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Coronavirus and the CARES Act: Implications for the Construction Industry

04.01.2020

On March 25, 2020, the U.S. Senate unanimously passed the $2.2 trillion *Coronavirus Aid, Relief, and Economic Security Act* (*"CARES Act"*)- the largest economic aid package in our nation's history. On March 27, 2020, the House of Representatives passed the CARES Act and on the same day, President Donald Trump signed it into law. This law, 880 pages long, provides much needed support for businesses across the country. The CARES Act provides significant new funding to small businesses in the United States for the period covering March 1, 2020 through December 31, 2020.

The CARES Act contains many provisions that will have a significant impact on the construction industry, including by not limited to, these provisions:

1. Loan programs that will help construction industry companies retain staff by assisting with payroll and other qualified costs. This was accomplished by amending the Small Business Act ("SBA") 7(a) loan program.
2. Delays payment of payroll taxes through January 1, 2021, which will provide relief for businesses' cash flow during this crisis.

3. Advanced-refundable tax credit for employers implementing new federal paid leave mandates in the *Families First Coronavirus Response Act*.
4. Congress has appropriated $349 billion for guaranteed, low-interest, no-fee loans under the Program. These loans contain a 6-month deferment period, meaning small businesses will not have to start making payments for at least six months.

Loan Programs and the Construction Industry

The CARES Act provides cash-flow assistance through federally guaranteed loans. These loans are a part of the Paycheck Protection Program (PPP). Numerous requirements must be met to receive loans, which are:

- The amount of money that will be loaned to a business depends on the average payroll.
- If you were in business February 15, 2019 – June 30, 2019, your maximum loan is equal to 2.5 times your average monthly payroll or 10 million dollars, whichever is less.
- If your business was not in business between February 15, 2019 – June 30, 2019, your max loan is equal to 2.5 times your average monthly payroll costs between January 1, 2020 and February 29, 2020.

Paycheck Protection Loans are eligible for loan forgiveness equal to the amount expended by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payments on mortgages that began before February 15, 2020, rent incident to any lease in force before February 15, 2020, and utilities for which service began before February 15, 2020.

Borrowers must certify that economic conditions make the loan necessary to support operations and acknowledge that the funds will retain workers or make mortgage, lease, and utility payments.

It is imperative to note that for this loan to be forgiven, a business must maintain the same number of employees from February 15, 2020- June 30, 2020, as it did for the same time period for 2019 or from January 1, 2020 through February 15, 2020. If a business has reduced its workforce during the period the loan will be reduced accordingly. If a business reduced its workforce by half, then the amount the that will be forgiven will be reduced by 50 percent. If a business rehires any of the previously laid-off employees the offset will be reduced.

The CARES Act waives SBA affiliation rules. Previously, under the affiliation rule, the SBA ordinarily counts the number of employees or annual receipts of a business's domestic and foreign affiliates when determining whether the business qualifies as a small business. The CARES Act provides that this regulation is waived with respect to eligibility for a covered loan for any business:

- With not more than 500 employees assigned a NAICS code beginning with 72 (the Accommodation and Food Services sector);
- Operating as a franchise assigned a franchise identifier code by the SBA; or
- Receiving financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958.

The CARES Act loans will be forgiven if these small businesses can establish that the money it received from this loan was used for payroll, which includes salaries under a yearly rate of $100,000.00, mortgage interest, rent, and utilities. Any money spent on these expenses will be forgiven, and will act essentially as a grant and not a loan. The forgiveness program will only cover eight weeks of covered expenses from the origination date of the loan, and borrowers will have to verify through documentation that their payments were for covered expenses during this period. Failure to properly document these expenses may lead to an applicant having to repay the loan instead of it being forgiven.[1]

The SBA has up to 30 days following the enactment of the CARES Act to issue regulations implementing and providing guidance under certain provisions of the CARES Act. In addition, the Treasury Department is required to issue regulations implementing and providing guidance under certain provisions of the CARES Act. Issuance of regulations and guidance may delay loan approval and disbursement or modify/waive certain loan requirements.

Beginning April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

Payroll Tax Assistance

Along with the loan program, the CARES Act allows businesses to defer payroll taxes for the rest of 2020. Businesses can pay half of the payroll taxes in 2021 and the rest in 2022, allowing the companies to recover from the economic hardships they are experiencing because of the Coronavirus.

Emergency EIDL Grants: Increased Eligibility for EIDL Grants

The CARES Act created a new $10 billion-dollar grant program which reshapes and expands eligibility for access to Economic Injury Disaster Loans (EIDL). The following types of business will be eligible for EIDL loans:

- Businesses with no more than 500 employees and

- Any individual operating as a sole proprietor or an independent contractor, and tribal businesses, cooperatives and ESOPs with no more than 500 employees.

The eligible period covers from January 31, 2020 to December 31, 2020. During this period, a party no longer needs to show that is able obtain credit elsewhere. Any SBA EIDL loans made in response to COVID-19 before December 31, 2020, will waive the personal guarantee on advances and loans of no more than $200,000.

If you are provided an EIDL, you may apply to refinance the EIDL into a Paycheck Protection Program loan. As previously discussed, Paycheck Protection Program loans are forgiven if the small businesses can establish that the money it received from this loan was used for payroll, which includes salaries under a yearly rate of $100,000.00, mortgage interest, rent, and utilities. A borrower cannot receive a PPP loan in addition to an Economic Injury Disaster Loan (EIDL). However, if a business received an EIDL, it can be converted into a PPP providing the business with the protections delineated above.

Relief under Existing SBA Loans

If your company already has an existing loan with the SBA, lenders are encouraged to provide loan recipients with payment deferments. The SBA will pay lenders the deferred principal and interest payments that are owed during the covered six-month period. For this six-month period, borrowers will be excused from making these payments, allowing these businesses to retain their work force, ensuring that many Americans will continue to receive paychecks during these trying times.

[1] If any amount of the loan is not forgiven, that amount will be payable over a maximum of 10 years at an interest rate not to exceed 4%.

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