

Client Alert

Stimulus to Provide Unprecedented Government Assistance to US Businesses (UPDATE)



March 30, 2020

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, a \$2 trillion economic stimulus and relief package aimed at stabilizing the economy through support of large and small businesses alike. While details will continue to emerge on the specific provisions of the package, many of the COVID-19 stimulus programs contained in this legislation will likely build off of pre-existing government programs.

We intend to update this communication as information becomes clearer, but details that are currently available indicate that businesses in need of additional capital and financing, among other forms of relief, may be able to take advantage of the programs below. If you have any questions regarding the CARES Act or how it may affect your company, please contact the authors of this alert or your O'Melveny advisor.

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Federal Government Assistance for Businesses of Any Size

Emergency Loans and Loan Guarantees under Title IV of the CARES Act

Program	Eligibility	Purpose	Program Size	Application Process and Terms	Limitations
CARES Act 4003(b)(1) Loan	Passenger Air Carriers and related businesses as defined in 49 U.S.C. 40102 for which: - Credit is not otherwise reasonably available - Actual or expected losses due to coronavirus	Support to the airline industry	Total Program Funds: \$25 billion	Secretary of Treasury to provide additional details within 10 days of CARES Act enactment	Maximum 5 year duration of loan; Must maintain 90% of pre-March 24, 2020 employment levels for at least 6 months; Cannot issue dividends on common stock and cannot buy back stock for extent of loan and one year after loan matures; Limits on executive compensation for 2 years; Maintenance of

	jeopardize continued operations of the business				certain air transportation service may be required
CARES Act 4003(b)(2) Loan	<p>Cargo Air Carriers for which:</p> <ul style="list-style-type: none"> - Credit is not otherwise reasonably available - Actual or expected losses due to coronavirus jeopardize continued operations of the business 	Support to the airline industry	Total Program Funds: \$4 billion	Secretary of Treasury to provide additional details within 10 days of CARES Act enactment	Maximum 5 year duration of loan; Must maintain 90% of pre-March 24, 2020 employment levels for at least 6 months; Cannot issue dividends on common stock and cannot buy back stock for extent of loan and one year after loan matures; Limits on executive compensation for 2 years
CARES Act 4003(b)(3) Loan	<p>Businesses critical to maintaining national security for which:</p> <ul style="list-style-type: none"> - Credit is not otherwise reasonably available - Actual or expected losses due to coronavirus jeopardize continued operations of the business 	"National security" not defined for purposes of this provision	Total Program Funds: \$17 billion	Secretary of Treasury to provide additional details within 10 days of CARES Act enactment	Maximum 5 year duration of loan; Must maintain 90% of pre-March 24, 2020 employment levels for at least 6 months; Cannot issue dividends on common stock and cannot buy back stock for extent of loan and one year after loan matures; Limits on executive compensation for 2 years
CARES Act 4003(b)(4) Loan	US businesses that are organized in the US and have significant operations in and a majority of employees based in the US and have not otherwise received adequate economic relief in the form of loan or loan guarantees under the CARES act; States; municipalities	Increase liquidity to the financial system; Focuses assistance to mid-sized businesses (i.e with between 500 and 10,000 employees), including non-profits	Total Program Funds: Between \$454 - 500 billion	<p>Further procedures pending relating to section 13(3) of the Federal Reserve Act</p> <p>For mid-sized businesses, maximum 2% interest rate with a 6 month deferment</p>	<p>Maximum 5 year duration of loan; Must maintain 90% of pre-March 24, 2020 employment levels for at least 6 months; Cannot issue dividends on common stock and cannot buy back stock for extent of loan and one year after loan matures; Limits on executive compensation for 2 years; Collateral requirement to be promulgated by the Federal Reserve;</p> <p>Loan forgiveness prohibited</p>

Term Asset Backed Securities Loan Facility (TALF)

The US Federal Reserve created the TALF program in November 2008 to boost consumer spending in order to help jumpstart the economy in response to the global financial crisis. The TALF is a credit facility authorized under section 13(3) of the Federal Reserve Act intended to help meet the credit needs of

consumers and small businesses by facilitating the issuance of asset-backed securities (ABS) and improving the market conditions for ABS more generally. Since the last loan maturity date in January 2015, the TALF Program has remained dormant. On March 23, 2020, the Federal Reserve announced that it would be reopening the TALF. Specific details are pending.

Program	Eligibility Requirements	Purpose	Program Size/Terms	Application Process	Limitations
TALF	All US companies that own eligible collateral and maintain an account relationship with a primary dealer	Create incentive for consumer and business loans by providing liquidity for new asset-backed securities	Total Program Funds: Initially \$100 billion and up to \$700 billion Rate: 100 basis points above LIBOR swap rate based on life of securities	Awaiting Details – anticipated that terms and conditions will be based on those used for the 2008 TALF	No new credit extensions after September 30, 2020 unless extended; Eligible collateral must be AAA-rated asset backed securities focused on recent commercial and consumer lending including auto loans; student loans; credit card receivables; equipment loans; SBA loans

Federal Government Assistance for Small Businesses

Small Business Administration Loans - 7(a)

The Small Business Administration (SBA) administers loan guaranty programs designed to encourage lenders to provide loans to small businesses that might not be eligible for traditional business loans through normal business channels. SBA’s 7(a) loan program, authorized by Section 7(a) of the Small Business Act of 1953, is the agency’s flagship loan guaranty program for providing financial assistance to small businesses. The 7(a) loan program has several subprograms as well, including the SBA Express, Export Express, and Community Advantage Pilot programs, which have their own eligibility requirements, terms, and benefits. The SBA relies on banks, credit unions and other specialized lenders for issuing loans.

Program	Eligibility Requirements	Purpose	Amount/Rate	Application Process	Limitations
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SBA(7)(a) General	For-profit business operating in the US with fewer than 500 employees (or that meet the applicable size standard established by the SBA for the industry); Must have operated for over a year	General business loans for working capital, equipment, building (including purchase and renovation), and debt refinancing (under special conditions)	Max Amount \$5 million Max Rate - 2.25% - 4.75% plus the prime rate (higher for some programs)	Apply through SBA approved lender SBA Approval: 5-10 business days Lender Approval: Varies	Total allowable amount of loan is cumulative with other SBA loans
SBA(7)(a) Express	For-profit business operating in the US with fewer than 500 employees (or that meet the applicable size standard established by the SBA for the industry); Must have operated for over a year	General business loans for working capital, equipment, building (including purchase and renovation), and debt refinancing (under special conditions)	Max Amount \$350,000 Max Rate - 2.25% - 4.75% plus the prime rate (higher for some programs)	Apply through SBA approved lender Express loan - 36 hours Lender Approval: Varies	Total allowable amount of loan is cumulative with other SBA loans

Proposed Modifications to SBA 7(a) Loans under CARES Act - Paycheck Protection Program

The CARES Act proposes to create the Paycheck Protection Program for issuing covered loans to businesses to help retain workers during the COVID-19 crisis. Covered loans are any loans issued under this program between Feb 15, 2020 and September 30, 2020. Congress proposes funding \$349 billion for these loans.

Program	Eligibility Requirements	Purpose	Amount/Rate	Application Process	Limitations
Paycheck Protection Program	For profit and non-profit small businesses that were in operation on Feb. 15, 2020 and had employees or paid independent contractors; Sole proprietorships, independent	Loans issued between Feb 15, 2020 and June 30, 2020 can cover payroll costs, group health	Maximum loan amount is the lesser of: 2.5 times the average monthly payroll costs of the business plus any	Apply through an SBA approved lender or apply through a lender approved by the	Must certify funds will be used to retain workers and maintain business; May not have an application pending for

	<p>contractors, veterans' organization, and Tribal business concerns under applicable SBA size standards are included;</p> <p>Must have fewer than 500 employees or the applicable SBA industry size standard (but in all cases fewer than 500 employees);</p> <p>Affiliation requirements are waived for businesses in the food preparation industries (North American Industry Classification System codes beginning with 72, which includes certain hotels and restaurants), SBA defined franchises, and businesses receiving financial assistance from a company licensed under section 301 of the Small Business Investment Act</p>	<p>benefits, medical and sick leave, salaries, mortgage interest, rent, utilities, and interest on debt incurred before Feb. 15, 2020</p>	<p>outstanding amount of a disaster loan received between January 31, 2020 and the loan date; or \$10 million</p> <p>Interest rates will not exceed 4%</p>	<p>Treasury Management Program established by the CARES Act</p>	<p>another loan under the SBA's 7(a) program or receive other 7(a) funds for the same purpose;</p> <p>No requirement for borrower to prove it could not otherwise obtain funds;</p> <p>Presumption of adverse impact from COVID-19</p>
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Small Business Administration Loans - CDC

SBA's CDC/504 Loan program is designed as a long-term financing tool for economic development within a community. This Program provides growing businesses with long-term, fixed-rate financing to acquire fixed assets, such as land and buildings for expansion or modernization. The CDC/504 loans are available through Certified Development Companies (CDC), which are non-profit corporations that work with the SBA and private-sector lenders to provide financing to small businesses. CDC/504 loans are typically structured with the SBA providing 40% of the total project costs, a participating lender covering up to 50% of the total project costs, and the borrower contributing 10% of the project costs.

Program	Eligibility Requirements	Purpose	Amount	Application Process	Limitations
SBA - CDC	For-profit business operating in the US with tangible net worth less than \$15 million and average net income less than \$5 million	Primarily for fixed assets (not working capital or debt refinancing), including purchasing land and improvements or purchasing long-term machinery and equipment	Max of \$5 million	Apply through SBA approved lender. Typical application timing: 60 days	Must create or retain 1 job for every \$65,000 guaranteed by SBA or meet SBA community development or public policy goals

Small Business Administration Loans - 7(b)(2) Disaster Loans

SBA provides low-interest disaster loans to businesses of all sizes, private non-profit organizations, homeowners, and renters to repair or replace real estate, personal property, machinery and equipment, inventory and business assets that have been damaged or destroyed in a declared disaster; and to provide eligible small businesses necessary working capital to help overcome the economic injury of a declared disaster. Unlike other SBA loans that are available through approved lenders, SBA makes disaster loans directly from its Office of Disaster Assistance.

Program	Eligibility Requirements	Purpose	Amount	Application Process	Limitations
SBA 7(b) Disaster Loan	Any US business can apply for a disaster loan covering real property damage; Only small businesses with fewer than 500 employees can apply for a disaster loan for economic injury	Requires a formal disaster declaration by the President, administered by FEMA; Loans to support a business harmed or damaged by a disaster to cover either real property damage or economic injury	Max \$2 million	Apply online via SBA website	Must apply within specified deadlines from the date of the disaster declaration

State and Municipal Relief Programs

Several states and municipalities are offering emergency grants and low-interest loans with favorable repayment terms to small businesses that have experienced a decrease in revenue because of the COVID-19 outbreak. For example, New York City is offering both the Employee Retention Grant Program for businesses struggling to retain employees and a Small Business Continuity Fund Loan for businesses that have seen at least a 25% decrease in revenue. Maryland, Wisconsin, Minnesota, Florida, Los Angeles, San Francisco, Chicago and Denver have all announced similar grant or loan relief for coronavirus-affected small businesses.

State Programs:

Program	Eligibility Requirements	Purpose	Amount	Application Process	Limitations
Florida Small Business Emergency Bridge Loan Program	Florida businesses established and actively operating with 2-100 employees; Business must have repaid, in full, any previous FL Small Business Emergency Bridge Loan and must demonstrate business suffered a significant economic injury and is unable to meet its obligations to pay ordinary and necessary operating expenses as a result of the declared disaster event	Short-Term loan for purposes of maintaining or restarting business operations; Must be repaid upon obtained alternative funding	\$50,000 - \$100,000 Loans are interest-free for one year; after that, the interest rate rises to 12%	Applications through the Florida Department of Economic Opportunity	Loan will be repaid by applying for other financial assistance (e.g. SBA Business Disaster Loan, bank loan, insurance reimbursement , etc.); and can't derive more than 1/3 of revenue from gambling or other prohibited activities

Maryland Small Business COVID-19 Emergency Relief Grant Fund	Maryland businesses and non-profits impacted by the COVID-19 with 50 or fewer employees	Grant Fund offers working capital (similar to SBA loan) to assist small businesses and non-profits with disrupted operations due to COVID-19	Grants up to \$10,000 not to exceed 3 months of cash operating expenses	Apply through Maryland Department of Commerce	Business or non-profit is expected to seek longer term funding through its bank, SBA, or other source
Maryland Small Business COVID-19 Emergency Relief Loan Fund	Businesses impacted by the COVID-19 with fewer than 50 employees	Loan assistance is intended to provide interim relief complementing bank loans, business interruption insurance, and financial partners	Loans up to \$50,000 Rate: 0% for the first 12 months, and 2% for the remaining 36 months	Apply through Maryland Department of Commerce	
Minnesota Emergency Loan Program	Small businesses operating in MN for at least one year; provide collateral or personal guarantee for at least 20% of the loan; Have been denied credit by a lender and have sought or currently seeking SBA Economic Injury Disaster Loan Assistance	Loan Program to assist businesses affected by emergency declarations	Emergency Loan Program providing \$2,500 to \$35,000; First payment deferred 6 months with potentially partial forgiveness	Apply through Minnesota Department of Employment and Economic Development (DEED)	Loans not available to businesses that derive income from passive investments without operational ties to operating businesses, generate any income from gambling or adult-oriented activities, or have no current or historical financial statements

WEDC Small Business 20/20 Grant Program	Businesses with no more than 20 employees. The Small Business 20/20 Program provides grant funds to approved community development financial institutions (CDFIs)	Grant funds to cover rent and to meet payroll expenses, including paid leave (including sick, family and other leave related to COVID-19)	Grants of up to \$20,000 to existing loan clients to assist with cash-flow challenges resulting from COVID-19	Apply through Wisconsin Small Business Development Center	Businesses that are not currently CDFI clients are not eligible to access these funds, but WEDC will work to expand access to funding through other programs as more resources become available
The Wisconsin Small Business Development (SBDC) Network	SBA loan eligibility requirements apply	Helps small businesses apply for federal disaster loans related to (COVID-19) pandemic			

Municipal Programs:

Program	Eligibility Requirements	Purpose	Amount/Rate	Application Process	Limitations
Chicago Small Business Resiliency Fund	Chicago businesses that have suffered more than 25% revenue decrease due to COVID-19, employ fewer than 50 employees and have gross	Loans to provide small businesses with emergency cash flow	Loan Amount Up to \$50,000	Loan Applications processed by Community Development Financial Institution (CDFI) partners	Must use the loan for working capital; At least 50% of proceeds applied toward payroll and commitment to retain the workforce at 50% of pre-COVID-19

	revenues of less than \$3 million in 2019; Cannot have pre-existing tax liens or legal judgments				levels. Low-interest loans for a term of up to five years
City of Los Angeles Small Business Emergency Microloan Program	Businesses and microenterprises in Los Angeles with a “reasonable and responsible” individual credit history. Requires owners of 20% or more of the business to guarantee the loan	Loan to stabilize businesses and microenterprises that provide low-income jobs	Loans of \$5,000 to \$20,000	Apply through the EWDD Emergency Microloan Management Team	Must use the loan for working capital only; Loans with a repayment terms of six months to one year carry an interest rate of 0%, and five-year loans have interest rates of 3% to 5%
Denver Small Business Emergency Relief Fund	Small businesses that may have had to temporarily close, are struggling with paying rent and utilities, or have had to lay off staff	Support business stabilization efforts	Grants up to \$7,500 or microloans	Apply through Denver Department of Public Health and Environment	Highest priority will be the industries most impacted by the coronavirus pandemic, such as the food industry
NYC Small Business Continuity Fund	Located within the five boroughs of NYC; Demonstrate at least at 25% decrease in revenue;	Business loan to retain employees and ensure business continuity	Max \$75,000	Apply through NYC Small Business Services	Have no outstanding tax liens or legal judgments

	Employ fewer than 99 employees Demonstrate ability to repay the loan				
NYC Employee Retention Grant Program	Located within the five boroughs of NYC; Demonstrate at least 25% decrease in revenue; 1-4 employees; Have been in operation for at least 6 months	Grant to help retain employees	Grant will cover 40% of payroll costs for two months	Apply through NYC Small Business Services	Have no outstanding tax liens or legal judgments
San Francisco COVID-19 Small Business Resiliency Fund	Businesses licensed in SF with between 1-5 employees that have lost 25% or more of revenue, and less than \$2.5 million in gross receipts	Grant to help cover rent and employee salaries	\$10,000 in emergency funding	Apply through SF City Office of Economic and Workforce Development	

We continue to track developments and changes to legislations, policies, and programs at the federal, state, and local level. As rules and regulations are issued to implement the CARES Act and other programs, we will provide further updates to this communication as well as deeper analysis of specific programs.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm. Laurel Loomis Rimón, an O'Melveny partner licensed to practice law in California and the District of Columbia, David J. Johnson, Jr., an O'Melveny partner licensed to practice law in California, the District of Columbia, New York, and Hong Kong, Sung Pak, an O'Melveny partner licensed to practice law in New York, and Braddock Stevenson, an O'Melveny counsel licensed to practice law in New Jersey and New York, contributed to the content of this newsletter. The views expressed in this newsletter are the views of the authors except as otherwise noted.



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