

FAQ: SMALL BUSINESS EMERGENCY LOANS

OVERVIEW

In response to the Coronavirus (COVID-19) pandemic, small business owners in all U.S. states, Washington D.C., and territories are currently eligible to apply for disaster assistance. On Wednesday, March 25, 2020 and on March 27, 2020, the U.S. Senate and the House of Representatives passed the Coronavirus Aid, Relief and Economic Security (CARES) Act and the President signed it into law. The CARES Act creates several new Federal Small Business Administration (SBA) loan programs or amendments to existing programs that could assist businesses that have been impacted by the COVID-19 pandemic with their day-to-day operating expenses.

WHAT TYPES OF ASSISTANCE ARE AVAILABLE?

PAYCHECK PROTECTION PROGRAM

How does the program work?

The Paycheck Protection Program is designed to provide a direct incentive for small businesses to keep their workers on payroll by providing each small business a loan up to \$10 million for payroll and certain other expenses.

The Paycheck Protection Program (“PPP”) authorizes up to \$349 billion in forgivable loans to small businesses to pay their employees during the COVID-19 crisis. The bill would provide a government guarantee of loans under section 7 (a) of the Small Business Act to 100 percent through Dec. 31, 2020. All loan terms will be the same for everyone.

Who would qualify?

Eligibility includes small employers with 500 employees or fewer, as well as those that meet the current Small Business Administration (SBA) size standards. Size standards are a complex issue. The SBA has a very helpful webpage for determining size standard. <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>.

Additionally, self-employed individuals, sole proprietors and “gig economy” individuals would also qualify. “Gig” economy individuals are those in temporary, flexible jobs are commonplace and companies tend toward hiring independent contractor and

freelancers instead of full-time employees: and

Certain nonprofits, including 501(c)(3) organizations, 501(c)(19) veteran organizations, and tribal business concerns with under 500 employees are also eligible.

Small businesses in the hospitality and food industry classified for tax purposes as NAICS 72 who have more than one location could also be eligible at an individual location. To be eligible the store and location employs less than 500 employees. The 500-employee rule is applied on a per physical location basis. This means each store location could be eligible. Normal affiliation rules do not apply to a business operated as a franchise or one who receives financial assistance from an approved Small Business Investment Company. For reference, 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. Control may arise through ownership, management, or other relationships or interactions between the parties.

Businesses in certain industries may have more than 500 employees if they meet the SBA's size standards for those industries. <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>.

The 500-employee threshold includes all employees: full-time, part-time, and any other status.

For eligibility purposes, the Act requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

How will a lender evaluate eligibility?

In evaluating eligibility, lenders will consider whether the borrower was in operation before February 15, 2020, and if the borrower had employees for whom they paid salaries and payroll taxes or paid independent contractors.

Lenders will also ask you for a good faith certification that:

- The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations;
- The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- The borrower does not have an application pending for a loan duplicative of the purpose and amounts as this loan;
- From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here; and

- If for independent contractors, sole proprietors, or self-employed individuals, lenders will also be looking for certain documents such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.

How do you apply?

Lenders may begin processing loan applications as soon as April 3, 2020. Starting April 3, 2020, small businesses and sole proprietorships can apply. Starting April 10, 2020, independent contractors and self-employed individuals can apply.

You can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. A SBA 7(a) lender is one who offers small business loans guaranteed by the SBA. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating in the program. A list of SBA lenders is available at www.sba.gov.

What does the loan cover?

Covered payroll costs included salary, wages, payment of cash tips, employee group health care benefits, including insurance premiums; retirement contributions, allowance for dismissal or separation, assessment of state or local taxes assessed on the compensation of the employee, and covered leave (vacation, parental, medical, family or sick leave). Payroll costs are capped (excluded) at \$100,000 on an annualized basis for each employee. Additional exclusions include payroll taxes, railroad retirement taxes and income taxes, compensation for any employee whose principal place of residence is outside the United States and qualified sick or family leave wages where a credit is granted elsewhere under the CARES Act. Due to likely high subscription, it is anticipated that, at least 75% of the forgiven amount must have been used for payroll costs.

How much would an applicant receive?

The size of the loans would equal 250 percent of an employer's average monthly payroll. The maximum loan amount would be \$10 million. The loan is 100% SBA backed.

What is the eligibility period?

The CARES Act defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.

Will the loans be forgiven?

The United States Small Business Administration (SBA) will forgive the portion of the loans used for payroll, rent, mortgage interest, or utilities. Up to 100 percent of the loan is forgivable. The loan amounts will be forgiven so long as:

- The loan proceeds are used to cover payroll costs, and most mortgage interest, rent, and utility costs over the 8-week period after the loan is made;
- If all employees are kept on payroll for eight weeks; and
- Employee and compensation levels are maintained.

Loan forgiveness would be reduced if there is a reduction in the number of employees or a reduction of greater than 25% in wages paid to employees.

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages.

The loan forgiveness cannot exceed the principal.

What are the financial benefits?

The cost of participation in the program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments from a minimum of six months and up to one year, and no prepayment penalties.

Is security required?

These loans will not require security or a guarantee. A personal guarantee is not required for the loan and no collateral is required for the loan. These loans do not require that an applicant be unable to obtain financial assistance elsewhere. and the SBA is waiving all fees related to applying for such loans.

What is the interest rate on any amount that is not forgiven?

Interest rates on any amount not eligible for forgiveness will be no more than 4%. The amount forgiven will be reduced by a formula related to layoffs or salary or wage reductions during the eight-week period after origination of the loan. A borrower is able to avoid this reduction by rehiring employees and eliminating the reduction in salary. It is proposed that lenders will be reimbursed by SBA for making these loans:

- 5% for loans up to \$350,000;
- 3% for loans over \$350,000 and less than \$2 million; and
- 1% for loans \$2 million and over.

Reductions in employment or wages that occur during the period beginning on February 15, 2020, and ending 30 days after enactment of the CARES Act, (as compared to February 15, 2020) shall not reduce the amount of loan forgiveness IF by June 30, 2020 the borrower eliminates the reduction in employees or reduction in wages.

Who manages the loans?

The Small Business Administration. Loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program.

OTHER BUSINESS-RELATED PROVISIONS

SBA ECONOMIC INJURY DISASTER ASSISTANCE LOANS

Enhanced Debt Relief is also available in SBA's other business loan programs to help small businesses overcome the challenges created by this health crisis.

In response to the Coronavirus (COVID-19) pandemic, small business owners in all U.S. states, Washington D.C., and territories are eligible to apply for an Economic Injury Disaster Loan advance of up to \$10,000. The SBA's Economic Injury Disaster Loan program provides small businesses with working capital loans of up to \$2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. The CARES Act dedicated \$10 billion to support the expanded EIDL program.

SBA's Economic Injury Disaster Loans offer up to \$2 million in assistance. This loan will become available at the request of the Governor made to the SBA. These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact. The interest rate is 3.75% for small businesses. The interest rate for non-profits is 2.75%.

SBA offers loans with 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.

The CARES Act allows for a \$10,000 EIDL Loan Advance. This option is available to applicants on the current on-line EIDL Application. Click the box at the end of your EIDL application if you wish to receive the \$10,000 advance. Application made prior to Noon on Monday, March 30 you will need to re-apply for your EIDL for this advance. Funds will be made available within three days of a successful application, and this loan advance will not have to be repaid.

Economic Injury Disaster Loans are only available to residents in declared disaster areas.

SMALL BUSINESS DEBT RELIEF

The CARES Act would require SBA to pay all principal, interest, and fees on all existing SBA loan products, including 7(a), Community Advantage, 504, and Microloan programs, for six months to provide relief to small businesses negatively affected by COVID-19, and provides \$17 billion for this purpose.

BANKRUPTCY

The CARES Act also amends the Small Business Reorganization Act to increase the eligibility threshold to file under subchapter V of chapter 11 of the U.S. Bankruptcy Code to businesses with less than \$7,500,000 of debt. The increase sunsets after one year and the eligibility threshold returns to \$2,725,625.

EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19

This provision in the CARES Act provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose:

- Operations were fully or partially suspended, due to a COVID-19-related shut-down order, or
- Gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees

when they are not providing services due to the COVID-19-related circumstances described above.

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.

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.

DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES

This provision would allow employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.

Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

MODIFICATIONS FOR NET OPERATING LOSSES

Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years.

The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

MODIFICATION OF LIMITATION ON LOSSES FOR TAXPAYERS OTHER THAN CORPORATIONS

This provision of the Act modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

MODIFICATION OF CREDIT FOR PRIOR YEAR MINIMUM TAX LIABILITY OF CORPORATIONS

The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available in the Act as refundable credits over several years, ending in 2021.

The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

MODIFICATION OF LIMITATION ON BUSINESS INTEREST

The provision of the Act temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020.

As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

WHAT RESOURCES ARE AVAILABLE?

Helpful web sites:

www.coronavirus.gov

www.sba.gov

www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources

www.sba.gov/local-assistance

West Virginia Small Business Administration Offices:

West Virginia District Office (Charleston Branch Office)

SBA District Office

405 Capitol Street Suite 412

Charleston, WV 25301

304-347-5220

West Virginia District Office

SBA District Office

320 West Pike Street Suite 330

Clarksburg, WV 26301

304-623-5631

<https://www.sba.gov/offices/district/wv/clarksburg> (this web page is for both offices)

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