The CARES Act Relief Funds Toolkit

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- Small Business Committee Payment Protection Program and EIDL Grant Flow Chart
- Unemployment Insurance Provisions one-pager
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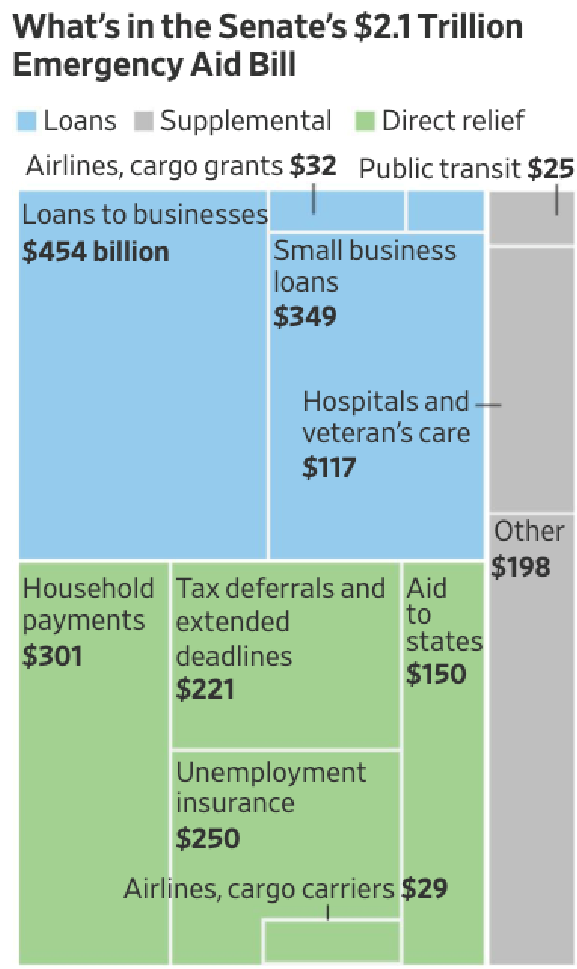
- Key Tax Provisions Summary
- Small Business Owner's Guide to the CARES Act - Senate Committee on Small Business & Entrepreneurship



Source: The Wall Street Journal March 26, 2020

Small Business Administration (SBA)

What You Need to Know:

- Small Businesses should coordinate closely with their banks and check for updates regularly.
- $349 billion in loans for small businesses and nonprofits to cover payroll and operating expenses during the crisis.
- It is expected that loans will be processes and disbursed by local banks or credit unions.
- Most of these loans will be forgiven by the Treasury (making the program a grant program).

SBA Resources Overview:

Click here for a list of SBA banks in each state

Click here for a list of top 100 SBA lenders in the US

Click here for Coronavirus (COVID-19): Small Business Guidance & Loan Resources

Click here for a mock-up of the CARES Act Application step-by-step

The Wall Street Journal Guide on *"How to Apply for Small Business Loans Under the Coronavirus Stimulus Bill"*

SBA Contact Information:

Click here for Lead Small Business Development Centers (SBDCS) By State Or Region-Contact Information

Click here for SBA District Offices

Click here for SBA State/Regional Resource Guides

Small Business Loan Provisions:

Title I of the CARES Act contains the Paycheck Protection Program (PPP), a $366 billion SBA lending program intended to alleviate disruption to small businesses caused by the coronavirus. $349 billion is marked for direct lending to small businesses. The PPP is modeled on the existing Small Business Act 7(a) program, but loans through the PPP are given a 100% government guarantee, an increase from the current 75% under the 7(a) loan program, and may be forgiven if used to maintain payroll and related expenses. The program will apply to small business, nonprofits, veterans' organizations, and a myriad of qualifying individuals.

7(a) provisions in the CARES Act

The $2 trillion stimulus package calls for loans to be distributed using the existing framework of the SBA's 7(a) program, the agency's primary loan offering. The 7(a) program is a partnership between private financial lenders, which issue the loans, and the SBA, which guarantees the loans. The SBA currently guarantees about $25 billion in 7(a) loans to small businesses, and the additional $350 billion in lending authority created by the bill is included on top of that.

Additional measures in the legislation temporarily raise the maximum amount of a 7(a) loan to $10 million from $5 million and instructs lenders to determine how much to lend based on a formula that considers a business's past payroll expenses. The bill also sets the maximum interest rate for these loans at 4%. The main underwriting standards for eligibility will be proof of payroll costs, which will be significantly relaxed compared to 7(a) loans issued during ordinary times, according to Senate staffers. A typical 7(a) requirement that certain borrowers provide collateral, for example, will be waived.

The measure includes a provision for loan forgiveness for businesses that retain their workers or rehire ones that were laid off. Businesses that meet the payroll requirements would be eligible for forgiveness on the portion of the loan used for costs including payroll, rent, mortgage obligations and utilities, according to the bill text.

Treasury Secretary Steven Mnuchin said his department plans to issue new regulations that would make it possible for almost all FDIC-insured banks to make the SBA loans. Approximately 1,800 banks, credit unions and other financial institutions are part of an existing network of lenders the SBA has approved to issue loans through the 7(a) program, according to the agency. The CARES Act includes measures that would allow the Treasury Department to give additional lenders the authority to issue the loans, even if they aren't already a part of the SBA's approved lender network. The timeline and criteria for getting additional lenders on board and who those additional lenders will be have not yet been announced.

Assistance

Banks, credit unions, and additional lenders as designated by the Treasury Department will process, close, disperse, and service the loans. It is envisioned that businesses with pre-existing bank accounts will be able to apply for the loans online (provided the institution is participating in the program). Eligible businesses may apply for a loan made for 250% of the employer's average monthly payroll. The loan is capped at $10 million. In turn, businesses may use loans to supplement payroll, employee salaries (not in excess of $100k), commissions, benefits, mortgage interest, rent, utilities, and any other debt obligations incurred during the covered period. For covered loans, all personal guarantees by the borrower will be waived and bad credit will not apply. The loans will have a ten-year maturity at not more than 4% interest and, for the institutions booking the loans, they are deemed to be given a zero percent risk weight.

Loan Forgiveness

All borrowers will be eligible for loan forgiveness with the level of borrower's forgiveness reduced per a statutory formula that accounts for any employee or payroll reduction during the emergency. The loans will be forgiven in the future provided the borrower submits appropriate documentation.

Eligibility

Small businesses, nonprofits, or veteran's organizations with less than 500 employees, or the applicable SBA size standard for the industry are eligible for loans per the PPE. "Size standard" references the SBA's current small business classification standards, as matched to industries described in the North American Industry Classification System (NAICS). A chart outlining the SBA's numerous definitions for "small businesses" by industry is linked here. SBA size standards frequently contradict the 500-employee marker provided above, with some industries qualifying as small businesses with as many as 1,500 employees. The PPP also waives the affiliation rule for: businesses in the hospitality/food service and certain related-franchisees. Some questions have arisen regarding the intended scope of the affiliate waiver provision (which will require some follow-up). Additionally, the following entities can seek relief:

- Sole-proprietors, independent contractors, and other self-employed individuals.
- Businesses with more than one physical location and no more than 500 employees per physical location in certain Accommodation and Food Services industries.
- Borrowers who have received an economic injury disaster loan (EIDL) between 2/15/20 – 3/31/20.

Note that borrowers receiving PPP assistance cannot pursue assistance in the form of an Economic Injury Disaster Loan through SBA for the same purpose. Additionally, nonprofit organizations receiving Medicaid reimbursements are excluded from eligibility for loans.

Timeline

The PPP states that loans may cover the period as beginning on February 15, 2020 and ending on December 31, 2020. The SBA Administrator will issue regulations to carry out the provisions of the CARES Act and make relief available no later than 15 days after the date of enactment of the Act. Lastly, lenders will issue decisions on applications for relief no later than 60 days after the date on which a lender receives an application for loan forgiveness.

What Borrower's Should Expect

- Borrower is presented a simple application form.
- Opening statement "America CARES Act loans are to support Small Businesses with their expenses for 60 days with the primary goal to keep Americans employed in the pre-COVID 19 impact jobs as well as to help with their expenses during this time"

Borrowers enter monthly payroll amount:

1. Payment of salaries or wages

2. Payment of cash tip or equivalent

3. Payment for vacation, parental, family or sick leave

4. Allowance for dismissal or separation

5. Payments required for provision of group health care benefits including insurance premiums

6. Payment or any retirement benefit

7. Payment of state or local tax assessed on compensation of employees

8. Payments of any compensation to a sole proprietor or independent contractor that is a wage, commission or similar compensation that is not more than $100k per year prorated for a month

Amounts may **not** include:

1. Compensation to an individual employee in excess of $100k as prorated for a month.

2. Taxes imposed or withheld under chapters 21, 22 or 24 of Internal Revenue Code of 1986 during that period.

3. Any compensation of an employee whose principal place of residence is outside of the United States.

4. Qualified sick leave wages for which credit is already allowed under section 7001 of the Families First Coronavirus Response Act.

Borrowers will provide the number of employees employed from February 15, 2019 through June 30, 2019 and attest that:

1. Business was a going concern on 2/15/20 and had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors.

2. These estimates are accurate

3. They will use the proceeds from the loan amount to only pay the following expenses:

   i. payroll costs, especially bringing the same number of employees back to full complement during the sixty days.

ii. costs related to the continuation of group health care benefits.

iii. employee salaries, commissions or similar compensation.

iv. mortgage payments.

v. Rent (including under a lease agreement).

vi. Utilities.

vii. Interest on any other debt obligations that were incurred prior to February 15,2020 (note proceeds may not be used to pay down principle or pay loans in full).

4. In 60-90 days, borrower will submit an application for loan forgiveness.

5. They understand that the loan proceeds will be deposited into their account at their lender and that they will use that account to pay the above costs for the next sixty days.

6. They understand that if they use the proceeds for different purposes or do not seek forgiveness that they are personally guaranteeing this loan and that this will convert to a business loan with a term to be determined by the lending institution.

That the borrower certifies that:

1. The uncertainty of current economic conditions makes necessary the loan request to support their ongoing operations.

2. Acknowledging the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments

3. They will maintain an average monthly number of full-time equivalent employees (as defined in section 45R(d)(2) of the Internal Revenue Code of 1986) during the covered period that is not less than the average monthly number of full-time equivalent employees during the applicable period

Borrower signs note.

Funds deposited into account within 24 hours.

Federal Reserve and Treasury Department

What You Need to Know:

- The CARES Act provides $500 billion in loans, loan guarantees divided into four categories:
    1. $25 billion for passenger airlines;
    2. $4 billion for cargo air carriers;
    3. $17 billion for businesses critical to maintaining national security; and
    4. $454 billion for use in loan or loan guarantees established by the Federal Reserve for eligible businesses as well as state or municipalities.

- The bill authorizes the Federal Reserve to create a Main Street Lending Facility for small and mid-size businesses using 13(3) powers. **Guidance on this program is forthcoming.

- The bill directs the Treasury Secretary to "endeavor to seek the implementation" of a Middle Market loan facility for banks to provide loans to businesses and eligible nonprofits with 500-10,000 employees.

- Prior to the passage of the CARES Act, the Federal Reserve announced several new programs to support the "flow of credit to employers, consumers, and businesses" through special purpose vehicles in conjunction with the Treasury's Exchange Stabilization Fund (ESF).

CARES Act Lending

The bill provides $500 billion to the Treasury's ESF to provide loans, loan guarantees, and to support the Federal Reserve credit facilities. The pot allocates $25 billion for air carriers, $4 billion for cargo air carriers, and $17 billion for "businesses critical to maintaining national security."

The remaining $454 billion is provided for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities. Lending under 13(3) programs will be funded by Treasury investments in Federal Reserve facilities that will allow the funds to be leveraged no more than ten times, providing a maximum $4.54 trillion in lending.

Direct Lending Requirements and Restrictions

- Loan and Loan Guarantees may be made available if:

    1. Credit is not reasonably available;

    2. Intended obligation is prudently incurred;

    3. The loan is reasonably secured;

    4. Term no longer than 5 years;

5. Stock buybacks are barred for the life of the loan, plus one year – excepting current contractual obligations;
6. Dividends and other capital distributions are barred for the life of the loan, plus one year;
7. To the extent practicable, eligible businesses shall maintain employment at March 24, 2020 levels and shall not reduce employment levels by more than 10% as of that date;
8. Eligible businesses must certify that they are “created or organized in the U.S. or under U.S. law and have “significant operations and employees base in the U.S.;
9. Pursuant to Secretarial determination, eligible businesses must have losses that would jeopardize continued business operations; and
10. Eligible business must be created or organized in the United States or under the laws of the U.S. and have significant operations in, and employees based in, the U.S.

- Lending under Federal Reserve programs or facilities will require:
    - Stock buybacks are barred for the life of the loan, plus one year – excepting current contractual obligations;
    - Dividends and other capital distributions are barred for the life of the loan, plus one year; and
    - Compensation limits:
        - During the term of the loan plus one year, salaries for critical businesses are limited such that—no officer or employee whose total compensation exceeded $425,000 in calendar year 2019 will receive:

          (A) compensation greater than what they received calendar year 2019; or

          (B) a severance package twice their 2019 pay; and
        - Officers making over $3 million:
            - No officer or employee of the eligible business whose total compensation exceeded $3 million in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of: $3 million plus half of any total over $3 million.

Federal Reserve Programs

On Monday, March 23rd prior to the passage of the CARES Act, the Federal Reserve announced several new programs to support the "flow of credit to employers, consumers and businesses" through SPVs in conjunction with Treasury's ESF. These programs include (term sheets hyperlinked):

1. Primary Market Corporate Credit Facility — Provides access to credit for investment grade companies to maintain business operations and capacity.

2. Secondary Market Corporate Credit Facility — Allows the purchase of secondary market corporate bonds issued by investment grade U.S. Companies and U.S.-listed exchange traded funds.

3. Term Asset-Backed Securities Loan Facility — Allows the Fed to lend on a non-recourse basis to holders of AAA rated ABS backed by new and recent originations of consumer and small business loans.

4. Expansion of Money Market Mutual Fund Liquidity Facility.

5. Expansion of Commercial Paper Funding Facility.

Applicable Uses

Purchasing obligations or other interests directly from issuers of such obligations or other interests;

Purchasing obligations or other interests in secondary markets or otherwise; or

Making loans, including loans or other advances secured by collateral.

Inapplicable Uses

The term ''*direct loan*'' means a loan under a bilateral loan agreement that is —

(I) entered into directly with an eligible business as borrower; and

(II) not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or securities or capital markets transactions.