

SMBs: ACT NOW TO TAKE ADVANTAGE OF SBA LOANS AND PAYROLL TAX INCENTIVES

Background

In light of the novel coronavirus (COVID-19) global pandemic, many small-to-medium sized businesses are struggling to manage revenue losses amid prolonged economic uncertainty.

To offset the pandemic's financial impacts, Congress has passed several stimulus bills, including the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which includes provisions that can provide for increased cashflow as well as tax savings.

Businesses should quickly consider how these provisions could help their companies during this uncertain time to ensure they are maximizing available benefits.

SBA Paycheck Protection Program

This \$350 billion forgivable loan program, included in the CARES Act, significantly expands which organizations are eligible for Small Business Administration (SBA) loans. For organizations facing financial strain as a result of COVID-19, these loans can help offset a variety of costs.

What can the loan be used for?

The loan can cover costs including payroll, continuation of health care benefits, employee compensation (excludes compensation in excess of \$100,000 on an annual basis), mortgage interest obligations, rent or lease payments, utilities, and interest on debt incurred before the covered period.

Who is eligible for the program?

To qualify for the program, businesses must have either fewer than 500 employees (including full time, part time and "other" employees), meet the [SBA's size standards](#), or have less than \$15 million of tangible net worth and less than \$5 million of average net income in the last 2 years. There are some special eligibility rules for businesses in the hospitality and dining industries.

How much can a business borrow?

The maximum amount for these loans is two times the average total monthly payroll costs, or up to \$10 million. The interest rate may not exceed 4%. Business can also defer payment of the principal, interest and fees for six months to one year.

Is there loan forgiveness?

Yes, provided your business meets certain conditions. Your business will be eligible to apply for loan forgiveness equal to the amount you spent during an eight-week period after the loan closing date on:

- Payroll costs
- Interest on mortgages
- Payments of rent
- Utility payments

Principal payments of mortgage payments will not be eligible for forgiveness.

How do you apply?

Applications and underwriting are handled by SBA-approved banks. While documentation requirements will vary between institutions, we would expect them to include the following:

- Current personal financial statement
- Latest available personal tax return
- Latest available business tax return
- Latest available internal 2019 YE financials
- YTD internal 2020 financials
- Spreadsheet detailing the following:
 - List of all full-time employees with eight weeks salary + payroll taxes
 - Cost of two months of rent with copies of leases
 - Cost of two months of mortgage interest with copy of loan payments
 - Cost of two months of utility costs with copy of utility payments

What is required to be eligible?

Borrowers will need to include a *Good-Faith Certification* that:

- The loan is needed to continue operations during the COVID-19 emergency.
- Funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments.
- The applicant does not have any other application pending under this program for the same purpose.
- From February 15, 2020, until December 31, 2020, the applicant has not received duplicative amounts under this program.

Are there any other considerations to be aware of?

- Given these very limited requirements for borrowers, we may see additional guidance from the SBA on how banks should be underwriting these loans.

- Additionally, the CARES Act does not appear to have overridden the SBA's "affiliation" rules. Entities are considered "affiliates" when they are controlled by or under common control of another entity. This classification generally includes private equity owners. Business cannot exceed the size thresholds for either the primary industry of the business alone, or the industry of the business and its affiliates, whichever is greater. For groups of affiliates that operate in different industries—a typical case for private equity portfolio companies—industry code is based on the primary income producing entity. However, there is some ambiguity in the text of the CARES Act, so additional guidance may be forthcoming.

Employee Retention Credit

The CARES Act provides eligible employers with a refundable credit against payroll tax liability.

How much does the credit cover?

The credit is equal to 50% of the first \$10,000 in wages per employee (including value of health plan benefits).

Who is eligible for the credit?

Eligible employers must have carried on a trade or business during 2020 and satisfy one of two tests:

- Business operations are fully or partially suspended due to orders from a governmental entity limiting commerce, travel, or group meetings.
- A year-over-year (comparing calendar quarters) reduction in gross receipts of at least 50% – until gross receipts exceed 80% year-over-year.

For employers of **more than 100 employees**, only wages for employees who are **not** currently providing services for the employer due to COVID-19 causes are eligible for the credit. For employers of **100 or fewer employees**, qualified wages include those for any, regardless of if the employee is providing services.

Employers receiving a loan under the SBA Paycheck Protection Program are not eligible for this credit.

Delay of Employer Payroll Taxes

The CARES Act postpones the due date for employers and self-employed individuals for payment of the employer share of taxes related to Social Security.

When are the deferred payments due?

The deferred amounts are payable over the next two years – half due December 31, 2021, and half due December 31, 2022.

Who is eligible for the deferral?

All businesses and self-employed individuals are eligible. However, employers who receive a loan under the SBA Paycheck Protection Program and whose indebtedness is forgiven are not

eligible for the payroll tax deferral.

How We Can Help

Small to medium-sized businesses have many potential avenues—including the SBA loan program and payroll tax incentives—to help offset costs during this uncertain time. However, navigating the complex loan application process is a daunting task. The payroll tax provisions in the CARES Act interact with the SBA loan provisions, adding to the complexity.

In the immediate term, we can assist in analyzing which approach will be the most beneficial for your employees and your company. Those seeking SBA loans will need to move quickly to get their loans approved and funded. We can help you navigate the required paperwork and help organize the necessary information in an expedited manner—so you can boost your cashflow ASAP.

In addition to maximizing these available options, there are also beneficial income tax provisions to claim on income tax returns, including 2019 returns. We can assist companies in determining possible cash tax refunds through net operating loss (NOL) carrybacks and quick refunds of 2019 taxes already paid.