



The CARES Act authorizes the Small Business Administration (“SBA”) to fully guarantee an additional \$349 Billion in Section 7(a) loans to small businesses affected by COVID-19.

1. **Eligibility - 500 or Less Employees or “Small Business.”**

a. *Does my business qualify as a “Small Business”*

- (i) If there are less than 500 employees the business automatically qualifies.
- (ii) If there are more than 500 employees, your business can still qualify if:
 - (a) your business has fewer than the number of employees specified in the NAICS table found at: https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf or
 - (b) the annual revenue for your business is lower than the revenue threshold found in the NAICS table.

A few items to note:

- 1. Number of Employees is determined based on a 12 month average.
- 2. All employees, including full-time and part-time employees, count as one employee (i.e. not based on full time equivalents).
- 3. Revenue levels are determined based on average annual revenues for the most recently completed 3 fiscal years for which tax returns have been filed.
- 4. The NAICS table for any given industry is only based on the number of employees or revenue, but not both.
- 5. When determining what NAICS code to reference for your business, you have to look at the loan applicants primary industry and the primary industry of the affiliated group’s.

b. *Special Eligibility Considerations - Accommodation and Food Services.*

Any business with an NAICS code beginning with “72” is eligible even if the businesses has over 500 employees in total if there are less than 500 employees *per location*. Below is a list of industries that have an NAICS code that begins with 72:

- 721110 Hotels (except Casino Hotels) and Motels
- 721120 Casino Hotels
- 721191 Bed-and-Breakfast Inns

721199	All Other Traveler Accommodation
721211	RV (Recreational Vehicle) Parks and Campgrounds
721214	Recreational and Vacation Camps (except Campgrounds)
721310	Rooming and Boarding Houses
722310	Food Service Contractors
722320	Caterers
722330	Mobile Food Services
722410	Drinking Places (Alcoholic Beverages)
722511	Full-Service Restaurants
722513	Limited-Service Restaurants
722514	Cafeterias, Grill Buffets, and Buffets
722515	Snack and Nonalcoholic Beverage Bars

c. *Affiliation*

- (i) For purposes of determining whether a business meets the criteria set forth in Section (a) above, a business is aggregated with its Affiliates for determining the number of employees and revenue.
- (ii) The qualification for an Affiliate is a grey area of the law and is based on the ability to exercise control by an entity owner or a Principal. The laws are complicated, but some common examples of Affiliates are the following:
 - (a) Subsidiaries;
 - (b) Sister companies owned by the same holding company;
 - (c) Minority shareholders that have approval rights in corporate documents; or
 - (d) Portfolio companies of a private equity fund;
- (iii) Principal is defined as follows:
 - (a) For sole proprietorships, the proprietor;
 - (b) For General Partnerships, all general partners;
 - (c) For Limited Partnerships, all general partners and any limited partner who owns 20 percent or more of the partnership;
 - (d) For Limited Liability Entities, the Manager/Managing Member(s) and any member who owns 20 percent or more of the entity; or
 - (e) For corporations, any individual or legal entity who owns 20 percent or more of the voting stock

The regulations regarding determination of an Affiliate can be found here: <https://www.law.cornell.edu/cfr/text/13/121.103>

- (iv) If your business and its Affiliates fall under more than one NAICS code, the applicant has to meet the NAICS codes for its industry and the primary industry for the entire affiliate group must also meet the standards.
- (v) Affiliation requirements are waived for the following:
 - (a) Any business with an NAICS code beginning with “72” (see list in Section 1(c) above);
 - (b) Any business operating as a franchise; or
 - (c) Any business which receives financial assistance from a Small Business Investment Company (think of an SBIC lender).

2. **Loan Details**

- a. Lender authority
 - (i) Loans are administered by banks or other SBA approved lenders and are 100% guaranteed by the SBA. No loans are made directly by the SBA.
 - (ii) Lenders are given more latitude to approve loans under this package without as much SBA oversight. The SBA is expanding lender eligibility.
 - (iii) Lenders must approve applications within 15 days.
- b. *Loan Amount* - The maximum loan amount is the lesser of (i) 12 month average monthly payroll costs multiplied by 2.5 or (ii) \$10,000,000.
 - (a) Payroll Costs include salaries and wages, sick leave, healthcare benefits including insurance premiums, retirement benefits, severance, and certain taxes assessed on the compensation of employees.
 - (b) Payroll costs do not include the following:
 - i. Compensation of an individual employee to the extent compensation exceeds \$100,000 annually (we believe the intent of the bill is to include the portion of compensation that is less than \$100,000 in the payroll cost calculation, but the language in the bill is not clear);
 - ii. Compensation of an employee whose principal residence is outside of the United States;
 - iii. Sick leave and family leave wage paid under the Families First Coronavirus Response Act; or

iv. Employer's portion of social security taxes and employer's portion of federal income tax withholdings.

c. *Payment Terms*

- (i) Eligible loans (or portions thereof) will be forgiven (see Section 3 below).
- (ii) Payments are deferred a minimum of six months and a maximum of one year. If an investor declines to approve a deferral requested by a lender, the SBA shall purchase the loan so that the borrower may receive the deferral.
- (iii) The maximum interest rate for a loan that is not forgiven is 4%, and the maximum repayment term is 10 years.

d. *Permissible Uses*

- (i) All Payroll Costs (see Section 2(b)(i) above).
- (ii) Payments of interest on any debt obligation secured by real or personal property (no prepayments allowed).
- (iii) Rent and utilities.
- (iv) Interest on any debt obligation.

e. *Other details*

- (i) SBA disaster loans made between January 31, 2020 and the passage of the CARES Act may be refinanced as 7(a) loans.
- (ii) The SBA is not collecting fees.
- (iii) The maximum amount of SBA Express loans has been increased to \$1,000,000 (faster approval for express loans).
- (iv) Canceled debt will not be considered income.
- (v) There is no collateral requirement and there are no personal guaranties.
- (vi) The CARES Act waives the "no credit elsewhere" requirement.

3. **Loan Forgiveness**

a. *General* - Recipients of 7(a) loans are eligible for forgiveness in an amount equal to the total cost of the following liabilities incurred during the 8 week period beginning on the date of the origination of the loan:

- (i) All Payroll Costs (see Section 2(b)(i) above).
- (ii) Payments of interest on any secured debt or any debt incurred prior to 2/15/20.
- (iii) Rent for a lease in place prior to 2/15/20.

(iv) Utilities (electric, gas, water, phone internet or transportation) if service began prior to 2/15/20.

b. *Forgiveness Reduction*

(i) The loan forgiveness amount will be reduced by the percentage of full time equivalent employees that were eliminated during the 8 week period after the loan is funded.

(ii) The loan forgiveness amount will also be reduced by any percentage reduction in total salary in excess of 25% for employees earning less than \$100,000 annually.

(iii) If salary reductions of more than 25% for workers making less than \$100,000 per year or employee eliminations occur between February 15, 2020 and 30 days after the passage of the CARES bill, but by no later than June 30, 2020, your business rehires the same number of full time equivalent employees that were eliminated or reinstates salary and wages for those making less than \$100,000 per year whose salary and wages were cut by more than 25%, then the loan forgiveness amount will not be reduced for such actions.

c. *Documentation*

(i) Loan forgiveness amounts will only be approved if properly documented.

Please contact Matt Delguyd or Logan Bryant at the following contact information if you have any questions.

Matt Delguyd | Partner

Commercial Finance and Banking



Office: 216-363-4627

Mobile: 440-476-8923

mdelguyd@beneschlaw.com

Logan Bryant | Associate

Corporate and Securities



Office: 216-363-6217

Mobile: 330-635-8322

lbryant@beneschlaw.com