

FUTALEUFU PARTNERS

“GIVE ME LIQUIDITY OR GIVE ME DEATH”

GOVERNMENT RESOURCES - CARES ACT LOAN UPDATE – 3-26-20

I. Introduction

At the time of writing, the 2019-2020 Coronavirus pandemic remains a continuously evolving and fluid situation. Part III of the stimulus package, known as the CARES Act, is currently working its way through congress. In a move designed to keep small businesses afloat, the CARES Act provides that businesses with fewer than 500 employees — including sole proprietors and nonprofits— will have access to nearly \$350 billion in loans under Section 7 of the Small Business Act during the “covered period,” which runs from February 15, 2020 through June 30, 2020.

This program is separate from the Disaster loans currently available on the SBA website. Companies may only participate in one of the programs. **We believe the best loans for our portfolio companies are the CARES loans.**

II. Summary of CARES loans

Eligibility

- In addition to “small business concerns” as currently defined under the SBA, eligible businesses for the new program include any business concern, nonprofit organization, veterans’ organization, or Tribal business if it employs not more than the greater of—
 - Up to 500 employees (includes full-time, part-time, and those employed on other bases)
 - If applicable, the size standard in number of employees established
- There is a special eligibility rule for businesses in the hospitality and dining industries. For businesses with more than one physical location, if it employs 500 or fewer employees per location and is assigned to the “accommodation and food services” sector (Sector 72) under the North American Industry Classification System (NAICS), the business is eligible to receive a loan.
- Sole proprietors, independent contractors, and eligible self-employed individuals (as defined in Congress’s last COVID-19 bill, the Families First Coronavirus Response Act (Families First Act)) are eligible for loan recipients, subject to some documentation requirements to substantiate eligibility.

BOTTOM LINE: We believe virtually all portfolio companies will be eligible.

How loan amounts will be calculated and key terms

- CARES loans will be calculated as follows with a cap of \$10M:
 - 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019);
 - PLUS the outstanding amount of a loan made under the SBA's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program;
 - Payroll for purposes of calculating the loan amount is outlined below.
- Payroll definition for the loans
 - Payroll includes:
 - Gross wages, commissions, salary or similar compensation to an employee,
 - Payment of a cash tip or equivalent,
 - Payment for vacation, parental, family, medical or sick leave,
 - Allowance for dismissal or separation,
 - Payment for group health care benefits, including premiums,
 - Payment of retirement benefits
 - Payment of state or local taxes assessed on employee compensation
 - Payroll excludes:
 - Compensation for individual employees with compensation in excess of \$100,000
 - Employees who reside outside of the US
 - Any qualified sick or FMLA amounts paid under the COVID-19 Stimulus 2 legislation
- Loan durations up to 10 years and interest rates below 4%
- No personal guarantees are required

Use of proceeds

Proceeds can be used for the following:

- Payroll and related costs (as defined above)
- Rent, mortgages and utilities
- Debt service
- Other items TBD

How the loans will be issued

- The SBA guarantees the loans, so borrowers will likely need to apply through banks, credit unions and other lenders. Approximately 1,800 private lenders are already approved to issue 7(a) loans, and at a press briefing Wednesday, Treasury Secretary Steven Mnuchin said the department plans to issue new regulations that will make it possible for almost all FDIC-insured banks to make SBA loans. We do not believe these loans will go through the SBA website. So, the best way to begin is to approach your lender and inquire about applying for a 7(a) small business loan.
- Based on Sec. Mnuchin's statements at a press conference yesterday the applications and bank readiness to process loans is expected by the end of next week. He also stated that he expects 1 day approval and funding of applications.

Likely documentation requirements

- Consolidated 2019 financials
- Full schedule of liabilities
- Payroll records for the last 12 months
- Tax return for 2018
- Cap table

Overview of forgiveness

- A separate section of the CARES Act calls for a portion of the aforementioned paycheck protection loans to be forgiven on a tax-free basis. The amount to be forgiven is the sum of the following payments made by the borrower during the 8-week period beginning on the date of the loan (see the end of the document for a screenshot of the bills text):
 - Payroll costs (as defined above)
 - Mortgage interest
 - Rent
 - Certain utility payments
- To seek forgiveness, a borrower must submit to the lender an application that includes documentation verifying the number of employees and pay rates, and cancelled checks showing mortgage, rent, or utility payments. Specific rules on forgiveness will be detailed in the next 30 days by the SBA.

Other important notes

- A loan made under the SBA's Disaster Loan Program on or after January 31, 2020, may be refinanced as part of a covered loan under the new CARES Act program as soon as these new loans are made available. (businesses are not eligible for both programs simultaneously)
- The CARES Act provides for possible deferment of repayment of the loans for a period of at least six months, but not to exceed a year. Even better, under Section 1112 of the Act,

the government will pay the principal and interest on a paycheck protection loan for the first six months for which payments are due. So it looks like SBA will cover the first 6 months of payments and allow for the deferral of an additional 6 months – Total of 12 months deferral of payments.

- The CARES loans will not require significant underwriting. Rather, they will require a good-faith certification that:
 - The loan is needed to continue operations during the COVID-19 emergency;
 - Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
 - The applicant does not have any other application pending under this program for the same purpose; and
 - From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.

III. What you need to do now to be prepared to get a CARES loan

- **Reach out to your bank to ask them if they are participating**
- **Gather the aforementioned records that will be needed so you are ready to go**
- **Begin to calculate the loan amount (we'll send a template out to help you do this calculation by Friday)**

As previously stated, this continues to be a very fluid situation and we will provide updates as new information becomes available.

LIQUIDTY, LIQIDITY, LIQUIDITY.

“(F) ALLOWABLE USES OF COVERED LOANS.—

“(i) IN GENERAL.—During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for—

“(I) payroll costs;

“(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

“(III) employee salaries, commissions, or similar compensations;

“(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);

“(V) rent (including rent under a lease agreement);

“(VI) utilities; and

“(VII) interest on any other debt obligations that were incurred before the covered period.

Forgivable uses of a PPP loan