

## COVID-19 美国法下的救济：解读美国《救助法案》 项下美国小企业管理局（SBA）的贷款机遇 COVID-19 Relief under US Legal Regime: Understanding SBA Loan Opportunities Under the US CARES Act

《救助法案》为美国的小型企业提供 3500 亿美元的“薪资保护贷款”，并为已有的“经济损害危难贷款”项目补充 100 亿美元。

The CARES Act provides \$350 billion for small business Paycheck Protection Loans, and an additional \$10 billion for the existing Economic Injury Disaster Loan program.

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### 要点概述 TAKEAWAYS

- ② 根据《冠状病毒援助、救济和经济保障法案》（“《救助法案》”），美国国会已拨款 3500 亿美元用于美国联邦小企业管理局（“SBA”）向受 COVID-19 影响的小型企业提供多达 1000 万美元的“薪酬保护贷款”（“薪酬贷款”）。

Under the CARES Act, Congress has appropriated \$350 billion for Small Business Administration (SBA) Paycheck Protection Loans of up to \$10 million to small businesses impacted by COVID-19.

- ② 《救助法案》还对“经济损害危难贷款”项目进行了修订，调拨 100 亿美元用于 SBA 向受自然灾害影响的小企业提供不超过 200 万美元的“经济损害危难贷款”（“危难贷款”），自然灾害现包括 COVID-19 疫情。

The Act also appropriates \$10 billion for SBA Economic Injury Disaster Loans of up to \$2 million to small businesses impacted by natural disasters—now including the COVID-19 pandemic—and modifies this program.

- ② 《救助法案》允许已经享受危难贷款的企业申请薪酬贷款，前提是申请人不会将两类贷款重复用于同一用途。申请人应谨慎行事。

The Act allows a company that already has an Economic Injury Disaster Loan to apply for a Paycheck Protection Loan if it will not duplicate the applicant's use of the Economic Injury Disaster Loan. Applicants should approach this issue with caution.

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2020 年 3 月 11 日，特朗普总统在全国讲话中宣布，美国联邦小企业管理局（SBA）将为受到 COVID-19 疫情影响的小企业提供 500 亿美元的低息贷款。而《救助法案》项下的拨款额大大超出了总统的上述最初承诺，即在该法案下拨款了 3500 亿美元用于向小企业提供薪酬贷款，其中包括向员工数少于 500 人的每一家公司提供最多 1000 万美元的贷款。《救助法案》还为受 2019 冠状病毒影响的公司提供 100 亿美元的危难贷款，并对该贷款项目的实施规则做出了诸多修订。截至本文发表，《救助法案》（[H.R. 748](#)）已被美国国会参众两院通过，并于 2020 年 3 月 27 日经特朗普总统签署生效。我们将在下文概述《救助法案》有关上述两种贷款的主要规定。

On March 11, 2020, President Trump announced in a national address that the SBA would be making \$50 billion in low-interest loans available to small businesses impacted by the COVID-19 pandemic. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) greatly exceeds the President's initial pledge by appropriating \$350 billion for "Paycheck Protection Loans" for small businesses—including up to \$10 million per company for companies with fewer than 500 employees. The Act also makes \$10 billion available to the SBA's existing Economic Injury Disaster Loans for companies impacted by COVID-19, and modifies the rules for those loans in several ways. At the time of this publication, the CARES Act ([H.R. 748](#)) has been passed by both chambers of Congress and is expected to be signed by President Trump on March 27, 2020. We summarize below the Act's major provisions related to these two types of SBA loan opportunities.

## 第 7 (a) 条 薪酬贷款

### Section 7(a) Paycheck Protection Loan

- 《救助法案》第 1102 条为“薪酬保护项目”，该条修订了《小企业法案》的第 7 (a) 条，直至 **2020 年 6 月 30 日**，为现有“小企业”提供高达 **1000 万**美元的贷款（金额以公式计算结果为主）。该法案定义的“小企业”为员工人数不超过 **500 人**的公司（包括其受共同所有权或控制权控制的关联方），除非根据所属行业（参见如：北美行业分类系统（NAICS）代码）对“小企业”适用规模标准另有界定以允许超过 500 人员工数的公司界定为“小企业”。

Section 1102 of the Act, dubbed the “Paycheck Protection Program,” amends Section 7(a) of the Small Business Act to make loans **up to \$10 million** (based on a formula) available **until June 30, 2020** to existing “small businesses,” a term defined under the Act as companies of **up to 500 employees** (including their “affiliates”—i.e., firms under common ownership or control) unless an applicable size standard for an industry (i.e., NAICS code) allows for a greater number of employees.

- 此外，《救助法案》豁免了 SBA 对“72 类”行业的“从属”规则，该规则适用于住宿和餐饮行业，根据该法案的豁免政策，该“72 类”行业内的企业只要在任一具体地点工作的员工人数不超过 500 人，该企业就可申请新贷款。换言之，酒店和餐厅连锁企业也可以有资格申请该薪酬贷款（如果该企业集团在任一具体地点工作的员工人数不超过 500 人）。上述 SBA 的豁免政策也同样适用于 SBA 在其连锁经营目录上批准的连锁经营企业，以及通过“小企业投资公司”项目获得融资的小企业。

In addition, the Act *waives* SBA “affiliation” rules for industry “Sector 72,” which applies to Accommodation and Food Services, such that businesses within this sector qualify for new loans as long as they do not have more than 500 employees at any given location. In other words, hotel and restaurant chains may qualify for these loans. The SBA’s affiliation rules also are waived for franchises that are approved on the SBA’s Franchise Directory, and small businesses that receive financing through the Small Business Investment Company program.

- 该项薪酬贷款可用于支付经营成本，包括工资成本（以员工年薪不超过 10 万美元为基础按比例计算）、员工福利和休假、抵押贷款的利息费用、债务再融资、租金和公用事业费。

These loans may be used to cover business costs, including payroll costs (pro-rated based on a maximum employee annual salary of \$100,000), employee benefits and leave, mortgage interest payments, debt refinancing, rent and utilities.

- 《救助法案》还免除了通常与第 7 (a) 条相匹配的个人保证要求以及申请人需证明其无法从其他渠道获得信贷的要求。该法案进一步规定 SBA 不得向贷款获得人的任何个人股东、其他股东或合伙人追索，除非贷款被用于未经批准的目的。

The Act waives the personal guaranty requirement typically associated with Section 7(a) loans, as well as the requirement for applicants to demonstrate that they are unable to obtain credit from other sources. The Act further provides that the SBA “shall have no recourse” against any individual shareholder, member or partner of a loan recipient unless the loan is used for an unauthorized purpose.

- 《救助法案》要求合格贷款人提供善意证明，声明其经营已受 COVID-19 影响且贷款将用于保留就业岗位、支付工资和偿还其他负债。

It also requires that eligible borrowers make good faith certifications that they have been impacted by COVID-19 and will use the loan funds to retain workers and maintain payroll and other debt obligations.

- 《救助法案》规定薪酬贷款的利息将不超过 4%，贷款的偿还时间将推迟不少于六个月但不超过一年。

The Act also states that interest for the Paycheck Protection Loans will be no more than four percent and that payment of the loans shall be deferred for no less than six months and no more than one year.

- 重要的是，《救助法案》第 1106 条“贷款免除”规定了政府将免除该法案项下以下贷款的还款责任，前提是贷款获得者能够书面证明贷款已用于支付：（1）工资；（2）抵押贷款的利息；（3）房租和（4）公用事业费水电费，且每一项目均需是贷款发放日起八周内的费用。

Importantly, Section 1106 of the Act, titled “Loan Forgiveness,” provides that the Government will *forgive* the amount of a loan under the Act that a recipient can document was used to pay: (1) payroll costs; (2) mortgage interest; (3) rent and (4) utilities—in each case for up to eight weeks following the issuance of the loan.

- 《救助法案》还将 SBA 快速贷款（即 SBA 将在 36 小时内处理贷款申请）的最高限额从 35 万美元提高至 100 万美元，直至 2020 年 12 月 31 日。

The Act also increases the maximum SBA Express loan—a loan whose application SBA will process in 36 hours—from \$350,000 to \$1 million through December 31, 2020.

- 《救助法案》第 1114 条指示 SBA 通过应急规定，以使该法案在颁布后 15 天内得以施行。

Section 1114 of the Act directs the SBA to pass emergency regulations to implement the Act within **15 days** after its enactment.

- 《救助法案》允许已经获得或正在申请第 7（b）条项下灾难贷款（详见下节论述）的公司也申请薪酬贷款，但二者用途不得重复。新的第 7（a）条项下的薪酬贷款的用途可能和第 7（b）条项下的灾难贷款的用途相似。该法案中有关“重复”的条款规定如下：“本条禁止[在灾难贷款项目下]灾难贷款的获得者自 2020 年 1 月 31 日起至灾难贷款有效日这段期间获得本条项下的协助，但其获得的灾难贷款并非用于支付工资或上文（即第 7(a) 条）描述的其他债务。”灾难贷款还可用于“申请人应对其因为供应链受到干扰而无法从原有渠道获得原材料而发生的成本增长”。我们将密切关注 SBA 对该条款做出的进一步解释。

The Act allows a company that already has or is applying for a Section 7(b) Economic Injury Disaster Loan (discussed in the next section) to also apply for a Paycheck Protection Loan if it will not duplicate the applicant’s use of the Disaster Loan. A provision of the Act titled “Duplication” states as follows: “Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under [the Disaster Loan program] during the period beginning on January 31, 2020, and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other obligations described [above] from receiving assistance under this paragraph.” The purposes for which the new Section 7(a) Paycheck Protection Loans may be used are similar to those for which Section 7(b) Disaster Loans may be used. Disaster Loans, however, also may be used for “meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains.” We will closely monitor SBA’s interpretation of this provision.

## 第 7 (b) 条危难贷款

### Section 7(b) Economic Injury Disaster Loans

《救助法案》还包括与 SBA 现行危难贷款项目有关的规定。危难贷款项目依据《小企业法案》第 7 (b) 条开展，对位于 SBA 已宣布为危难地区的小企业提供长期低息贷款（对小企业适用 3.75% 的利率，对非盈利组织适用 2.75% 的利率）。小企业若位于 [SBA 网站上列出的](#) 危难地区，则可以申请第 7 (b) 条项下高达 200 万美元的危难贷款。该法案对该项目做出包括如下关键点的调整：

The CARES Act also contains provisions related to SBA's existing Economic Injury Disaster Loan program. The program operates pursuant to Section 7(b) of the Small Business Act and provides low-interest (3.75 percent for small businesses and 2.75 percent of nonprofits) long-term loans to small businesses located in areas that SBA has declared to be geographic disaster zones. Small businesses can apply for up to \$2 million in 7(b) Disaster Loans, if they are located within the geographic disaster zones [identified on the SBA website](#). Key changes to this program based on the CARES Act include:

- 《救助法案》第 1110 条规定，经本法案修订，SBA 危难贷款直至 2020 年 12 月 31 日均可提供（注意上述第 7 (a) 条项下的薪酬贷款的“覆盖期间”仅至 2020 年 6 月 30 日）。

Section 1110 of the CARES Act provides that SBA Disaster Loans, as modified by the CARES Act, will be available until December 31, 2020. (Note that the “covered period” for the Section 7(a) loans described above runs only until June 30, 2020.)

- 为危难贷款之目的，《救助法案》同样修改了“小企业”的定义以包括员工人数不多于 500 人的公司，但未豁免 72 类行业的从属规则。

The Act similarly changes the definition of “small business,” for the purposes of a Disaster Loan, to include a company with no more than 500 employees, but does not waive the affiliation rules for Sector 72.

- 《救助法案》还豁免了个人保证要求以及申请人需证明其无法从其他渠道获得信贷的要求。

The Act also waives the personal guaranty requirement and the requirement for applicants to demonstrate that they are unable to obtain credit from other sources.

- 《救助法案》规定申请人的贷款申请在尚待处理时，（在递交申请后三日内）将获得 10,000 美元的紧急预付款。值得注意的是，该法案规定若申请人在 **申请上述第 7 (a) 条项下的贷款** 时获得了该等预付款，若申请人随后获得了第 7 (a) 条项下的贷款，预付款的金额将在“用于支付工资的贷款的免除额度中扣除”。

The Act provides for a \$10,000 emergency advance (within three days of submitting an application) while an applicant's loan application is pending, which SBA will *not* require to be repaid. Notably, the Act contemplates that an applicant may receive this advance while **still applying for a Section 7(a) loan** described above and that, if the applicant later receives a 7(a) loan, the amount of the advance will “be reduced from the loan forgiveness amount for a loan for payroll costs.”

现简要介绍危难贷款的背景：第 7 (b) 条项下的危难贷款可用于支付固定负债、工资、应付账款和其他成本，但不得用于弥补销售或利润损失，且不得用于某些用途，如债务再融资、偿还另一联邦机关的贷款、支付税收罚款、修复物理损坏或支付股东红利。危难贷款允许最高达 30 年的长还款期，以保证偿还能力。偿还期限根据每个借款人的偿还能力具体确定。

As background on the Economic Injury Disaster Loan program, Section 7(b) Disaster Loans may be used to pay fixed debts, payroll, accounts payable and other costs, but are not intended to replace lost sales or profits and cannot be used for certain purposes, including to refinance debt, make payments on loans owed by another federal agency, to pay tax penalty obligations, repair physical damages, or to pay dividends to stockholders. These Disaster Loans also offer long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.

为符合贷款资格，申请人还必须：拥有可被接受的信用记录、有能力偿还贷款、实际位于已公布的危难地区，且因已公布的危难（而非因为经济衰退或其他原因）损失了流动资金。

To be eligible, the applicant also must have an acceptable credit history, have the ability to repay the loan, be physically located in a declared a disaster area, and have suffered working capital losses due to the declared disaster, not due to a downturn in the economy or other reasons.

申请人可[在线申请灾难贷款](#)，其应至少提交下列材料：

Applicants may [apply for a Disaster Loan online](#) and should expect to provide at least the following paperwork:

- 完整的 SBA 贷款申请表（SBA 表 5）  
Completed SBA loan application (SBA Form 5)
- 申请人、负责人和关联方的税务信息授权（国税局表 4506T）  
Tax Information Authorization (IRS Form 4506T) for the applicant, principals and affiliates
- 最近的联邦所得税申报表的完整复印件  
Complete copies of the most recent Federal Income Tax Return
- 债务清单（SBA 表 2202）  
Schedule of Liabilities (SBA Form 2202)
- 个人融资说明（SBA 表 413）  
Personal Financial Statement (SBA Form 413).

美国普盈律师事务所可协助客户解读上述要求并确定是否可申请 SBA 贷款。

Pillsbury attorneys can help clients interpret the foregoing requirements and determine whether to apply for an SBA loan.

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美国普盈律师事务所经验丰富的危机管理专业人士正密切关注 COVID-19 给全球带来的威胁。我所集合在众多领域的经验和能力（如供应链管理、保险法、网络安全、劳动法、公司法和和其他领域），以协助客户应对危急和多变的外部环境。若您有兴趣了解更多与此快速多变的主题相关的具有领导性的想法，可访问[本所 COVID-19 资料中心](#)。

Pillsbury's experienced crisis management professionals are closely monitoring the global threat of COVID-19, drawing on the firm's capabilities in supply chain management, insurance law, cybersecurity, employment law, corporate law and other areas to provide critical guidance to clients in an urgent and quickly evolving situation. For more thought leadership on this rapidly developing topic, please visit [our COVID-19 \(Coronavirus\) Resource Center](#).