

Locke Lord QuickStudy: Saving Our Small Businesses: “Phase Three” Economic Recovery Proposal Includes New Forgivable SBA Loans for Small Businesses Impacted by COVID-19

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On March 19, 2020, the Senate Republicans released their proposal for the Coronavirus Aid, Relief, and Economic Security Act or the “CARES Act”, intended to be the “phase three” bill to address the economic impact of COVID-19 on the U.S. economy.

In addition to providing relief to certain sectors of the economy and individuals and families impacted by the ongoing pandemic, the CARES Act proposes significant relief to small businesses in the form of Small Business Interruption Loans to be administered under the existing Small Business Administration (“SBA”) Section 7(a) small business loan program. The proposed CARES Act is focused on keeping people employed and providing working capital to small business by creating a \$300 billion economic relief fund for the sole purpose of providing these Small Business Interruption Loans (each a “Loan” and, collectively, the “Loans”).¹

These Loans would be made by approved 7(a) lenders (and not the SBA itself), which would have delegated authority to make and approve Loans. Under the existing 7A loan program, the SBA guarantees up to 75% or 85% of the outstanding amount of the 7(a) loan (depending on the amount outstanding); however, under the CARES Acts, SBA would guarantee 100%² of Loans provided during the period from March 1, 2020 through December 31, 2020 (the “Covered Period”).³ The proposed CARES Act also suggests that the Treasury Department will work to identify new financial institutions to bring in as approved 7(a) lenders.

During the Covered Period, all small businesses employing **500 or less employees** that have been adversely impacted by COVID-19 would be eligible to receive a Loan in an amount equal to the lesser of: (1) \$10 million, and (2) the average total monthly amount of certain fixed costs (payroll, mortgage, rent and debt obligation payments) for the preceding year. In general, the proposed CARES Act mandates that these Loans will be fee free, not subject to prepayment premiums, and eligible for a deferral of all payments for a period of up to one year.⁴

Perhaps most notably, new Loans under this program are eligible for forgiveness of their indebtedness in an amount up to the amount of the Loan proceeds used to pay payroll costs and payments on debt obligations during the period from March 1, 2020 through June 30, 2020. Payroll costs expressly do not include compensation payments to anyone making \$100,000 per year or more and certain leave wages that are eligible for a credit under the “phase two” bill (Families First Coronavirus Response Act). The maximum forgiveness is also reduced by (1) a percentage equal to the number of employees laid off during the period from March 1, 2020 through June 30,

2020, and (2) if the small business cuts compensation for certain employees.⁵

In evaluating the eligibility of a borrower for a Loan under the program, a lender may only consider whether the borrower (i) was in operation on March 1, 2020, and (ii) had employees for whom the borrower paid salaries and payroll taxes.

The proposed CARES Act also increases the maximum loan amount for “Express Loans” from \$350,000 to \$1,000,000.⁶ “Express Loans” are expedited versions of the loans provided under Section 7(a) for which the turnaround time for a response to the application is given within 36 hours.⁷

It is important to note that a borrower who received a disaster loan under Section 7(b)(2) of the Small Business Act related to COVID-19 for purposes of paying payroll and providing payroll support would **not** be eligible for a Section 7(a) loan during the Covered Period for the same purposes.⁸ Potential borrowers thus will need to carefully consider which form of relief is best suited to their individual needs.

For more information on the availability of disaster loans under the Small Business Administration’s Economic Injury Disaster Loans program, please read our [QuickStudy, Saving Our Small Businesses: SBA Disaster Assistance Loans for Small Businesses Impacted by COVID-19?](#)

Your regular Locke Lord contact and the authors of this article would also be happy to help you navigate these new SBA programs, especially is relates to determining the SBA programs best suited for your company’s particular demands

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1. Coronavirus Aid, Relief, and Economic Security Act, S. 3548, 116th Cong. (2020).
2. *See id.* at §1102(f).
3. *See id.* at §1102(a).
4. *See id.* at §1102(e) and (g).
5. *See* CARES Act, *supra* note 1 at §1105(d).
6. *See id.* at §1102(i).
7. *Types of 7(a) loans*, U.S. Small Business Administration, <https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans#section-header-4> (last visited: March 20, 2020).
8. *See* CARES Act, *supra* note 1 at §1102(d)(3)

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