

Coronavirus Aid, Relief and Economic Security (CARES) Act Key Small Business Provisions Fact Sheet

Courtesy NSBA from SBAM's website

Page 1 of 5

The bipartisan legislation—the Coronavirus Aid, Relief, and Economic Security (CARES) Act—designed to pump \$2 trillion into the U.S. economy to help millions of American workers and businesses survive the effects of the novel coronavirus pandemic gripping the country has been passed in the Senate and House.

TITLE I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

Paycheck Protection Program

The bill would increase to \$350 billion the government guarantee of loans through a new Paycheck Protection Program under section 7 (a) of the Small Business Act to 100 percent through Dec. 31, 2020. Eligibility includes:

- Small employers with 500 employees or fewer, as well as those that meet the current Small Business Administration (SBA) size standards;
- Self-employed individuals, sole proprietors and “gig economy” individuals; and
- Certain nonprofits, including 501(c)(3) organizations and 501(c)(19) veteran organizations, and tribal business concerns with under 500 employees.

The size of the loans would equal 250 percent of an employer’s average monthly payroll. The maximum loan amount would be \$10 million.

Covered payroll costs include salary, wages, and payment of cash tips (up to an annual rate of pay of \$100,000); employee group health care benefits, including insurance premiums; retirement contributions; and covered leave. Defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.

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

For eligibility purposes, 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.

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.

Allow for expedited access to capital by establishing a \$10 billion program for small businesses who have applied for an EIDL loan to request an advance of up to \$10,000 on the loan to provide paid sick leave to employees, maintaining payroll, and other debt obligations.

Coronavirus Aid, Relief and Economic Security (CARES) Act Key Small Business Provisions Fact Sheet

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Page 2 of 5

The Treasury Secretary would be authorized to expedite the addition of new lenders and make further enhancements to quickly expedite delivery of capital to small employers.

The maximum loan amount for SBA Express loans would be increased from \$350,000 to \$1 million. Express loans provide borrowers with revolving lines of credit for working capital purposes.

Entrepreneurial Assistance

The bill would provide \$265 million for grants to SBA resource partners, including Small Business Development Centers and Women's Business Centers, to offer counseling, training, and related assistance to small businesses affected by COVID-19.

10 million would be provided for the Minority Business Development Agency to provide these services through Minority Business Centers and Minority Chambers of Commerce.

Loan Forgiveness

The borrower is eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.

Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages.

Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8 week period compared to the previous year or time period, proportionate to maintaining employees and wages.

Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact.

Emergency EIDL Grants

The bill would expand eligibility for entities suffering economic harm due to COVID-19 to access SBA's Economic Injury Disaster Loans (EIDL), while also giving SBA more flexibility to process and disperse small dollar loans.

The bill would allow businesses that apply for an EIDL expedited access to capital through an Emergency Grant—an advance of \$10,000 within three days to maintain payroll, provide paid sick leave, and to service other debt obligations.

\$10 billion would be provided to support the expanded EIDL program.

Small Business Debt Relief

The bill 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.

Source: <https://www.sbam.org/Resources/ArtMID/404/ArticleID/3843/Coronavirus-Aid-Relief-and-Economic-Security-CARES-Act-Key-Small-Business-Provisions-Fact-Sheet>

Coronavirus Aid, Relief and Economic Security (CARES) Act Key Small Business Provisions Fact Sheet

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Page 3 of 5

Bankruptcy

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.

TITLE II—ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

Unemployment Insurance Provisions

Creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

Provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.

Allows funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

Grants an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

Provides funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

Rebates and Other Individual Provisions

All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) rebate. In addition, they are eligible for an additional \$500 per child.

The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold.

The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

Special Rules for use of Retirement Funds

The provision waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020.

Waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020.

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Coronavirus Aid, Relief and Economic Security (CARES) Act Key Small Business Provisions Fact Sheet

Courtesy NSBA from SBAM's website

Page 4 of 5

Business Provisions

Employee retention credit for employers subject to closure due to COVID-19

The provision 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 (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.

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

Allows 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

The provision 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.

Coronavirus Aid, Relief and Economic Security (CARES) Act Key Small Business Provisions Fact Sheet

Courtesy NSBA from SBAM's website

Page 5 of 5

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 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 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.

Technical amendment regarding qualified improvement property

The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.

The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

Labor Provisions

Limitation on Paid Leave

Creates a limitation stating an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee under this section.

Emergency Paid Sick Leave Limitation

Creates a limitation stating an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee under this section.

Unemployment Insurance

Provides that applications for unemployment compensation and assistance with the application process, to the extent practicable, be accessible in two ways: in person, by phone, or online.

Paid Leave for Rehired Employees

Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. Employee would have had to work for the employer at least 30 days prior to being laid off.