

1. Introduction:

1.1 The purpose of this memo is to advise clients on programs available for small businesses as a result of the current COVID-19 pandemic and shall be the first in a series of updates on the implementation of the new protections available for small businesses.

1.2 The CARE Act (“Act”) was implemented to provide emergency assistance and health care response for individuals, families, and businesses affected by the 2020 Coronavirus pandemic. When the programs and initiatives from the Act are implemented, there will be many new resources available to small businesses. California has also responded to the pandemic with a series of its own new programs.

1.3 This guide provides information about relevant programs and initiatives that will soon be available from the Small Business Administration (“SBA”), some additional tax provisions that are outside the scope of SBA, California state support programs, and economic support programs for medical practices.

Programs ¹	
2. Paycheck Protection Program (“PPP”) Loans	<p>General Information: This program will provide cash-flow assistance through 100 percent federally guaranteed loans to employers who maintain their payroll during this emergency. If employers maintain their payroll, the loans will be forgiven.</p> <p style="margin-left: 20px;">2.1 <u>PPP Features</u></p> <p style="margin-left: 40px;">2.1.1 Forgiveness of up to 8 weeks of payroll based on employee retention and salary levels;</p> <p style="margin-left: 40px;">2.1.2 no SBA fees; and</p> <p style="margin-left: 40px;">2.1.3 at least six months of deferral with maximum deferrals of up to a year.</p> <p style="margin-left: 20px;">2.2 <u>Timing</u></p> <p style="margin-left: 40px;">2.2.1 The program is retroactive to February 15, 2020, in order to help bring back workers who may have been laid off.</p> <p style="margin-left: 40px;">2.2.2 Loans are available through June 30, 2020.</p> <p style="margin-left: 40px;">2.2.3 Small Businesses will be able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020.</p> <p style="margin-left: 40px;">2.2.4 Entities must have been in operation on February 15, 2020.</p> <p style="margin-left: 20px;">2.3 <u>Eligibility</u></p> <p style="margin-left: 40px;">2.3.1 Small businesses of less than 500 employees or the applicable size standard specific to certain industries under the North American Industry Classification System (NAICS) industry as provided by SBA.²</p>

¹ All information is cited from the CARES Act and the Small Business Owner’s Guide published by the U.S. Senate Committee of Small Business and Entrepreneurship.

² https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf

2.3.2 Any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72, for which the affiliation rules are waived.

2.3.3 Affiliation rules³ are also waived for any business concern operating as a franchise that is assigned a franchise identifier code by SBA, and company that receives funding through a Small Business Investment Company.

2.4 Loan Size

2.4.1 Depending on your business's situation, the loan size will be calculated in different ways. The maximum loan size is always \$10 million.

2.4.1.1 If you were in business February 15, 2019 – June 30, 2019: Your max loan is equal to 250 percent of your average monthly payroll costs during that time period. If your business employs seasonal workers, you can opt to choose March 1, 2019 as your time period start date.

2.4.1.2 If you were not in business between February 15, 2019 – June 30, 2019: Your max loan is equal to 250 percent of your average monthly payroll costs between January 1, 2020 and February 29, 2020.

2.4.1.3 If you took out an Economic Injury Disaster Loan (EIDL) between February 15, 2020 and June 30, 2020 and you want to refinance that loan into a PPP loan, you would add the outstanding loan amount to the payroll sum.

2.4.2 The SBA published a step by step methodology to calculate the loan amount.⁴

2.4.2.1 Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees⁵ whose principal place of residence is the United States.

2.4.2.2 Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

2.4.2.3 Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

2.4.2.4 Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

2.4.2.5 Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the

³ Affiliation rules become important when SBA is deciding whether a business's affiliations preclude them from being considered "small." Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. (For more information on affiliation rules: https://www.sba.gov/sites/default/files/affiliation_discussion_0.pdf)

⁴ <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>

⁵ Independent Contractors are not included as Employees in Calculation.

amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

2.5 Costs Eligible for Payroll

2.5.1 Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)

2.5.2 Payment for vacation, parental, family, medical, or sick leave

2.5.3 Allowance for dismissal or separation

2.5.4 Payment required for the provisions of group health care benefits, including insurance premium

2.5.5 Payment of any retirement benefit

2.5.6 Payment of State or local tax assessed on the compensation of employees

2.6 Costs NOT Eligible for Payroll

2.6.1 Employee/owner compensation over \$100,000

2.6.2 Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code

2.6.3 Compensation of employees whose principal place of residence is outside of the U.S.

2.6.4 Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act

2.7 Allowable Uses of Loan Proceeds

2.7.1 At least 75% of the loan proceeds must be used for payroll costs (as described above) the rest can be used for other allowable uses (as listed below).

2.7.2 Other Allowable Uses:

2.7.2.1 Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums

2.7.2.2 Employee salaries, commissions, or similar compensations (see exclusions above)

2.7.2.3 Payments of interest on any mortgage obligation (which shall not include any prepayment or payment of principal on a mortgage obligation)

2.7.2.4 Rent (including rent under a lease agreement)

2.7.2.5 Utilities

2.7.2.6 Interest on any other debt obligations that were incurred before the covered period

2.8 Where to get a PPP Loan

2.8.1 All current SBA 7(a) lenders (see below for information about 7(a) loans) are eligible lenders for PPP. The Department of Treasury will also be in charge of authorizing new lenders, including nonbank lenders, to help meet the needs of small business owners.

2.8.2 To begin preparing your application, you can download a copy here: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>. This will help you understand what information will be requested from you when you apply with a lender.

2.9 Loan Terms

2.9.1 For any amounts not forgiven, the maximum term is 10 years, the maximum interest rate is 4 percent, zero loan fees, zero prepayment fee (SBA will establish application fees caps for lenders that charge). Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the loan

2.10 Calculation of Forgiveness Amount

2.10.1 The actual amount of loan forgiveness will depend, in part, on the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan. However, not more than 25 percent of the loan forgiveness amount may be attributable to non-payroll costs.

2.11 Application for PPP Loan Forgiveness

2.11.1 You must apply through your lender for forgiveness on your loan. In this application, you must include:

2.11.1.1 Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings.

2.11.1.2 Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities.

2.11.1.3 Certification from a representative of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use.

2.12 Number of PPP Loans Available

2.12.1 Only one PPP loan is available per entity. Each loan will be registered under a Taxpayer Identification Number at SBA to prevent multiple loans to the same entity.

2.13 Coordinating a PPP Loan with SBA's Existing Loans

2.13.1 Borrowers may apply for PPP loans and other SBA financial assistance, including Economic Injury Disaster Loans (EIDLs), Small Business Debt Relief, 7(a) loans, 504 loans, and microloans, and also receive investment capital from

	<p>Small Business Investment Corporations (SBICs). However, you cannot use your PPP loan for the same purpose as your other SBA loan(s). For example, if you use your PPP to cover payroll for the 8-week covered period, you cannot use a different SBA loan product for payroll for those same costs in that period, although you could use it for payroll not during that period or for different workers.</p>
<p>3. Small Business Debt Relief Program</p>	<p>General Information: This program will provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans. Under it, SBA will cover all loan payments on these SBA loans, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out loans within six months of the President signing the bill into law (March 27, 2020).</p> <p>3.1 <u>SBA Loans Eligible for Relief</u></p> <p>3.1.1 7(a) loans not made under the PPP, 504 loans, and microloans. Disaster loans are not eligible (see below for more information on these).</p> <p>3.2 <u>Eligibility for a 7(a), 504, or Microloan</u></p> <p>3.2.1 In general, businesses must meet size standards⁶, be based in the U.S., be able to repay, and have a sound business purpose. To check whether your business is considered small, you will need your business's 6-digit North American Industry Classification System (NAICS) code and 3-year average annual revenue. Each program has different requirements, see https://www.sba.gov/fundingprograms/loans for more details.</p> <p>3.3 <u>7(a) Loans and the Application Process</u></p> <p>3.3.1 7(a) loans are an affordable loan product of up to \$5 million for borrowers who lack credit elsewhere and need access to versatile financing, providing short-term or long-term working capital and to purchase an existing business, refinance current business debt, or purchase furniture, fixtures and supplies. In the program, banks share a portion of the risk of the loan with SBA. There are many different types of 7(a) loans⁷. You apply for a 7(a) loan with a bank or a mission-based lender. SBA has a free referral service tool called Lender Match to help find a lender near you.⁸</p> <p>3.4 <u>504 Loans and the Application Process</u></p> <p>3.4.1 The 504 Loan Program⁹ provides loans of up to \$5.5 million to approved small businesses with long term, fixed-rate financing used to acquire fixed assets for expansion or modernization. It is a good option if you need to purchase real estate, buildings, and machinery. You apply through a Certified Development Company, which is a nonprofit corporation that promotes economic development. SBA has a free referral service tool called Lender Match to help find a lender near you.¹⁰</p> <p>3.5 <u>Microloans and the Application Process</u></p>

⁶ <https://www.sba.gov/size-standards/>

⁷ <https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans>

⁸ <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>

⁹ <https://www.sba.gov/brand/assets/sba/sba-lenders/504-Loan-Fact-Sheet-Borrower-Version.pdf>

¹⁰ <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>

	<p>3.5.1 The Microloan Program provides loans up to \$50,000 to help small businesses and certain not-for profit childcare centers to start up and expand. The average microloan is about \$13,000. These loans are delivered through mission-based lenders who are also able to provide business counseling. SBA has a free referral service tool called Lender Match to help find a microlender near you.¹¹</p>
<p>4. Economic Injury Disaster Loans (“EIDL”) & Emergency Economic Injury Grants</p>	<p>These grants provide an emergency advance of up to \$10,000 to small businesses harmed by COVID-19 within three days of applying for an SBA EIDL. To access the advance, you first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.</p> <p>4.1 <u>Eligibility of EIDL</u></p> <p>4.1.1 Those suffering substantial economic injury in all 50 states, DC, and the territories may apply for an EIDL.</p> <p>4.1.2 The following entities with 500 or fewer employees</p> <p>4.1.2.1 Sole proprietorships, with or without employees</p> <p>4.1.2.2 Independent Contractors</p> <p>4.1.2.3 Cooperatives and employee owned businesses</p> <p>4.1.3 Small business concerns and small agricultural cooperatives that meet the applicable size standard for SBA are also eligible, as well as most private non-profits of any size¹².</p> <p>4.2 <u>EIDL and its Use</u></p> <p>4.2.1 EIDLs are lower interest loans of up to \$2 million, with principal and interest deferment at the SBA’s discretion, that are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.</p> <p>4.3 <u>Eligibility for an Emergency Economic Injury Grant</u></p> <p>4.3.1 Those eligible for an EIDL and who have been in operation since January 31, 2020, when the public health crisis was announced.</p> <p>4.4 <u>Length of Time Emergency Injury Grants are Available</u></p> <p>4.4.1 January 31, 2020 – December 31, 2020. The grants are backdated to January 31, 2020 to allow those who have already applied for EIDLs to be eligible to also receive a grant.</p> <p>4.5 <u>EIDL and/or Emergency Economic Injury Grant with a PPP Loan</u></p>

¹¹ <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>

¹² Please visit <https://www.sba.gov/size-standards/> to find out if your business meets SBA’s small business size standards. You will need the 6-digit North American Industry Classification Code for your business and your business’s 3-year average annual revenue.

	<p>4.5.1 Whether you have already received an EIDL unrelated to COVID-19 or you receive a COVID-19 related EIDL and/or Emergency Grant between January 31, 2020 and June 30, 2020, you may also apply for a PPP loan. If you ultimately receive a PPP loan or refinance an EIDL into a PPP loan, any advance amount received under the Emergency Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP. However, you cannot use your EIDL for the same purpose as your PPP loan. For example, if you use your EIDL to cover payroll for certain workers in April, you cannot use PPP for payroll for those same workers in April, although you could use it for payroll in March or for different workers in April.</p> <p>4.6 <u>Application for an EIDL and Economic Injury Grant</u></p> <p>4.6.1 To apply for an EIDL online, please visit https://disasterloan.sba.gov/ela/.¹³</p> <p>4.6.2 When you apply, you can request an emergency grant of \$10,000</p> <p>4.6.3 The SBA will provide the grant within 3 days of receiving the application</p> <p>4.6.4 You will not have to repay the grant, even if your application for a loan is denied.</p> <p>4.7 <u>Express Bridge Loan Pilot Program</u></p> <p>4.7.1 Allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 with less paperwork. These loans can provide vital economic support to help small businesses overcome the temporary loss of revenue and can be term loans or used to bridge the gap while applying for a direct SBA EIDL. If a small business has an urgent need for cash while waiting for decision and disbursement on EIDL Loan, they may qualify for an SBA Express Disaster Bridge Loan.¹⁴</p>
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Small Business Tax Provisions ¹	
<p>5. Employee Retention Credit for Employers Subject to Closure or Experiencing Economic Hardship</p>	<p>5.1 This provision would provide a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 pandemic. The credit is available to employers whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.</p> <p>Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship are eligible for the credit. For employers with 100 or fewer fulltime employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation,</p>

¹³ Specific SBA District Offices can be a resource when applying (<https://www.sba.gov/local-assistance/find/?type=SBA%20District%20Office&pageNumber=1>)

¹⁴ <https://www.sba.gov/document/support--express-bridge-loan-pilot-program-guide>

	<p>including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).</p> <p>5.2 The credit is not available to employers receiving assistance through the Paycheck Protection Program. The credit is provided through December 31, 2020.</p>
<p>6. Delay of Payment of Employer Payroll Taxes</p>	<p>6.1 This provision would allow taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.</p> <p>6.2 Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.</p>

California State Support for Small Businesses Impacted by COVID-19 ¹⁵	
<p>7. Information Source for All Updates and Relevant Information from the State of California</p>	<p>7.1 The Governor's Office of Business and Economic Development (GO-Biz - https://business.ca.gov/coronavirus-2019/)</p>
<p>8. California iBank Small Business Loan Guarantee Program</p>	<p>8.1 Guarantees up to \$1 million and a micro lending program for loans up to \$10,000 with accommodations for disasters. The program is run through local mission based lenders, the Financial Development Corporations: https://www.ibank.ca.gov/small-business-finance-center/.</p>
<p>9. Rent Relief for Small Business Owners Who Must Close due to COVID-19</p>	<p>9.1 Governor Newsom's executive order suspends all state laws that would prevent local governments from enacting policies to protect you as a resident or business owner from eviction because of nonpayment of rent due to COVID-19. As a resident or business owner, a financial institution holding your home or commercial mortgage is requested to implement an immediate moratorium on a foreclosure involving you, when the foreclosure or foreclosure-related eviction arises from economic hardship caused by COVID-19 conditions. In order to protect renters, homeowners and commercial tenants during this pandemic, Governor Newsom's executive order has removed state-law limitations on local governments to halt evictions in the midst of the outbreak.</p>

¹⁵ All information is cited from: <https://business.ca.gov/coronavirus-2019/>

10. California Capital Access Program (CalCAP) (1-500 employees)	10.1 CalCAP ¹⁶ is a loan loss reserve program which may provide up to 100% coverage on losses as a result of certain loan defaults. Individual borrowers are limited to a maximum of \$2.5 million enrolled over a 3-year period. ¹⁷
11. Jump Start Loan Program	11.1 This program offers loans from \$500 to \$10,000 to low-wealth entrepreneurs in declared disaster and emergency areas. ¹⁸
12. State Tax Issues	<p>12.1 State (and federal tax) filing deadlines have been extended to July 15, 2020.</p> <p>12.2 Visit the California Department of Tax and Fee Administration website to apply for special assistance, including filing and payment extensions, and/or relief from interest and penalties (https://www.cdtfa.ca.gov/services/covid19.htm).</p> <p>12.3 Employers experiencing a hardship may request up to a 60-day extension from the Employment Development Department to file their state payroll reports and/or deposit state payroll taxes without penalty or interest (https://www.edd.ca.gov/about_edd/coronavirus-2019.htm).</p>
13. Deferred Mortgage Payments	<p>13.1 On March 25, 2020, Governor Newsom announced that financial institutions would offer, consistent with applicable guidelines, mortgage payment forbearances of up to 90 days to borrowers economically impacted by COVID-19. In addition, those institutions must:</p> <p>13.1.1 Provide borrowers a streamlined process to request a forbearance for COVID-19-related reasons, supported with available documentation;</p> <p>13.1.2 Confirm approval of and terms of forbearance program; and</p> <p>13.1.3 Provide borrowers the opportunity to request additional relief, as practicable, upon continued showing of hardship due to COVID-19.</p>

Federal Economic Relief Packages Specifically for Medical Practices (in addition to the small business programs listed above)¹⁹

14. Direct Payments	<p>14.1 \$100 billion in direct assistance to physicians, hospitals and other health care workers for unreimbursed expenses and lost revenues due to reductions in other services as a result of the COVID-19 outbreak. Detailed guidance for eligibility and applications is forthcoming from the Department of Health and Human Services (HHS).</p> <p>14.2 2% increase in Medicare physician payments by temporarily lifting the Medicare sequestration cuts. 20% enhanced Medicare inpatient payment for services</p>
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¹⁶ <https://www.treasurer.ca.gov/cpcfca/calcap/sb/brochure.pdf>

¹⁷ Participating Lenders: <https://www.treasurer.ca.gov/cpcfca/calcap/sb/institutions.pdf>

¹⁸ <https://www.ibank.ca.gov/small-business-finance-center/>

¹⁹ All information is cited from the CMA publication regarding Financial Assistance for Medical Practices During the COVID-19 Pandemic.

	<p>provided to patients with a COVID-19 diagnosis. Hospitals can also request to receive Medicare payments in an upfront lump sum.</p> <p>14.3 \$454 billion to the Treasury Secretary’s Stabilization Fund to provide emergency relief to assist businesses, including physician practices impacted by the outbreak.</p> <p>14.4 Congress updated the mandate for Medicare, Medicaid, private insurers, TriCare, the VA and Indian Health Services to cover and pay for COVID-19 vaccines, testing and related physician visits and prohibit any patient cost-sharing for such services. Medicare will pay for 100% of the visit costs. Private insurers must pay the contracted rate. If there is no contract, insurers must pay the cash price posted by the physician.</p> <p>14.5 All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married) are eligible for a full \$1,200 (\$2,400 married) rebate. They are also eligible for an additional \$500 per child. No action is required to receive a rebate check from the IRS.</p>
<p>15. Medicare Accelerated and Advance Physician Payments</p>	<p>15.1 The Centers for Medicare & Medicaid Services (CMS) on March 28, 2020, announced an expansion of its accelerated and advance payment program for participating Medicare physicians and hospitals. This expansion is intended to lessen the financial hardship of providers facing extraordinary challenges related to the COVID-19 pandemic and help with cash flow problems that many physician practices are experiencing. To qualify for accelerated or advance payments, the physician must:</p> <p>15.1.1 Have billed Medicare for claims within 180 days immediately prior to the date of signature on the provider’s/supplier’s request form;</p> <p>15.1.2 Not be in bankruptcy;</p> <p>15.1.3 Not be under active medical review or program integrity investigation; and</p> <p>15.1.4 Not have any outstanding delinquent Medicare overpayments</p> <p>15.2 Medicare will start accepting and processing the Accelerated/Advance Payment Requests immediately. California physicians should submit a request to Noridian, California's Medicare contractor. Physicians can request 100% of their historical Medicare payment amount for a three-month period. CMS anticipates that the payments will be issued within seven days of the provider’s request. Repayment of the advance payments are due 120 days after the issuance of the advance payment. Physicians have 210 days from the issuance of the advance payment to repay the entire balance due to CMS.²⁰</p>

For more information, contact Shuchee Shah at (714) 549-6200 or sshah@tocounsel.com.

²⁰ CMS Fact Sheet on Application Process (<https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf>)

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