provides relief to small business resource centers in two forms. First, it appropriates \$240,000,000 in funds available through grants to Entrepreneurial Development Programs through the SBA. Second, it waives matching funding requirements for three (3) months for grants available to Minority Business Centers, Minority Business Chambers of Commerce, and Women's Business Centers. The goal of this stimulus is to provide additional funding and educational training and resources to small business outreach and counseling programs like "SCORE", veterans business outreach, women's business centers, and minority business centers for the purpose of equipping counselors with tools and information to help business owners navigate the challenges and effects of COVID-19.

For additional resources and information on all of the programs discussed above, here is a link to the US Senate's Guide to the [Small Business Owner's Guide to the CARES Act](#) published by the US Senate's committee on Small Business and Entrepreneurship.

### **BANKRUPTCY RELIEF UNDER CHAPTERS 7, 11, & 13**

In the event that you or your business is involved in or may become involved in a bankruptcy proceeding, whether you are acting as a debtor or creditor, the CARES Act made a couple adjustments, that may impact your circumstances. More specifically, the CARES Act makes changes to the following for one (1) year, expiring March 27, 2021:

- *Chapter 11.* The debt limit for businesses looking to file for reorganization under Subchapter 5 has been increased from \$2,725,625 up to \$7,500,000;
- *Chapter 7.* For the purposes of determining a debtor's eligibility to file under Chapter 7, the definition of "current monthly income" has been changed to exclude any payments received by the debtor pursuant to the CARES Act.
- *Chapter 13.* Any CARES Act payments made to the debtor may not be included in the calculation of "disposable income" in order to determine whether or not a plan of reorganization may be confirmed under Chapter 13. Further, debtors who have a previously confirmed plan under Chapter 13 are permitted to seek modification of the plan to extend payments up to 7 years in the event they have experienced a "material financial hardship" related to COVID-19.

## UNEMPLOYMENT INSURANCE EXPANSION

In anticipation of a surge in layoffs to the American workforce caused by “shelter in place” orders and the practical difficulties that small businesses will face, the CARES Act expanded the benefits to those who are no longer employed through no fault of their own. The CARES Act makes changes to a worker’s eligibility, to the type and amount of benefits that may be available, and to how the benefits are administered between the State and Federal Agencies.

*The CARES Act expands the eligibility requirements to allow for more workers to receive unemployment insurance benefits.* Unemployment benefit assistance can now be provided to those who are not otherwise entitled to benefits under existing state or federal law for weeks of unemployment, partial unemployment, or inability to work as a result of a COVID-19 illness, quarantine, or movement restriction during the period January 27, 2020 through December 31, 2020. This includes any waiting periods for benefits under applicable state law. The expansion also provides eligibility to individuals who are self-employed, seeking part-time employment, and to those who might not have sufficient work history. However, individuals who have the ability to telework with pay and those who are receiving paid sick leave or other paid benefits are expressly excluded (even if they otherwise satisfy the criteria for unemployment under the new law).

*The CARES Act expands the amount of unemployment insurance benefits available to eligible workers.* The CARES Act provides the following unemployment insurance benefits:

- Each worker who is either laid off or sustains a reduction in hours due to a COVID-19-related issue will receive an additional \$600 per week above the amount available through the worker’s state unemployment program.
- The additional \$600 payment is available for unemployment insurance payments made between March 27, 2020 through July 31, 2020.
- States can agree to provide pandemic emergency unemployment compensation to individuals who have either exhausted all of the benefits available to them under existing state and federal law or who are not otherwise eligible for benefits under existing state and federal law.
- The total benefit period is increased from 26 to 39 weeks (including any unemployment benefits or extended benefits received under existing state or federal law). It also leaves open the opportunity for the benefit period to be extended beyond 39 weeks. The \$600 weekly benefit increase will be applicable only to weekly payments made through the end of July 2020.
- Waives any waiting periods for benefits under applicable state law.
- *Short-Time Compensation Plans:* For employers with approved short time compensation plans (Shared Work Plan), The CARES ACT reduces the employer’s

contribution to half of the payment amount approved under such plan. For more information about applying for a Shared Work Compensation Plan, visit the [Minnesota Department of Employment and Economic Development](#).

Chestnut Cambronne PA remains ready, willing, and able to assist restaurant, bar, and spa owners, and public accommodation providers with their legal needs. If you want to discuss whether your establishment might continue operating or any other matters, please do not hesitate to contact our attorneys **William Torhorst** at **(612) 336-1281** [wtorhorst@chestnutcambronne.com](mailto:wtorhorst@chestnutcambronne.com) and **Jennifer Crancer** at **(612) 767-3612** or [jcrancer@chestnutcambronne.com](mailto:jcrancer@chestnutcambronne.com).