

CARES Act Summary for Public Finance

by John P. Danos, David D. Grossklaus, Jennifer L. Hanson, Cristina Kuhn, Erin McCrady, Dan Semmens, and James H. Smith

In a potentially sweeping boost to public finance, the CARES Act (the “Act”) authorizes the direct purchase by the Federal Reserve of state and local government obligations, as well as the provision of debt guarantees and direct loans. These measures mirror the loan and loan guarantee programs under the Act for businesses. This capital will be deployed via a Special Purpose Vehicle established under the Federal Reserve’s Section 13(3) authority, with \$454 billion in capital provided via the Treasury’s Exchange Stabilization Fund (ESF). With leveraging and other means an expectation of ten times investment on the \$454 billion ESF investment is expected to equate to approximately \$4.54 trillion to be invested.

The below is a summary of additional provisions of the Act related to public finance. It describes how the Act provides state and local governments with financial assistance to provide for economic protection and welfare of their citizens, local business and community healthcare providers. Please reach out to members of our Public Finance practice if you have any questions.

TITLE I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

Section 1102. Paycheck Protection Program

Increases the government guarantee of loans made for the Payment Protection Program under section 7(a) of the Small Business Act to 100 percent through December 31, 2020.

Provides the authority for the Administrator of the U.S. Small Business Administration (SBA) to make loans under the Paycheck Protection Program.

Entities eligible for loans include 501(c)(3) nonprofit organizations with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher.

Applies current SBA affiliation rules to eligible nonprofits.

Allow businesses with more than one physical location that employs no more than 500

Related People

- John P. Danos
- David D. Grossklaus
- Jennifer L. Hanson
- Cristina Kuhn
- Erin McCrady
- Dan Semmens
- James H. Smith

Related Capabilities

- Public Finance
- Banking & Financial Institutions

employees per physical location in certain industries to be eligible and is below a gross annual receipts threshold in certain industries to be eligible.

Defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.

Establishes the maximum 7(a) loan amount to \$10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan.

Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.

Provides delegated authority, which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA's channels, to all current 7(a) lenders who make these loans to small businesses, and provides that same authority to lenders who join the program and make these loans.

For eligibility purposes, requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

Provides an avenue, through the U.S. Department of Treasury, for additional lenders to be approved to help keep workers paid and employed. Additional lenders approved by Treasury are only permitted to make Paycheck Protection Program loans, not regular 7(a) loans.

Provides a limitation on a borrower from receiving this assistance and an economic injury disaster loan through SBA for the same purpose. However, it allows a borrower who has an EIDL loan unrelated to COVID-19 to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven under the Paycheck Protection Program.

Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, mortgage lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.

Waives both borrower and lender fees for participation in the Paycheck Protection Program.

Waives the requirement that the borrower could not obtain credit elsewhere test for funds provided under this program. Waives collateral and personal guarantee requirements under this program.

Outlines the treatment of any portion of a loan that is not used for forgiveness purposes. The remaining loan balance will have a maturity of not more than 10 years, and the guarantee for that portion of the loan will remain intact.

Sets a maximum interest rate of four percent.

Ensures borrowers are not charged any prepayment fees.

Increases the government guarantee of 7(a) loans to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding \$150,000 and 85 percent for loans equal to or less than \$150,000.

Allows complete deferment of 7(a) loan payments for at least six months and not more than a year, and requires SBA to disseminate guidance to lenders on this deferment process within 30 days.

Provides the regulatory capital risk weight of loans made under this program, and temporary relief from troubled debt restructuring (TDR) disclosures for loans that are deferred under this program.

Provides an authorization level of \$349 billion for the 7(a) program through December 31, 2020.

Section 1106. Loan Forgiveness

Establishes that the borrower receiving a loan under Section 1102 shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.

Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages:

Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation **plus** any covered utility payment.

The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll

at the beginning of the period.

Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses.

Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact.

Section 1110. Emergency EIDL Grants

Expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private nonprofit organizations are also eligible for both grants and EIDLs.

Requires that for any SBA EIDL loans made in response to COVID-19 before December 31, 2020, the SBA shall waive any personal guarantee on advances and loans below \$200,000, the requirement that an applicant needs to have been in business for the 1-year period before the disaster, and the requirement that an applicant be unable to obtain credit elsewhere.

During the covered period, allows SBA to approve and offer EIDL loans based solely on an applicant's credit score, or use an alternative appropriate alternative method for determining applicant's ability to repay.

Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than \$10,000, which the SBA must distribute within 3 days.

Establishes that applicants shall not be required to repay advance payments, even if subsequently denied for an EIDL loan.

In advance of disbursing the advance payment, the SBA must verify that the entity is an eligible applicant for an EIDL loan. This approval shall take the form of a certification under penalty of perjury by the applicant that they are eligible.

Outlines that advance payment may be used for providing paid sick leave to employees unable to work due to the direct effect of COVID-19, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

Requires that an advance payment be considered when determining loan forgiveness, if the applicant transfers into a loan made under SBA's Paycheck Protection Program.

Terminates the authority to carry out Emergency EIDL Grants on December 31, 2020.

TITLE IV—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY

Subtitle A—Coronavirus Economic Stabilization Act of 2020

Section 4002. Definitions.

Defines an “Eligible Business” as a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act. This Section also defines a “State” as any of the several States, the District of Columbia, any of the territories and possessions of the United States, any bi-State or multi-State entity, and any Indian tribe, and defines “Municipality” as including a political subdivision of a State and an instrumentality of a municipality, a State or a political subdivision of a State.

Section 4003. Emergency Relief and Taxpayer Protections

- Provides \$500 billion to Treasury’s Exchange Stabilization Fund to provide loans, loan guarantees, and other investments, distributed as follows:
 - (1) Direct lending, including:
 - a. \$25 billion for passenger air carriers, eligible businesses that are certified under part 145 of title 15, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents;
 - b. \$4 billion for cargo air carriers; and
 - c. \$17 billion for businesses important to maintaining national security.
 - (2) \$454 billion, as well as any amounts available but not used for direct lending, for loans, loan guarantees, and investments in support of the Federal Reserve’s lending facilities to eligible businesses, states, and municipalities. Federal Reserve 13(3) lending is a critical tool that can be used in times of crisis to help mitigate extraordinary pressure in financial markets that would otherwise have severe adverse consequences for households, businesses, and the U.S. economy, including through
 - (a) purchasing obligations or other interests directly from issuers of the obligations;
 - (b) purchasing obligations or other interests in the secondary market or otherwise; or
 - (c) making loans, including loans or other advances secured by collateral.

Any lending through a 13(3) facility established by the Federal Reserve under this Section must be broad-based, with verification that each participant is not insolvent and is unable to obtain adequate financing elsewhere. Loan forgiveness is not permissible in any such credit facility.

Treasury will endeavor to implement a special 13(3) facility through the Federal Reserve targeted specifically at nonprofit organizations and businesses between 500 and 10,000 employees, with the loans made under the facility to bear interest at not more than 2% per annum, with no principal or interest payments due for at least six months, subject to additional loan criteria and obligations on the recipient, such as:

- (1) The recipient must certify that the uncertainty of economic conditions as of the date of the applicable makes the loan request necessary to support the ongoing operations of the recipient;

- (2) The funds received must be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through September 30, 2020;
- (3) The recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to its workers no later than 4 months after the termination date of the public health emergency;
- (4) The recipient will not outsource or offshore jobs for the term of the loan plus an additional two years;
- (5) The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years; and
- (6) The recipient must remain neutral in any union organizing effort for the term of the loan.

Section 4029. Termination Authority.

All authority to make new loans, loan guarantees, or other investments provided under this Title shall terminate on December 31, 2020. The duration of all loans under this Title shall not exceed five years.

TITLE V—CORONAVIRUS RELIEF FUNDS

Section 5001. Coronavirus Relief Fund

Provides \$150 billion to States, Territories, and Tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines, allocated by population proportions, with a minimum of \$1.25 billion for states with relatively small populations.

Units of local government (a county, municipality, town, township, village, parish, borough or other unit of general government below the State level with a population that exceeds 500,000) may apply for a portion of the applicable State's share upon application and certification that the funds will be used for nonbudgeted expenditures incurred between March 1, 2020 and December 1, 2020 related to the public health emergency with respect to COVID-19.