Overview of Small Business Provisions in Federal Government COVID-19 Relief Packages

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Helpful Links:
Full Text of CARES Bill
Employee Retention Tax Credit IRS FAQ
Paycheck Protection Program (PPP):
  • Small Business Administration Overview of PPP
  • IRS Fact Sheet from March 31 on PPP
  • PPP Sample Application
  • List of approved lenders

SBA Economic Injury Disaster Loans
Webinar from Crowell & Moring Lawfirm on CARES Act
CEBN Blogpost on Federal COVID-19 Programs

Overview of Federal Response to COVID-19

Phase 1—3/6: Coronavirus Preparedness & Response Supplemental Appropriation Act ($8.3 Billion)
-Funding for health agencies, state, & local governments to respond

Phase 2—3/18: Families First Coronavirus Response Act ($3.4 Billion)
-Free COVID testing
-Paid sick leave for millions of workers
-Boosted unemployment aid
-Expanded food assistance

Phase 3—3/27: CARES Act, Coronavirus Aid Relief and Economic Security ($2 Trillion)
-assistance to hospitals and state and local governments
-rebate checks to individuals and families
-funding to help small businesses meet payroll and other expenses
-expanded unemployment benefits
-funds for airlines and other severely impacted industries

Phase 4: TBD
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How does this Compare to Great Recession and the Federal Response?

Scale of the response:
  • Troubled Asset Relief Program (TARP) / American Recovery and Reinvestment Act (ARRA): $1.5 Trillion
  • CARES Act was $2 Trillion Alone, Trump has floated idea of a $2 Trillion stimulus for phase 4

Scope of the response:
  • Mitigation in 08 was targeted for the financial/auto sectors
Now it’s for the airline industry, but has also been more broadly applied to small businesses across the country. The economic dynamics are much different in that we’re facing a mass hit in demand across all sectors. In ’09 USGOV intervened to keep people working, now gov is intervening to keep people at home but on payrolls. We are now facing a much different problem of a wider scope and scale. Obviously not just an economic problem but first and foremost a public health problem. Pelosi has described phases 1/2 as immediate response, CARES Act as “mitigation,” phase 4 as “recovery.”

What does the CARES Act mean for Small Businesses?

1: **Employee Retention Tax Credit** for eligible employers
   - a 50% refundable tax credit on the first $10,000 spent on payroll for each employee from March 12, 2020 through Jan 1, 2021
   - max credit per employee is $5,000

2: **Paycheck Protection Program (PPP)**, for businesses with less than 500 employees (depending on NAICS code)
   - $349B appropriated for forgivable loans to small business
   - Funds can be spent on rent, mortgage interest, and payroll among other items specified up front
   - cannot take tax credit and PPP loan, it is an either or situation

3: **Loosened requirements for EIDL Loans**
   - Economic Injury Disaster Loans carried out through the Small Business Administration
   - these are not forgivable loans, they are low interest loans
   - It’s uncertain whether these can be refinanced or integrate into PPP loans
   - CARES Act ensures that any EIDL loan applicant receives $10,000 within 3 days of an application being received

Paycheck Protection Program

**Eligibility/Application**
Application opens on the following dates:
- April 3, 2020: small businesses and sole proprietorships
- April 10, 2020: independent contractors and self-employed individuals
- An applicant must have fewer than 500 employees (though this restriction has been relaxed for restaurants and hotels)
- If you are affiliated with another business or businesses, and the aggregate number of employees is over 500, this may disqualify you
- Venture backed startups are one example, and we are a part of an effort to have this clarified by treasury
- These loans are being carried out by approved banks
-- List of lenders will be available at SBA.gov
- Any current SBA lenders will be able to make the loans (fastest way to get loans would be to go through an already approved bank). SBA is working to add additional lenders to this list
- this is supposed to be a same-day approval process
- not only does the approved borrower have to sign but also anyone who is at least a 20% owner of a business certifying answers in application have been answered accurately
- Documentation likely to be needed:
  1: Showing in operation on Feb 15, 2020
  2: Need to show payroll: had employees for whom the borrower paid salaries and payroll taxes; and/or paid independent contractors as reported on 1099-MISC

What can funds be used for?
Not for Distribution

On application, recipients must note what loan will be used for. Eligible uses include the following:
- Payroll costs for 8 weeks from the issuance of the loan (this covers the first $100K of salary for each employee)
- Costs related to continuation of health care benefits
- Payments of interest on any mortgage obligation (no prepayment or payment of principal on a mortgage obligation)
- Rent
- Utilities
- Interest on any other debt obligations incurred before the covered period
- Other as covered in section 7A of the small business act (includes working capital, inventory, seasonal line of credit or refinancing debt, including an EIDL loan)

Forgiveness

The IRS has issued guidance that provides further details on this
- Loans are forgiven if spent on the costs previously outlined
- If you lay off employees or reduce salary more than 25% under $100K the loan forgiveness is reduced accordingly
- Any portion of the loan that is not forgiven must be paid off with interest
- PPP loan forgiveness is subject to formulaic reduction compared to prior periods of payroll

To calculate the penalty:

Take average number of FTE employed over 8 week period beginning on date of loan compared to a reference window either:

1: Feb 15, 2019 – June 30, 2019 avg number of FTE (any 8 weeks)

OR

2: Jan 1, 2020 – Feb 28, 2020 avg number of FTE

- Choose period when number of employees was the least
- Compare the number of employees in 8 week period vs 1 or 2. There is a pro-rata reduction based on this difference if there are less employees in the loan window vs the reference window
- The second test is a dollar for dollar reduction. Any employee you lay off between Feb 15 and 30 days after legislation enacted and don’t rehire there is a dollar for dollar reduction in loans
- There is a reduction in loan forgiveness if you reduce pay for any employees by more than 25%
- The one exception to this is for employees with salary above $100K/year the 25% reduction does not apply.
- These are additional reductions on top of pro-rata reductions