How the CARES Act Impacts Dealers

On March 27, 2020 the president signed into law the CARES Act to provide economic aid to individuals and businesses impacted by the COVID-19 pandemic.

The CARES Act has many new programs to help businesses like yours during these uncertain economic times. Summarized below are the new programs that could most significantly impact your business and your employees. These include forgivable small business loans, increased unemployment benefits for laid off and furloughed workers, business tax deferrals and credits, and direct cash payments to individuals.

I. Forgivable Loans for Small Businesses – "Paycheck Protection Program"

Who can get a loan?
Small businesses with fewer than 500 employees that make a good-faith certification that 1) the loan is needed to continue operations during the COVID-19 pandemic, and 2) the funds will be used to retain workers and pay other specified business expenses. Self-employed individuals and independent contractors also qualify but may have additional documentation requirements.

How much can I borrow?
Up to 2.5 times your average monthly payroll costs for the prior 12 months, with a max of $10 million.

Eligible payroll costs include salary, wages, commissions, tips, PTO, health insurance, retirement benefits, and local employment taxes. Eligible payroll costs do not include payroll taxes, compensation paid to employees residing outside the U.S, or any compensation paid to an individual employee above an annual salary of $100,000, as prorated for the covered period.

The Small Business Administration (SBA) has additional details on how to calculate average payroll costs, including for self-employed and independent contractors, on its website.

How much will be forgiven?
All valid business expenses on the following items incurred within the first 8 weeks of receiving the loan (up to the loan amount) will be forgiven: payroll, rents, leases, mortgage interest, and utility payments. However, not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs. The amount forgiven will not be counted as taxable income.

Your amount forgiven will be reduced based on the following:

- If you reduce your number of employees, your amount forgiven will be reduced by the same percentage.
- If you reduce employee salaries more than 25% of their prior pay, your amount forgiven will be reduced proportionally by the same percentage. For the purpose of this calculation, anyone who has an annualized salary in 2019 of more than $100,000 is not included.
- Reductions in employment or wages that occur between February 15, 2020 and April 26, 2020 will not reduce your loan forgiveness **IF** you restore your employment and salary numbers by June 30, 2020.

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What are the loan terms?
Any principal that is not forgiven will be charged interest at 1%. The loan is due in two years. All payments are deferred for six months, but interest will accrue over this period. There is no penalty for prepayment.

When and how do I apply?
Starting April 3, 2020 small businesses and sole proprietorships can apply. Independent contractors and self-employed individuals can apply for loans starting April 10, 2020. The application form is available here.

You can apply for and receive your loan through any SBA approved lender or federally insured banks and credit unions. The best place to start is probably your current bank or credit union.

The SBA should issue regulations with more details on precisely what documentation is required, but it is clear you will need documentation that establishes your average monthly payroll. No collateral or personal guarantee is required to receive a loan.

How long will it take to get approved?
The goal is that loans will be dispersed quickly, with the hope that loans can be approved within days of completing the application and dispersed shortly thereafter.

How long will the program last? The program is open until June 30, 2020, but you are encouraged to apply as quickly as possible, as there is an overall funding cap for this program.

PPP Loan Example:
A small business with 10 employees and an average monthly payroll over the previous twelve months of $50,000 applies for a PPP loan with its local bank. After attesting that the COVID-19 virus has impacted its business operations, the business would receive a loan of $125,000 ($50,000 X 2.5).

If, over the next 8 weeks, the business incurs $100,000 in eligible payroll, and $10,000 in rent and utilities expenses, that $110,000 would be fully forgiven. The principle balance of the loan would then be reduced to $15,000 and amortized for two years at an interest rate of 1%. The first loan payment would be due within six months.

More Information about the Paycheck Protection Program is available here.

Relation to SBA Disaster Loans: PPP loans are separate from the SBA's disaster loan program.

The SBA's disaster loan program is another government program designed to help small businesses weather the economic storm caused by the COVID-19 pandemic. While disaster loans are not forgivable, they provide generous terms and could also benefit your business. More details are available here: https://www.sba.gov/funding-programs/disaster-assistance.

Businesses that have recently received loans through the SBA's existing Economic Injury Disaster Loans program can refinance those loans through the PPP program.

II. Pandemic Unemployment Insurance of an additional $600 Per Week

Amount: Increases unemployment benefits by $600 per week nationwide for individuals impacted by the COVID-19 pandemic. The additional $600 per week will last through the end of July 2020.

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Who Qualifies: Any workers eligible for state unemployment benefits, including laid off and furloughed workers, qualify for the additional benefits. The law also provides benefits to independent contractors and self-employed individuals, who ordinarily are not covered.

Relationship to Existing Unemployment Insurance Programs: The pre-existing unemployment insurance programs vary between states, but the average check is between $350-$500, and lasts for up to 26 weeks. This new program will add $600 per week to your state's existing program through the end of July. Find a link to your state's existing program here.

Additional 13 Weeks: The law also adds 13 additional weeks to a state's standard program, paid at your state's existing rate. Thus, if your state currently provides for 26 weeks of unemployment insurance, your employees would now qualify for 39 weeks at your state's existing rate.

No One-Week Waiting Period: The law waives the one-week waiting period that most states require before paying unemployment insurance, meaning employees can receive their benefits as soon as they lose their compensation.

Additional State Benefits: Certain states have also increased state-specific benefits. Check your state's website for more information.

III. Delay of Employer Payroll Taxes

Employers generally are responsible for paying a 6.2% Social Security tax on employee wages. The CARES Act allows employers to postpone paying this tax until 2021. The deferred amounts would be payable over the following two years, with half due by December 31, 2021 and the other half by December 31, 2022.

IV. Employee Retention Credits

What is it: A refundable payroll tax credit for 50 percent of the first $10,000 in wages per employee paid by employers during the COVID-19 pandemic. **Businesses that receive forgivable loans under the SBA's Paycheck Protection Program are not eligible for this credit**

Who Qualifies: The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. For employers with more than 100 full-time employees, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit.

The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

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V. Beneficial Treatment of Losses

This provision relaxes the limitations on a company's use of losses. Under current law, net operating losses (NOL) cannot be carried back to reduce income in a prior tax year. This provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. These changes will allow companies to use current losses and to offset prior year gains and amend prior year tax returns, with the intent to provide cash flow and liquidity during the COVID-19 emergency.

VI. Direct Cash Payments to Individuals

Amount: All U.S. residents with adjusted gross income in 2019 of up to $75,000 ($150,000 for married couples) will get a $1,200 ($2,400 for couples) payment. They are also eligible for an additional $500 per child. This applies even for those who have no income.

The payments start phasing out for earners above those income thresholds and would not go to single filers earning more than $99,000 and more than $198,000 for joint filers with no children.

No Action Required: For the vast majority of Americans, no action will be required to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return.

VII. Waives Penalties for Early Withdrawals of 401k

The CARES Act temporarily waives the 10% penalty for premature withdrawals from retirement accounts for withdrawals of less than $100,000, subject to certain rules.

VIII. Forbearance and Foreclosure Moratorium for Residential Mortgages

The CARES Act provides that a borrower with a federally-backed mortgage loan may request mortgage forbearance, regardless of delinquency status and without penalties, fees, or interest, by submitting a request to the borrower's servicer and affirming financial hardship due to COVID-19. A forbearance must be granted for up to 180 days and extended for an additional period of up to 180 days at the request of the borrower, though the initial or extended forbearance may be shortened.

The CARES Act also prohibits the servicer of a federally-backed mortgage loan to initiate any foreclosure process for at least 60 days beginning on March 18, 2020.

**This information is not intended to constitute legal advice. All information is for general informational purposes only.*

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