

Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) Executive Summary for Restaurants

Based on March 24, 2020 Draft Legislative Text – All Provisions Subject to Change

Keeping American Workers Employed & Paid Act

How Does It Work?

- The plan provides \$349 billion in cash flow assistance through 100% federally guaranteed loans to employers who maintain their payroll during this emergency. To help bring workers who may have already been laid off, the program can be retroactive to February 15, 2020, so employees can return onto payrolls. The loan’s covered period is February 15 to June 30, 2020. A loan can be obtained for operating costs on mortgages, rent and lease agreements, utilities, interest on debt obligations incurred before the covered period, and payroll costs that include:
 - The sum of payments of any compensation with respect to employees that is a salary or wage;
 - Payment of cash tip or equivalent;
 - Payment for vacation, parental, family, medical, or sick leave;
 - Allowance for dismissal or separation;
 - Payment required for the provisions of group health care benefits, including insurance premiums;
 - Payment of any retirement benefit; or
 - Payment of State or local tax assessed on the compensation of employees.

The maximum loan amount must be the lesser of:

- 1) *Two and a half months payroll*, as calculated by taking the average total monthly payments by the business for payroll costs incurred during the 1-year period before the date on which the loan is made. For a seasonal employer, the business calculates the average total monthly payments for payroll during the 12-week period beginning February 15, 2019, or at the choice of the business, March 1, 2019, and ending June 30, 2019. Multiply this number by 2.5 for two and a half months payroll.
- 2) *\$10,000,000*

Restricted from being included in the payroll calculation are: Any salaries above \$100,000 per year and any qualified sick leave wages for which a tax credit is allowed under section 7001 or 7003 of the *Families First Coronavirus Response Act*.

What Businesses Are Eligible?

- During the covered period, any business that employs less than 500 employees *per physical location of the business concern* and that is assigned a North American Industry Classification System code beginning with 72 ([Accommodation and Food Services – U.S. Census Bureau](#)) at the time of disbursal shall be eligible to receive a covered loan.
- The program enacted by this legislation *would remove* the “Credit Elsewhere Test,” which normally requires an extensive analysis to determine whether the borrower has the ability to obtain some or all of the requested loan funds from alternative sources without causing undue hardship.
- No collateral, or personal guarantee, shall be required for the covered loan.
 - Many franchisors have been concerned about existing collateral requirements that could disqualify their franchisees from getting these loans – under this latest draft, the Association successfully requested that this requirement is altogether dropped.

What Is Loan Forgiveness?

- Businesses would receive loan forgiveness in an amount equal to the payroll cost and costs related to pre-existing debt obligations for the covered period of February 15, 2020 to June 30, 2020. This would be conditional upon the business retaining their employees and payroll levels during the covered period.

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- The amount of loan forgiveness is determined when employers maintain an average monthly number of full-time equivalent employees (30 hour per week calculation under the Affordable Care Act) during the period that is not less than the average monthly number of full-time equivalent employees during the previous covered period. The forgiveness amount is reduced according to the amount of full-time employees on staff compared to the previous comparable period, February 15, 2019 to June 30, 2019.
- Loan forgiveness may also cover any additional wages paid by businesses to tipped employees (as defined in the *Fair Labor Standards Act*).

Loan Mechanics

- The program is administered through the (SBA) 7(a) Loan Program, and the government guarantee increases to 100% through December 31, 2020, and then reduce to 75% for loans exceeding \$150,000 and 85% for loans equal to or less than \$150,000.
- Waives both borrower and lender fees for 7(a) loans.
- Allows complete deferment of 7(a) loan payments for one year.
- Increases the maximum loan for an SBA Express loan from \$350,000 to \$1 million through December 31, 2020.

Qualified Improvement Property

- Businesses will be able to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.
- This corrects the error in the Tax Cuts and Jobs Act and increases a business’ access to cash flow by allowing them to amend a prior year return, while incentivizing investment.

Modifications for Net Operating Losses (NOLs)

- The provision relaxes limitations on a company’s use of losses from prior years. NOLs are currently subject to a taxable income limitation, and they cannot be carried back to reduce income in a prior tax year. This provision provides that a loss from 2018, 2019, or 2020 can be carried back five years.
- This also temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Delay of Payment of Employer Payroll Taxes

- Employers can defer payment of the employer share of the Social Security tax.
- The deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Additional Tax Relief

- The tax filing deadline will be extended from April 15 to July 15
 - Businesses and individuals can postpone estimated tax payments due from the date of enactment until October 15, 2020 with no cap on the amount of payment postponed
- Modification of limitation on losses for taxpayers other than corporations
- Modification of credit for prior year minimum tax liability of corporations
- Modification of limitation on business interest

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Exchange Stabilization Fund for Severely Distressed Sectors of Economy

- \$150 billion in Treasury Department collateralized loans under an Exchange Stabilization Fund for eligible businesses
- An entity is only eligible for relief if the Treasury Secretary determines its continued operations are jeopardized as a result of losses stemming directly from the coronavirus outbreak.
- Interest rates on any loans extended by the Treasury Secretary may be no less than the current average yield on outstanding marketable obligations of the United States of comparable maturity.
- The legislation explicitly bars the Treasury Secretary from using the funds provided to make grants or direct cash payments to entities.
 - The legislation mandates that entities receiving assistance do not increase compensation for, or provide golden parachutes to, executives over a two-year period from the date of enactment.
- The legislation directs the Secretary of the Treasury, to the extent feasible and practicable, to ensure that the Government is compensated for the risk assumed in making loans and loan guarantees. To that end, “the [Treasury] Secretary is authorized to enter into contracts under which the Government, contingent on the financial success of the eligible entity, would participate in the gains of the eligible entity or its security holders through the use of such instruments as warrants, stock options, common or preferred stock, or other appropriate equity instruments.”