



Federal and Connecticut Emergency Loan Programs Now Available to Small Businesses

March 27, 2020

The U.S. Federal Government has passed emergency economic stimulus legislation, known as the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), that provides relief to small businesses in response to the COVID-19 crisis.

The State of Connecticut has additionally launched its own loan program for small businesses affected by the COVID-19 crisis.

We have set forth below a summary of key provisions of the loan programs available to small businesses included in the federal and state legislation. It is important to note that both pieces of legislation will have inadvertent errors and omissions, including definitions of important terms. We anticipate that both Congress and the State of Connecticut will make technical corrections to the legislation.

The CARES ACT Introduces New Small Business Loan Program

The CARES Act aims to provide relief, among other ways, by making loans available to small businesses through a new \$349 billion small business loan program.

The program provides eligible businesses access to federally guaranteed loans available at community and other banks. For the period from February 15, 2020 to June 30, 2020 (the “emergency period”), the program allows the Small Business Administration to provide 100% federally-backed loans up to a maximum amount to eligible businesses to help pay payroll and certain other costs. Subject to certain conditions, loan amounts are forgivable.

The goal of the program is to assist small businesses in retaining workers and maintaining payroll over the coming months. The program builds off of existing small business loan opportunities provided by the Small Business Administration by broadening the availability of such loans and providing incentives to small businesses to access loans under the program. Such incentives include:

- statutory fee waivers for both lenders and borrowers;
- government guarantee of 100% of the loan;
- removal of the “credit elsewhere” requirement;
- waiver of collateral and personal guarantee requirements;
- waiver of pre-payment penalties;
- no recourse against any individual shareholder, member or partner of a borrower for non-payment unless the loan proceeds are used for unauthorized purposes (as discussed below);
- repayment deferment for a minimum of 6 months and up to one year; and
- conditional loan forgiveness.

We have highlighted some of the key provisions of the program below and encourage small businesses that have been impacted by COVID-19 to explore and discuss with us opportunities available through the program.

Businesses that were not previously eligible for small business loans are now eligible to apply for loans under the program.

While the existing loan programs offered by the Small Business Administration were available only to businesses meeting the Small Business Administration's existing industry guidelines, the new program under the CARES Act temporarily provides loan opportunities to:

- any **business concern, 501(c)(3) nonprofit organization, veterans' organization or Tribal business** employing not more than the greater of 500 employees (including full-time, part-time, and those employed on other bases) or, if applicable, the size standard regarding number of employees established by the Small Business Administration for the industry in which the entity operates;
- sole proprietors;
- independent contractors; and
- eligible self-employed individuals.

In addition, the program applies special rules regarding the 500-employee limitation for certain businesses with more than one physical location and for entity affiliations.

Businesses meeting the above program requirements are eligible to receive a loan during the emergency period beginning on February 15, 2020 and ending on June 30, 2020, if the business:

- was in operation on February 15, 2020;
- had employees for whom the business paid salaries and payroll taxes or paid compensation to 1099 contractors; and
- can certify in good faith that:
 - the uncertainty of the current economic conditions makes necessary the loan request to support the ongoing operations of the business;
 - the funds will be used only for permissible expenses (as discussed below);
 - the business has not submitted duplicative loan applications; and
 - during the period beginning on February 15, 2020 and ending on December 31, 2020, the business has not received a prior loan under the program for the same purpose and duplicative of amounts applied for or received under the program.

The loan will cover up to two and a half months of expenses.

The maximum loan amount available to an eligible business under the program is calculated by assessing certain average monthly payments of the business related to payroll costs. An eligible business may be granted a loan up to the *lesser of*:

(i) either:

(A) 2.5x the average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers, the average total monthly payroll costs for the 12 weeks beginning on February 15, 2019 or, at the election of the borrower, beginning on March 1, 2019, and ending June 30, 2019), plus the outstanding amount of a loan made under the Small Business Administration's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program, or

(B) upon request for businesses that were not in existence during the period from February 15, 2019 to June 30, 2019, 2.5x the average total monthly payroll costs incurred from January 1, 2020 to February 29, 2020), plus the outstanding amount of a loan made under the Small Business Administration's Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program; or

(ii) \$10,000,000.

Among various other costs and expenses, "payroll costs" includes compensation paid to employees (such as salaries, wage, commissions, cash, etc.); severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to or income of sole proprietors or independent contractors that is a wage, commission, income, net earnings from self employment, or similar compensation up to \$100,000 per year prorated for the emergency period. Specifically excluded from "payroll costs" are individual employee compensation above \$100,000 per year, prorated for the emergency period; certain federal taxes; compensation to employees whose principal place of residence is outside of the US; and sick and family leave wages for which credit is allowed under the Families First Act.

The use of the loan funds is limited to certain expenses.

Proceeds of the loans may be used to cover the following: payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensation; mortgage interest payments; rent/lease agreement payments; utilities; and interest on any other debt obligations incurred prior to February 15, 2020.

Opportunity for Payment Deferral and Loan Forgiveness.

One of the most attractive aspects of the program is the opportunity for a business to receive loan payment deferral relief and, in certain circumstances, loan forgiveness.

The program provides that businesses that were operating on February 15, 2020, and that have a pending or approved loan application under the program, are presumed to qualify for complete payment deferment relief (for principal, interest, and fees) for six months to one year.

Indebtedness incurred under the program may be forgiven in an amount (not to exceed the principal amount of the loan) equal to the following expenditures made by the borrower during the emergency period: payroll costs (including compensation to independent contractors), interest payments on mortgage obligations incurred before February 15, 2020, rent payments under a leasing agreement in force before February 15, 2020, and utility payments for services that began before February 15, 2020.

However, any potential loan forgiveness will be reduced by any employee or salary or wage reductions during the emergency period as follows:

- in the case of employee reductions, the maximum available forgiveness amount discussed above will be reduced pursuant to the following reduction formula:
 - (i) such maximum available forgiveness amount **multiplied by**:
 - (ii) the average number of full-time equivalent employees per month employed during the emergency period **divided by** (a) in the case of non-seasonal employers, either (at the election of the borrower) (i) the average number of full-time equivalent employees per month employed from February 15, 2019 to June 30, 2019, or (ii) the average number of full-time equivalent employees per month employed from January 1, 2020 to February 29, 2020; and (b) in the case of seasonal employers, the average number of full-time equivalent employees per month employed from February 15, 2019 to June 30, 2019; and
- in the case of salary or wage reductions with respect to any employee who did not receive during any single pay period during 2019 wages or salary at an annualized rate in an amount of more than \$100,000, the maximum available forgiveness amount discussed above will be reduced by the amount of any reduction in such employee's total salary or wages during the emergency period in excess of 25% of such employee's total salary or wages during the most recent full quarter during which the employee was employed before the emergency period.

The program does provide leniency for businesses who wish to take advantage of the loan forgiveness opportunity that remedy certain lay-offs and wage reductions prior to June 30, 2020. If during the period beginning on February 15, 2020 and ending 30 days after the enactment of the Cares Act, there is either a reduction in the number of full-time equivalent employees as compared to February 15, 2020 or a reduction in salary or wages as compared to February 15, 2020 to one or more employees that would otherwise result in a reduction of the amount of loan forgiveness available to a particular business, such business may still be eligible for loan forgiveness if it has eliminated such reductions on or before June 30, 2020.

The amount of any loan forgiveness is excluded from gross income for federal income tax purposes. To the extent that 100% of a loan is not forgiven, the loan shall have a maximum maturity of 10 years from the date loan forgiveness is applied for and shall bear an interest rate not to exceed 4%.

What does a loan forgiveness application require?

To apply for loan forgiveness, borrowers must submit to their lenders (i) documentation verifying full-time equivalent employees on payroll and their pay rates and with respect to other covered costs/payments (e.g., documents verifying mortgage, rent, and utility payments), (ii) certification from a business representative that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments; and (iii) any other documentation the Small Business Administration may require.

Connecticut Recovery Bridge Loan Program

The State of Connecticut has launched its own \$25 million loan program through the Department of Economic and Community Development (DECD) for small businesses and nonprofits negatively impacted by COVID-19. **The \$25 million program will be allocated on a first-come, first-served basis.**

Set forth below is a summary of provisions of the Connecticut program based upon information released to date by the DECD on its website (<https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/CT-Recovery-Bridge-Loan-Program>).

Operating costs incurred after March 10, 2020 are eligible costs under the Connecticut program.

To qualify for the Connecticut program, a business must:

- be Connecticut based;
- have no more than 100 employees;
- be in good standing with the Connecticut Department of Revenue Services and DECD;
- have been profitable prior to March 10, 2020;
- not have had any adverse personal credit reports 60 days past due in the last 6 months;
- not be involved in real estate, multi-level marketing, adult entertainment, cannabis or firearms; and
- not be a state-elected public official or state employee.

Businesses meeting the program requirements are eligible to apply online through the DECD to receive a loan on the following terms:

- Maximum loan amount equal to the lesser of (i) three months operating expenses, or (ii) \$75,00 based on demonstrated cash flow needs. DECD reserves the right to determine loan amount;
- 0% interest rate;
- 12-month term, with 6-month extension if requested, subject to the discretion of the DECD;
- Pre-payable with no pre-payment penalties;
- Working capital loan; and
- Personal guaranty and credit score required.

Similar to the DECD's existing Small Business Express Program, businesses preparing to apply for a recovery bridge loan should be prepared to submit the following:

- Project Financing Plan & Budget;
- 2019 Income Statement (or) Profit and Loss Statement;
- Internal Financial Statements (YTD);
- 3-month projected cash flow demonstrating need;
- Summary of adverse economic impact resulting from COVID-19;
- Recent credit score report;
- Applicant Structure Documents;
- Personal Financial Statement;
- Ownership Breakdown; and
- DRS Letter of Good Standing.

Although there is no application fee, if the DECD approves the loan, the business is responsible for payment of DECD's legal costs incurred to prepare the loan documents whether or not a closing takes place.

What can you do if you are interested in pursuing an emergency small business loan?

We encourage any business impacted by COVID-19 to reach out with any questions that they may have regarding their eligibility to receive a small business loan under either the federal or State of Connecticut programs. Whitman Breed is committed to helping our clients through these challenging times and will assist in reviewing the program and the loan application process.