



## Business, Employee & Individual Provisions

### CARES Act

### PPP & Health Care Enhancement Act

### PPP Flexibility Act

Updated as of: 6/6/2020 12:11 PM

**This is a summary. Each topic contains more detail as outlined in the CARES Act and by the SBA.  
If you need assistance with applying for PPP or SBA loans or  
navigating the complexities after receiving a loan, [please contact us.](#)**

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## **SUMMARY**

[The Coronavirus Aid, Relief, & Economic Security Act \(The CARES Act\)](#) signed into law by President Trump on March 26, 2020.

[The Paycheck Protection Program and Health Care Enhancement Act](#) signed into law by President Trump on April 24, 2020.

The "PPP&HCE Act" amends The CARES Act to provide an additional \$370B for small businesses.

\$310 billion total for PPP with:

\$250 billion unrestricted

\$60 billion set aside for smaller institutions:

\$30 billion to lenders with assets of less than \$10 billion,

\$30 billion to lenders with assets between \$10 billion and \$50 billion.

\$60 billion for EIDL loans:

\$50 billion for EIDL loans

\$10 billion for EIDL grant

Eligibility for these funds are the same for The CARES Act.

Updated guidance from the SBA on the PPP – [New guidance as of 04-23-20](#)

[The Paycheck Protection Program Flexibility Act](#) signed into law by President Trump on June 5, 2020.

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## **A. FORGIVABLE LOANS**

*(Update: 06-05-2020 - Some provisions of the PPP have been modified by the [PPP Flexibility Act](#). Please review these modifications provided at the [end of this document](#).)*

### **1. Section 7(a) "Paycheck Protection Program" ("PPP") Section 1102 of the CARES Act**

- a) The SBA is authorized to loan up to \$349 billion under The CARES Act and \$310B under the PPP&HCE Act:
- b) The CARES Act increased the maximum SBA's 7(a) loan amount to \$10 million and would expand allowable uses of 7(a) loans. PPP Final Rule: <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>
- c) SMALL BUSINESS ADMINISTRATION 13 CFR Part 120 [Docket No. SBA-2020-0015] RIN 3245-AH34 Business Loan Program Temporary Changes; Paycheck Protection Program AGENCY: U.S. Small Business Administration. ACTION: Interim final rule. [https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule\\_0.pdf](https://www.sba.gov/sites/default/files/2020-04/PPP%20Interim%20Final%20Rule_0.pdf)
- d) April 24, 2020 PPP FAQ: [https://www.sba.gov/sites/default/files/2020-04/Paycheck-Protection-Program-Frequently-Asked-Questions\\_04%2024%2020.pdf](https://www.sba.gov/sites/default/files/2020-04/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2024%2020.pdf)

### **2) The CARES act provided \$349B in PPP 7(a) loans to eligible businesses.**

### **3) "Paycheck Protection Program and Health Care Enhancement Act" replenishes the original fund of the CARES Act and provides an additional \$310B in PPP 7(a) loans to eligible businesses:**

- a) \$310 billion total for PPP, with:
  - (i) \$250 billion unrestricted and
  - (ii) \$60 billion set aside for smaller institutions
    - (a) \$30 billion will go to lenders with assets of less than \$10 billion,
    - (b) \$30 billion will go to lenders with assets between \$10 billion and \$50 billion.

### **4) PPP Eligibility:**

- a) Small businesses with not more than 500 employees "per physical location" or the applicable size standard established by the SBA for the industry in which the business operates, if greater
- b) Nonprofits 501(c)(3) with fewer than 500 employees.
- c) A Tribal business concern that meets the SBA size standard.
- d) A 501(c)(19) Veterans Organization that meets the SBA size standard.
- e) [Sole proprietors, Self-employed individuals, or independent contractors who regularly carries on any trade or business](#)
  - i) Either had employees or independent contractors for whom they paid salaries or 1099 compensation.
    - (a) Independent contractors do not count for purposes of a calculating the size of a PPP loan.
    - (b) Independent contractors do not count as employees for purposes of PPP loan forgiveness.

### **5) Employee Requirement:**

- a) The 500-employee threshold includes all employees: full-time, part-time, and any other status.
- b) Employee's principal place of residence is in the U.S.

### **6) Expanded Allowable Uses for the covered PPP Loan Proceeds under the CARES Act (SEC. 1102. PPP. (a)(2)(F))**

- a) "Payroll Costs" (SEC. 1102. PAYCHECK PROTECTION PROGRAM. (a)(2)(A)(viii));
  - i) The sum of payments of any compensation with respect to:
    - (1) employees that is salary, wage, commission, or similar compensation;

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- (2) payment of cash tip or equivalent;
  - (3) payment for vacation, parental, family, medical, or sick leave;
  - (4) allowance for dismissal or separation;
  - (5) payment required for the provisions of group health care benefits, including insurance premiums;
  - (6) payment of any retirement benefit;
  - (7) payment of State or local tax assessed on the compensation of employees; and
- ii) The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,00 in 1 year, as prorated for the covered period;
  - iii) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
  - iv) employee salaries, commissions, or similar compensations; payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);
  - v) rent (including rent under a lease agreement); (05/18/2020 Update: The PPP Loan Forgiveness Application specifically states that rent includes the following: "Business rent or lease payments pursuant to lease agreements for real or personal property in force between February 15, 2020 (business rent or lease payments).")
  - vi) utilities (The CARES Act defines utilities in Sec.1106(a)(5) as electricity, gas, water, transportation, telephone or internet access for service which began prior to February 15, 2020. Further guidance released added gas used when driving a business vehicle. Other common utilities such as garbage collection or security monitoring may also be classified as a utility, but a business should confirm with the lending institution.)
  - vii) interest on any other debt obligations that were incurred before the covered period.
- b) The definition of "payroll costs" excludes leave payments made pursuant to the new Families First Coronavirus Response Act.
  - c) Eligible payroll costs do not include the compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period.
  - d) At least 75% of the forgiven amount must have been used for payroll.
- 7) **Included Payroll Costs for Calculating the PPP Loan Amount** ([Sole proprietors - see Section A\(23\)](#))
- a) Gross Salaries, wages, commissions and similar compensation, include officer(s) if paid W-2 wages, Cash tips or equivalents.
  - b) Vacation, parental, family, medical or sick leave, Severance pay.
  - c) Group health care benefits and Retirement benefits.
  - d) State or local taxes assessed on the compensation of employees (e.g., state unemployment and other payroll-based taxes).
  - e) The sum of payments of any compensation to or income of a sole proprietor, independent contractor or self-employed individual that are considered net earnings, wage, commission, or income from self-employment and do not exceed \$100,000.
  - f) Independent contractors do not count as employees for purposes of PPP loan forgiveness, as they have the ability to apply for PPP loans on their own.
- 8) **Excluded Payroll Costs that are not used for Calculating the PPP Loan Amount as per the Interim Final Rule on 04/02/2020**
- a) Cash Compensations of an individual employee in excess of an annual salary of \$100,000, as prorated for the period February 15, to June 30, 2020.
  - b) This exclusion does not apply to non-cash benefits including:
    - i) employer contributions to defined-benefit or defined-contribution retirement plans;
    - ii) payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums; and
    - iii) payment of state and local taxes assessed on compensation of employees.
  - c) Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code during the "covered period".
    - i) April 24, 2020 The SBA, in consultation with the Department of the Treasury additional guidance: The definition of "payroll costs" in the CARES Act, 15 U.S.C. 636(a)(36)(A)(viii), excludes "taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period," defined as February 15, 2020, to June 30, 2020. As described above, the SBA interprets this statutory exclusion to mean that payroll costs are calculated on a gross basis, without subtracting federal taxes that are imposed on the employee or withheld from employee wages. Unlike employer-side payroll taxes, such employee-side taxes are ordinarily expressed as a reduction in employee take-home pay; their exclusion from the definition of payroll costs means payroll costs should not be reduced based on taxes imposed on the employee or withheld from employee wages. This interpretation is consistent with the text of the statute and advances the legislative purpose of ensuring workers remain paid and employed. Further, because the reference period for determining a borrower's

maximum loan amount will largely or entirely precede the period from February 15, 2020, to June 30, 2020, and the period during which borrowers will be subject to the restrictions on allowable uses of the loans may extend beyond that period, for purposes of the determination of allowable uses of loans and the amount of loan forgiveness, this statutory exclusion will apply with respect to such taxes imposed or withheld at any time, not only during such period.

- ii) Any compensation of an employee whose principal place of residence is outside of the United States.
  - iii) Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116– 5 127); or qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act.
- 9) **New Guidance for Section 1102 released 04-06-20 from the Treasury Department and the Small Business Administration**
- a) The Gross Payroll approach should be used for both loan application and forgiveness.
  - b) The guidance also clarifies that employer FICA should not be included in the calculation of loan.
  - c) The \$100,000 salary limitation does not include healthcare, retirement benefits, and state and local taxes.
  - d) Applicants who use Professional Employer Organizations (PEOs) can provide payroll reports since they cannot produce individual entity payroll tax documents.
  - e) Borrowers can calculate their aggregate payroll costs using data either from calendar year 2019 or from the previous 12 months.
  - f) For applications filed 04/06/2020 and before based on the released on the version of the PPP Interim Final Rule published on April 2, 2020 do not need to update their application. Borrowers and Lenders may rely on the laws, rules, and guidance available at the time of the relevant application. However, borrowers whose previously submitted loan applications have not yet been processed may revise their applications based on clarifications released on 04-06-2020.
- 10) **Covered Period**
- a) “Covered Period” for PPP “Covered Loan” (The CARES Act Section 1102 (a)(2)(A)(ii)-(iii))
    - i) A loan made under the Care Act during the covered period: February 15, 2020 and ending on June 30, 2020.
    - ii) Includes liabilities of the borrower that are loans guaranteed by the SBA, as well as covered mortgage loans incurred before February 15, 2020.
  - b) “Covered Period” for PPP “Loan Forgiveness”
    - i) The term “covered period” means the 8-week period beginning on the date of the origination of a [covered loan](#) (The CARES Act, Section 1106 (a)(3).
- 11) **Loan Period**
- a) The loan period for this program would begin on February 15, 2020 and end on December 31, 2020, during which time applications must be submitted.
  - b) Paycheck protection loans are fully guaranteed by the federal government through Dec. 31, 2020 (previously guaranteed at 85%).
- 12) **Loan Amount**
- a) Maximum Amount — The sum of (i) borrower’s average total monthly “payroll costs” during the one-year period leading up to loan origination multiplied by 2.5 (i.e., 2.5 times average monthly payroll costs) plus (ii) the outstanding amount of borrower’s EIDL, if any, made between January 31, 2020, and the date Paycheck Protection Loans are first made available (such amount to be used to refinance the Disaster Loan), in all cases capped at \$10 million.
  - b) [For Seasonal Employers: Maximum loan](#)= 2.5 x Average total monthly payroll costs incurred during the year prior to the loan date.
  - c) For seasonal businesses, the applicant may use average monthly payroll for the period between February 15, 2019, or March 1, 2019, and June 30, 2019.
  - d) For businesses not operational in 2019: Max Loan=2.5 x Average total monthly payroll costs incurred for January & February 2020
  - e) Be sure to apply for loans that do not need to be repaid (guaranteed loans).
- 13) **Loan Forgiveness** ([Sole proprietors - see Section A\(23\)](#))
- a) Loan recipients must maintain existing employment levels “to the extent practicable” during the loan term and cannot reduce their employment levels by more than 10%.
  - b) For the 8-week period after the loan’s origination date, an eligible business concern must submit an application to the lender that originated the covered loan that will include:
    - i) Documentation of an amounts paid towards payroll in the subsequent 8 weeks after the loan’s origination date in the amount equal to the sum of the following costs incurred during the period:
      - (1) Payroll costs (compensation above \$100,000 excluded).

- (2) Amounts spent on mortgage interest, lease payments and utilities that were in place prior February 15, 2020 will be forgiven.
  - (3) Amount forgiven cannot exceed the amount borrowed.
  - c) Amounts forgiven for rehiring employees terminated for COVID-19.
  - d) Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the applicable periods, including payroll tax filings; and state income, payroll, and unemployment insurance filings; and
  - e) Documentation verifying payments on mortgage obligations, lease obligations and utilities, including cancelled checks, payment receipts, transcripts of accounts, or other documents.
  - f) The FTE (full-time employee) count does not have to include the same FT employees just the same number of FT employees.
    - i) FTE Calculations. Two alternative methods to choose from:
      - (1) Option 1: Take the average number of hours paid each week for each employee, divide by 40 and round the total to the nearest 10th. The maximum number of hours per employee is 40 or 1 FTE.
      - (2) Option 2: The SBA is also allowing for a simpler method that assigns 1.0 for employees who work 40 hours or more per week and .5 for employees who work fewer than 40 hours.
  - g) Lenders have 60 days to issue a decision on the application for loan forgiveness once submitted to the lender.
  - h) Payroll costs does not include employee compensation in excess of \$33,333 during the covered period, qualified sick leave and family leave wages for which a credit is allowed under FFCR Act.
  - i) Independent contractors have the ability to apply for a PPP loan on their own, so they do not count for purposes of a borrower's PPP loan forgiveness.
  - j) Taxability—For purposes of the IRC of 1986, any amount which would be includible in gross income of the eligible recipient by reason of forgiveness shall be excluded from gross income.
  - k) Neither the government nor lenders will charge small businesses any fees.
  - l) Proceeds must be spent in the 8 weeks following receipt of the loan proceeds.
  - m) Not more than 25% of the forgiven amount may be for non-payroll costs.
  - n) 75% of the loan maximum must be spent on payroll costs for the loan to be forgiven.
    - i) Example: A PPP loan of \$150,000 is received. If only \$75,000 is spent on payroll, the maximum loan amount that will be forgiven is \$100,000. (this is according to the new SBA guidance as explained by [Neil Bradley, Executive VP and CPO, U.S. Chamber of Commerce](#)).
  - o) [Unauthorized purposes of PPP funds](#)- SBA will direct you to repay those amounts. If you knowingly use the funds for unauthorized purposes, you will be subject to additional liability such as charges for fraud. If one of your shareholders, members, or partners uses PPP funds for unauthorized purposes, SBA will have recourse against the shareholder, member, or partner for the unauthorized use.
  - p) [PPP loan forgiveness and EIDL](#)-
    - i) If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan.
    - ii) If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan.
    - iii) Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- 14) **The amount of the forgiveness for the loans will be reduced if the employer**
- a) Reduces its FTE workforce during the eight-week period compared to prior periods ([See FTE calculation](#)); or
  - b) Reduces the salary or wages paid to an employee by more than 25% during the 8-wk period compared to the most recent quarter
  - c) Loan forgiveness will be proportionally reduced if the average number of employees is reduced during the covered period as compared to the same period in 2019.
- 15) **Any reduction in the amount of loan forgiveness will be completely avoided if**
- a) the employer re-hires all employees laid off (going back to February 15, 2020),
  - b) or increased their previously reduced wages, no later than June 20, 2020.
  - c) These provisions are designed to provide an incentive to employers to not lay off workers (or rehire them) and instead utilize the loan amounts to pay payroll and other expenses.
- 16) **Limitations**
- a) Stock buybacks are prohibited for the duration of the loan plus one additional year. Dividends may not be paid on the business's common stock for the term of the loan plus one additional year.
  - b) Limitations on the total compensation of highly paid workers for the term of the loan plus one additional year.
  - c) Covered loans with balance after loan forgiveness under section 1106 of the Cares Act will continue to be guaranteed with a maximum maturity of ten years. The interest rate is not to exceed 4%.

- 17) **Additional Information about Section 7(a) Paycheck Protection Loan**
- a) Loans will be available immediately through SBA-certified lenders
  - b) Lenders include banks, credit unions, and other financial institutions.
  - c) SBA will also be required to streamline the process to include additional lenders into the program and to ensure that funds are dispersed to qualified businesses as soon as possible.
  - d) The Act also increases the maximum SBA Express loan—a loan whose application SBA will process in 36 hours—from \$350,000 to \$1 million through December 31, 2020.
  - e) Lenders will determine eligibility for the loans based on whether the business was operational as of February 15, 2020, had employees on payroll, and paid wages and payroll taxes.
  - f) Section 1114 of the Act directs the SBA to pass emergency regulations to implement the Act within 15 days after its enactment.
  - g) Waives SBA “affiliation” rules for industry “Sector 72,” which applies to Accommodation and Food Services.
  - h) Waives personal guaranty requirement, typically associated with Section 7(a) loans.
  - i) Waives the requirement for applicants to demonstrate that they are unable to obtain credit from other sources.
  - j) The Act allows a company that already has or is applying for a Section 7(b) Economic Injury Disaster Loan to also apply for a Paycheck Protection Loan if it will not duplicate the applicant’s use of the Disaster Loan. A provision of the Act titled “Duplication” states as follows: “Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under [the Disaster Loan program] during the period beginning on January 31, 2020, and ending on the date on which covered loans are made available that is for a purpose other than paying payroll costs and other obligations described [above] from receiving assistance under this paragraph.” The purposes for which the new Section 7(a) Paycheck Protection Loans may be used are similar to those for which Section 7(b) Disaster Loans may be used. Disaster Loans, however, also may be used for “meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains.”
  - k) The SBA “shall have no recourse” against any individual shareholder, member or partner of a loan recipient unless the loan is used for an unauthorized purpose.
  - l) It also requires that eligible borrowers make good faith certifications that they have been impacted by COVID-19 and will use the loan funds to retain workers and maintain payroll and other debt obligations.
  - m) The Act also states that interest for the Paycheck Protection Loans will be no more than four percent and that payment of the loans shall be deferred for no less than six months and no more than one year.
  - n) Employer must maintain their pre-crisis level of full-time equivalent employees, or else face a reduction in forgiveness proportional to the reduction in headcount.
  - o) Since many businesses have already been forced to make staffing reductions in response to vanishing customers and lost revenues, the legislation includes a clause that allows them to qualify for loan forgiveness if they have re-hired back to pre-crisis levels by June 30, 2020.
  - p) If an application applied for both the PPP and EIDL Emergency Grant: make sure to distinguish, track, and document any EIDL grant funds (the \$10,000) that are used for purposes other than for the 7 allowed purposes of a PPP loan.
- 18) **Loan Terms for Section 7(a) “PPP”**
- a) **Payroll Costs** — Includes salary, wages, commissions, tips, PTO, health insurance, retirement benefits and local employment taxes for U.S.-based service providers, capped at \$100,000 annualized paid to such service provider.
  - b) **Excludes compensation** to employees residing outside the U.S. and qualified sick leave and family leave wages that are creditable under the Families First Coronavirus Response Act.
  - c) **Seasonal Employers** — Can use a measurement period of either (i) the 12-week period beginning February 15, 2019, or (ii) March 1, 2019 - June 30, 2019, instead of the one-year period leading up to loan origination.
  - d) **Companies Not in Business** on June 30, 2019 — To use a measurement period of January 1, 2020 - February 29, 2020.
  - e) **Maturity** —As of 04-02-20 SBA states the loan has a maturity of up to 2 years.
  - f) **Interest Rate** — 1.0% fixed rate (per U.S. Treasury 04-02-20) during the “covered period.”
  - g) **Fees** — SBA will not collect any fees on loans issued under the Paycheck Protection Program.
  - h) **The standard fees** under section 7 of the SBA are waived. Borrower and lender fees are waived. Prepayment fees are waived.
  - i) **Deferment** — All loan payments (principal, interest and fees) are deferred for six months (as of 04-02-20 per SBA)
  - j) **Prepayment** — Loans will not have any prepayment penalties.
  - k) **Nonrecourse** — Loans are to be nonrecourse, except to the extent the loan proceeds are used for a purpose other than borrower’s payroll, mortgage interest, rent and/or utilities expenses.
  - l) **Collateral/Personal Guarantee** — A borrower (and its stakeholders) will not need to provide any collateral or personal guarantee during the “covered period.”
  - m) **Interest payments** on the PPP loan are deferred for 6 months; however, interest will continue to accrue over this period.



- n) **Borrowers** should review lender-provided loan documents to confirm the collateral and personal guarantee terms of their Paycheck Protection Loan.
  - o) **Credit**- No credit check.
- 19) **What Lenders will be Looking for (as per the U.S. Chamber of Commerce)**
- a) The borrower was in operation before February 15, 2020 and had employees for whom they paid salaries and payroll taxes or paid independent contractors.
  - b) Lenders will also ask you for a good faith certification that:
    - i) The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations
    - ii) The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments
    - iii) Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for
    - iv) From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts applied for here (Note: There is an opportunity to fold emergency loans made between Jan. 31, 2020 and the date this loan program becomes available into a new loan)
    - v) If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC and income and expenses from sole proprietorship.
- 20) **Application process for Section 7(a) PPP Loan**
- a) Submit application to lender that includes:
  - b) Documentation that verifies the number Full-time employees on payroll and pay rates for the periods identified under the reduction for loan forgiveness above. Such as:
    - i) Payroll tax filings to the IRS, state payroll and SUTA filings
  - c) Financial statements verifying payment on debt obligations incurred before the covered period.
  - d) And, any other documents the SBA deems necessary.
  - e) Deadline to apply for paycheck protection loans is June 30, 2020.
- 21) **To Apply for the SBA Section 7(a) Paycheck Protection Program**
- a) Apply at any lending institution that is approved to participate in the program through the existing U.S. Small Business Administration (SBA) 7(a) lending program.
  - b) PPP FILLABLE LOAN APP: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>.
- 22) **When can application be made?**
- a) Starting April 3, 2020, small businesses can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
  - b) Starting April 10, 2020, sole proprietors, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
  - c) Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.
  - d) Caution against applying at multiple banks-
    - i) Do not apply to multiple banks at the same time. This is a technical violation of The CARES Act guidelines and could compromise your approval.
    - ii) The CARES ACT Section 1102 "PPP" (36)PPP(G) Borrow Requirements (i) Certification (III) "that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan".
    - iii) PPP loan applications cannot be concurrent. If your first application is rejected, you can submit another application through a second lender. If two lenders submit a Paycheck Protection Loan application to the government on your behalf, it may trigger a fraud alert. However, it there is a general understanding, under the current circumstances that the SBA is accepting one application and rejecting the others and no action of fraud is being pursued.
    - iv) If you receive a PL# from your lender, this means your PPP application has been accepted by the SBA
- 23) **Guidance for sole proprietors, independent contractors and self-employed as provided by the SBA on 04-14-2020**
- a) **Calculating the PPP loan amount:**
    - i) Owner compensation is calculated based on your 2019 1040 Schedule C, line 31 and is capped at \$100,000 annually.
    - ii) Employee salaries include all gross wages paid to your employees shown on your Form 941, line 5c.
    - iii) Employer paid health insurance contributions as shown on Schedule C, line 14.

- iv) Retirement contributions as shown on Schedule C, line 19. This does not include the owner's portion of retirement contributions which are shown elsewhere on the tax return.
  - v) State and local taxes assessed on employee compensation (primarily SUTA).
  - b) Sole Proprietors with multiple Schedule C businesses:
    - i) Include the net self-employment earnings from each entity in the PPP calculation.
  - c) The above amounts are annualized and then divided by 12 before applying the 2.5 multiple to calculate the loan.
  - d) The SBA guidance states that a sole proprietor who is a partner in a partnership may not submit a separate PPP loan application as a self-employed individual. In this case the self-employment earnings would be applied for at the partnership level as a payroll cost up to a maximum of \$100,000 annualized.
    - i) Update: from the Federal Register / Vol. 85, No. 97 / Tuesday, May 19, 2020 / Rules and Regulations: "Some PPP loans were approved to partnerships before the additional guidance was issued and, as a result, those businesses may not have received PPP loans in the maximum amount for which they are eligible. This interim final rule authorizes all PPP lenders to increase existing PPP loans to partnerships to include appropriate amounts to cover partner compensation in accordance with the interim final rule posted on April 14, 2020. In addition, although the interim final rule on disbursements posted on April 28, 2020, requires PPP loans to be disbursed in a single disbursement, if a PPP loan that is increased has already been disbursed, this interim final rule authorizes the lender to make an additional disbursement of the increased loan proceeds prior to submission of the initial SBA Form 1502 that includes that loan. SBA Form 1502 is required to be submitted within 20 calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502 reporting process, by May 22, 2020."
      - (1) Loan Increases: If a partnership received a PPP loan that did not include any compensation for its partners, can the loan amount be increased to include partner compensation? Yes. If a partnership received a PPP loan that only included amounts necessary for payroll costs of the partnership's employees and other eligible operating expenses, but did not include any amount for partner compensation,<sup>2</sup> the lender may electronically submit a request through SBA's E-Tran Servicing site to increase the PPP loan amount to include appropriate partner compensation, even if the loan has been fully disbursed, provided that the lender's first SBA Form 1502 report to SBA on the PPP loan has not been submitted. After the initial SBA Form 1502 report on the PPP loan has been submitted to SBA, or after the date the first SBA Form 1502 was required to be submitted to SBA, the loan cannot be increased. Additionally, the borrower must provide the lender with required documentation to support the calculation of the increase.
      - (2) Guidance describing how to calculate partnership PPP loan amounts and defining the self-employment income of partners was posted on April 24, 2020 (see How to Calculate Maximum Loan Amounts, Question 4 at <https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf>).
  - e) A 2019 Schedule C and/or 2019 Form 1099-MISC (if you receive this), detailing non-employee compensation received (box 7), an invoice, bank statement, or book of record that establishes you are self-employed must be supplied to the SBA in order to apply for a PPP loan. This is required in order to substantiate the expenses that are being used to calculate your maximum loan amount.
  - f) The Schedule C does not need to be filed, but it must be filled out and supplied to the lender to substantiate taking the loan. The SBA will release additional guidance for those self-employed individuals who were not in operation in 2019 but were in operation before February 15, 2020.
  - g) If you have multiple Schedule C businesses, you can include the net self-employment earnings from each entity in the PPP calculation.
  - h) The proceeds of the PPP loan are to be used for:
    - i) Owner's compensation up to \$100,000, annualized as calculated by net profit (Schedule C, line 31)
    - ii) Employee payroll costs
    - iii) Mortgage interest payments on business obligations related to real or personal property
    - iv) Business rent payments and business utility payments. The guidance is unclear on rent paid to a related party.
- 24) **Allowable Uses for the PPP Loan Proceeds for Sole Proprietor/Independent Contractor for the loan to be forgiven:**
- a) For employees (but not owners), salary up to \$100,000 annualized is eligible for forgiveness.
  - b) This is calculated on a weekly basis so only 8/52nds (8 weeks out of 52 weeks) will be eligible, or a maximum of \$15,385 per employee.
  - c) The guidance indicates that sole proprietors are only eligible to receive forgiveness of \$100,000 maximum of Schedule C, line 31 for their own compensation.
  - d) This means the \$100,000 maximum is inclusive of retirement contributions and health insurance for owners only.
  - e) Expenses will only be eligible if such expense was incurred in 2019. This limits the ability to add new expenses to qualify for forgiveness.
  - f) Proceeds must be spent in the 8 weeks following receipt of the loan proceeds.
  - g) Owner compensation replacement, calculated based on 2019 net profit as described above.



- h) Employee payroll costs (as defined in the First PPP Interim Final Rule) for employees whose principal place of residence is in the United States, if you have employees.
  - i) Other eligible employee expenses of retirement contributions, health insurance premiums.
  - j) Mortgage interest payments (but not mortgage prepayments or principal payments) on any business mortgage obligation on real or personal property (e.g., the interest on your mortgage for the warehouse you purchased to store business equipment or the interest on an auto loan for a vehicle you use to perform your business),
  - k) Business rent payments (e.g., the warehouse where you store business equipment or the vehicle you use to perform your business), and
  - l) Business utility payments (e.g., the cost of electricity in the warehouse you rent or gas you use driving your business vehicle). You must have claimed or be entitled to claim a deduction for such expenses on your 2019 Form 1040 Schedule C for them to be a permissible use during the eight-week period following the first disbursement of the loan (the "covered period"). For example, if you did not claim or are not entitled to claim utilities expenses on your 2019 Form 1040 Schedule C, you cannot use the proceeds for utilities during the covered period.
  - m) Interest payments on any other debt obligations that were incurred before February 15, 2020 (such amounts are not eligible for PPP loan forgiveness).
  - n) Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020 (maturity will be reset to PPP's maturity of two years). If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan.
  - o) If your EIDL loan was not used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- 25) **PPP Loan Forgiveness for Sole Proprietors and Independent Contractors.**
- a) *At least* 75% of the PPP loan proceeds shall be used for payroll costs. For purposes of determining the percentage of use of proceeds for payroll costs, the amount of any refinanced EIDL will be included. The rationale for this 75 % floor is contained in the [First PPP Interim Final Rule](#).
  - b) **25% of the loan proceeds, must be spent on eligible expenses, which include:**
    - i) **interest on a mortgage, a loan secured by personal property used in the business, rent, and utilities.**
    - ii) **To the extent that these expenses are incurred in connection with a home office, only the tax deductible portion will apply.** The tax-deductible portion is annualized on the tax return. Only 8 weeks of the allowable expense is forgivable.
- 26) **PPP application not approved (for any business entity type)**
- a) If the PPP application is not approved, an employer can still take advantage of tax credit provisions offered in the CARES Act.
  - b) Employers can defer paying their 2020 employer FICA tax (a 6.2% tax on the first \$137,700 of an employee's earnings). 50% of the deferred tax is due on December 31, 2021 and 2022. See Section 19 Deferral of Employment Taxes.
  - c) The IRS announced the week of April 13, 2020, that PPP borrowers also qualify for deferral through the date that their loan is approved for forgiveness.
  - d) Any FICA tax incurred up through that date qualifies for deferral through 2021 and 2022, but tax incurred after that date will have to be deposited without the benefit of deferral.
- 27) **PAYCHECK PROTECTION PROGRAM LENDERS**
- a) **Who Can Be a PPP Lender**
    - i) The CARES Act provides existing SBA-approved lenders with delegated authority to make and approve PPP loans under Section 7(a). As well, additional lenders to be determined by the U.S. Treasury Department and the SBA will be similarly authorized to make such PPP loans.
    - ii) The CARES Act further provides that the U.S. Treasury Department, in consultation with the SBA, and the Farm Credit Administration will establish criteria for insured depository institutions, insured credit unions, insured Farm Credit System institutions, and other lenders not already participating in SBA lending programs to make PPP loans until the expiration of the COVID-19 national emergency. The U.S. Treasury Department will establish the terms and conditions of participating in this additional loan program, but participation cannot compromise a lender's safety and soundness and the program's terms and conditions generally need to be consistent with those applicable to PPP loans made under Section 7(a).
    - iii) The SBA must issue regulations within 15 days of enactment of the CARES Act without regard to notice and comment requirements. It is possible that lenders could begin taking loan applications as soon as mid-April.
  - b) **Can PPP Loans Be Sold on the Secondary Market**

- i) If a PPP loan is sold on the secondary market, and the related investor does not approve a permitted deferment, the SBA must repurchase that loan and provide the deferral.
- c) **PPP Lenders List –**
  - i) Please visit: <http://www.denisehatcher.com/banks-offering-ppp-loans/> for the latest information.

## **B. ECONOMIC INJURY DISASTER LOANS**

1. **SECTION 7(b) ECONOMIC INJURY DISASTER LOANS - Title I, Section 1110(a) of The CARES Act**
  - a. The CARES Act appropriates \$10 billion for SBA Economic Injury Disaster Loans
  - b. The Paycheck Protection Program and Health Care Enhancement Act provides additional \$60 billion for EIDL loans
    - i. \$50 billion for EIDL loans
    - ii. \$10 billion for EIDL grant
2. Eligibility for these funds are the same as outlined in The CARES Act.
3. Up to \$2 million to per “small business” impacted by natural disasters now including the COVID-19 pandemic.
4. An increase in the loan amount can be requested within the two years following the initial loan approval.
5. The Act similarly changes the definition of “small business”, for the purposes of a Disaster Loan, to include a company with no more than 500 employees, but does not waive the affiliation rules for Sector 72.
6. A business have must have suffered a substantial economic injury and be located in a presidentially-declared disaster area.
7. The small business must show a loss effective January 31, 2020, to now and/or in the future, as compared to 2019 financials.
8. Loans are based on “actual economic injury” as determined by the SBA, less any recoveries such as insurance proceeds.
9. Section 1110 of the CARES Act provides SBA Disaster Loans, as modified by the CARES Act, are available until 12-31-2020.
10. **Fixed Loan Interest:** 3.75% for small businesses and 2.75% of non-profits. Disaster Loans are not subject to loan forgiveness.
11. **Loan Term:** up to 30-year term. Terms are determined on a case-by-case basis, based upon each borrower’s ability to repay.
12. **Payments:** Payments on Coronavirus EIDL loans are deferred for one year. Interest accrues during this period.
13. **Covered period:** the period beginning on January 31, 2020 and ending on December 31, 2020, i.e. all of 2020.
  - a. Note: this is a different “covered period” than in PPP which is February 15, 2020 thru June 30, 2020.
14. **Waivers:** The CARES Act also temporarily suspended the following program requirements until December 31, 2020 for applications made in response to COVID-19:
  - a. No personal guaranty requirement for loans up to \$200,000 through 12-31-2020, the covered period.
  - b. Waiver of the requirement that the business applicant was in business for the one-year period before the disaster.
    - i. except that the business must have been in operation on January 31, 2020.
  - c. Waiver of the requirement that the business applicant must demonstrate that they are unable to obtain credit from other sources.
15. **Proceeds:** 7(b) [Disaster Loans proceeds may be used for working capital to pay fixed debts, payroll, accounts payable;](#) including rent and mortgage payments; maintain payroll to retain employees, including sick leave pay due to the direct effect of COVID-19; pay accounts payable and other costs that the applicant could have paid had the disaster not occurred.
16. **An applicant shall not be required to repay any amounts of an advance,** even if subsequently denied an EIDL, if the advance grants funds are used for any of the following:
  - a. providing paid sick leave to employees unable to work due to the direct effect of the COVID–19;
  - b. maintaining payroll to retain employees during business disruptions or substantial slowdowns;
  - c. meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains;
  - d. making rent or mortgage payments; and
  - e. repaying obligations that cannot be met due to revenue losses.
17. **Ineligible Uses of Loan Proceeds: EIDL proceeds may not be used for:**
  - a. Payment of any dividends or bonuses;
  - b. Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services for the benefit of the applicant;
  - c. Repayment of stockholder/principal loans, except when the funds were injected on an interim basis as a result of the disaster and non-repayment would cause undue hardship to the stockholder/principal;
  - d. Expansion of facilities or acquisition of fixed assets;
  - e. Repair or replacement of physical damages;
  - f. Refinancing long term debt;
  - g. Paying down (including regular installment payments) or paying off loans provided, or owned by another Federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act. Federal Deposit Insurance Corporation (FDIC) is not considered a Federal agency for this purpose;
  - h. Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations.

- i. a. If a direct Federal debt is delinquent, your recommendation must be based on independent documentation from the appropriate Federal agency explaining how the delinquency will be cured. 50 30 9 76 Effective Date: May 31, 2018
      - ii. b. If a direct Federal debt is delinquent because of the disaster, we should make arrangements with that Federal creditor to have payments deferred or a similar action taken to bring the delinquency current prior to approval of an EIDL. If the Federal creditor cannot or will not cooperate, the likely result will be a decline of the EIDL request. However, if the applicant has other resources or recoveries, we should generally allow (and perhaps require) those resources to be applied first to ineligible needs, such as the payment of direct Federal debt.
      - iii. c. When processing during the injury period, it is generally appropriate for you to negotiate with Federal creditors to defer payments (or take similar action) until the end of the injury period. You must document why this was or was not imposed.
    - i. Pay any penalty resulting from noncompliance with a law, regulation or order of a Federal, state, regional, or local agency.
    - j. Contractor malfeasance; and
    - k. Relocation
18. **Limitations:** 7(b) Disaster Loans proceeds are not intended to replace lost sales or profits and cannot be used for certain purposes, including to refinance existing debt, make payments on loans owed by another federal agency, to pay tax penalty obligations, repair physical damages, or to pay dividends to stockholders or members, or to finance an expansion of the business.
19. **Collateral:** Economic Injury Disaster Loans over \$25,000 require collateral.
  - a. Loans which exceed \$25,000 must be secured to the extent possible. SBA will not decline a loan if the business doesn't have enough collateral, but will ask for whatever collateral is available which may include real estate owned by a business' principals. We may also take a lien on the damaged residential property. (per SBA as of 04/11/20)
  - b. Loans greater than \$25,000- general security interest in business assets will be used for collateral instead of real estate.
  - c. SBA takes real estate as collateral when it is available.
  - d. SBA will not decline a loan for lack of collateral, but requires borrowers to pledge what is available.
20. **Presence:** The applicant's business must have a physical presence in the declared disaster area.
  - a. An applicant's economic presence alone in a declared area does not meet this requirement. The physical presence must be tangible and significant. Merely having a P.O. Box in the disaster area would not qualify as a physical presence.
21. **Eligibility:** A business must qualify as a "small business concern" under the SBA eligibility requirements existing prior to the enactment of the CARES Act. To qualify as a small business concern, a business must comply with SBA size standards determined by reference to the applicant's industry NAICS code, which is determined based on either annual gross receipts or number of employees. Note that in certain cases, employees of certain affiliates of an applicant must be included when determining eligibility.
  - a. The applicant also must have an acceptable credit history, have the ability to repay the loan, be physically located in a declared a disaster area, and have suffered working capital losses due to the declared disaster, not due to a downturn in the economy or other reasons.
  - b. The Act allows a company that already has an Economic Injury Disaster Loan to apply for a Paycheck Protection Loan if it will not duplicate the applicant's use of the Economic Injury Disaster Loan. Applicants should approach this issue with caution.
22. **Coordination with Other Relief:** A borrower of an SBA Disaster Loan is eligible to participate in other SBA programs, including those under the CARES Act, but there must be no duplication in the uses of funds.
23. **Refinancing of EIDL:** The current assumption is that for the vast majority of EIDL's who later receive a PPP, the EIDL will be refinanced and rolled into the PPP so that the transfer, via refinancing, is such that there is no duplication.
24. **Reconsideration of denied loan:** Yes, there is reconsideration. An example would be if the loan was turned down for insufficient income and the owner would like to add on a co-borrower.
25. **Deadline to Apply:** Applicants must apply no later than December 16, 2020, in most states.

26. **Check Application Status:** <https://disasterloan.sba.gov/ela/Account/Login>
27. **Applicants may apply for an Economic Injury Disaster Loan online and should expect to provide at least the following paperwork:**
- a. Completed SBA loan application (SBA Form 5 or 5C)
  - b. SBA Form 5 link: <https://www.sba.gov/sites/default/files/Disaster%20Business%20Loan%20Application.pdf>
  - c. SBA Form 5C link: [https://disasterloan.sba.gov/ela/Documents/Disaster%20Home%20Loan%20Application%20\(SBA%20Form%205c\).aspx](https://disasterloan.sba.gov/ela/Documents/Disaster%20Home%20Loan%20Application%20(SBA%20Form%205c).aspx)
  - d. Approval can be based on a credit score and no first-year tax returns are required.
  - e. Copies of the most recent Federal Income Tax Return, if applicable. The borrowers must allow the SBA to review its tax records.
  - f. Tax Information Authorization (IRS Form 4506T) for the applicant, principals and affiliates, <https://www.irs.gov/pub/irs-pdf/f4506t.pdf>
    - i. Each owner with 20% or more ownership interest.
    - ii. Each general partner or managing member, regardless of ownership percentage.
    - iii. Each owner who owns more than 50% of an affiliate business.
  - g. Schedule of Liabilities (SBA Form 2202) <https://www.sba.gov/sites/default/files/2019-09/2202%20Schedule%20of%20Liabilities.pdf>
  - h. Personal Financial Statement (SBA Form 413) [https://www.sba.gov/sites/default/files/forms/SBA\\_Form\\_413\\_7a-504-SBG.pdf](https://www.sba.gov/sites/default/files/forms/SBA_Form_413_7a-504-SBG.pdf)
    - i. Other Information may also be requested.
  - j. Complete copy, including all schedules, of the most recent Federal income tax return for principals, general partners or managing member, and.
  - k. If the most recent Federal income tax return has not been filed, a year-end profit-and-loss statement and balance sheet for that tax year.
  - l. A current year-to-date profit-and-loss statement.
  - m. Additional Filing Requirements (SBA Form 1368) providing monthly sales figures. This is especially important for Economic Injury Disaster loans. [https://www.sba.gov/sites/default/files/files/serv\\_da\\_all\\_loanapp\\_5\\_0\\_4.pdf](https://www.sba.gov/sites/default/files/files/serv_da_all_loanapp_5_0_4.pdf)
  - n. The SBA offers the economic injury disaster loans, not banks.
  - o. This pandemic unprecedented, so the turnaround time is difficult to estimate. However, historically, disaster loans have taken approximately three weeks from time of application until completion of loan officer assessment, submission of any additionally required documentation, and final loan approval. The SBA anticipates the money will be distributed 3 days after that three-week loan officer review and approval period.
  - p. The SBA made updates to their application process as of 03/30/2020 to control application traffic to the website. The SBA moved away from the DropBox application process. If EIDL applications were completed before Monday, March 30, they should be resubmitted using the online link: <https://covid19relief.sba.gov/#/>
  - q. EIDL applications submitted March 30 or later received a verification number upon submission of the application. This verification indicates the application was received. No confirmation email will be sent as a follow-up confirmation of receipt of application.

**C. EIDL EMERGENCY ADVANCE (up to \$10,000) as part of Section 7(b) EIDL:**

1. Emergency Advance: Applicant of a 7(b) SBA Economic Injury Disaster Loan can request an advance of (up to) \$10,000.
2. A total of \$10 billion has been appropriated for the Emergency Advances.
3. The Economic Injury Disaster Loan advance funds will be made available within days of a successful application, and this loan advance will not have to be repaid, even if subsequently denied an EIDL.
4. 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. This advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue.
5. The CARES Act contemplates that an applicant may receive this advance while still applying for a Section 7(a) loan described above and that, if the applicant later receives a 7(a) loan, the amount of the advance will “be reduced from the loan forgiveness amount for a loan for payroll costs”.
6. SBA requires an applicant to verify eligibility, which will take the form of an affidavit you sign under penalty of perjury.
7. If an applicant applied for both the PPP and EIDL Emergency Advance: make sure to distinguish, track, and document any EIDL grant funds that are used for purposes other than allowed purposes of a PPP loan.
8. If the Emergency Grant is applied for and received, and a loan is offered, the applicant can decline the EIDL loan.
9. Apply here: <https://covid19relief.sba.gov/#/>
10. **UPDATE** – As of 04-06-2020, the SBA has changed the limitations on the Emergency Advances.
  - a. SBA has decided to implement a \$1,000 cap per employee on the advance, up to a maximum of \$10,000.

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- b. The advances will be distributed beginning the week of 04-06-2020.
  - c. The change in the program is the result of high demand for the loan.
11. **USE OF FUNDS.**—An advance provided under this subsection may be used to address any allowable purpose for a loan made under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)), *including*—
    - a. providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
    - b. maintaining payroll to retain employees during business disruptions or substantial slowdowns;
    - c. meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains;
    - d. making rent or mortgage payments; and
    - e. repaying obligations that cannot be met due to revenue losses.
  12. **REPAYMENT.**—An applicant shall not be required to repay any amounts of an advance provided under this subsection, even if subsequently denied a loan under section 7(b)(2) of the Small Business Act (15 U.S.C. 636(b)(2)). (See Section 1102 CARES Act)
    - a. Contact your lender about terms and repayment. Track all the spending of all funds from the PPP and EIDL.
    - b. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan
  13. **UNEMPLOYMENT GRANT.**—If an applicant that receives an advance under this subsection transfers into, or is approved for, the loan program under section 7(a) of the Small Business Act (15 U.S.C. 636(a)),
    - a. advance amount shall be reduced from loan forgiveness amount for a loan for payroll costs made under section 7(a).
  14. According to the SBA, the EIDL Advance is under the umbrella of the EIDL program and the proceeds must be used in accordance with the terms of the EIDL program.
  15. The CARES Act refers to this as the Emergency EIDL “Grant”. The SBA refers to this as the Emergency EIDL “Advance”.

**D. DIRECT LOANS under the Emergency Relief and Taxpayer protections portion of the CARES Act**

1. For Mid-Sizes Businesses with 500 to 10,000 employees that are not eligible for paycheck protection loans
2. Eligible for direct loans under the Emergency Relief and Taxpayer protections portion of the CARES Act.
3. Must make a “good-faith certification” to comply with certain requirements in the CARES Act.
4. This certification will likely occur on a form provided as part of the application for the loan
5. Failure to comply with the certifications could result in the rescission of the loan.
6. The business must certify that:
  - a. It intends to re-store at least 90% of its workforce that existed as of February 1, 2020, to include re-storing all compensation and benefits for those employees as of the same date. This restoration must be accomplished no later than 4 months after Health & Human Services declares an end to the public health emergency related to COVID-19;
  - b. It will not outsource jobs for the term of the loan (which cannot exceed five years) and for two years after repaying the loan;
  - c. It will not “abrogate” an existing collective bargaining agreement for the term of the loan and for two years after completing repayment of the loan. This language may impede efforts to engage in concessionary bargaining in the midst of such agreements;
  - d. It will remain “neutral in any union organizing effort for the term of the loan.” The term “neutral” in the context of union organizing has traditionally been used to impose significant restrictions on employer conduct beyond those imposed by other federal labor laws and regulations imposed by agencies such as the National Labor Relations Board (NLRB). A business subjecting itself to these terms may therefore limit the extent to which it could otherwise resort to its lawful “free speech” rights under these circumstances.

**E. SBA's WORKING CAPITAL LOANS ARE DIFFERENT FROM OTHER SBA LOANS**

1. SBA's Economic Injury Disaster Loan
2. (EIDLs) funds come directly from the U.S. Treasury.
3. Applicants do not go through a bank to apply for EIDL
4. Instead apply directly to SSA's Disaster Assistance Program at: DisasterLoan.sba.gov
5. There is no obligation to take the loan if offered.
6. The maximum unsecured loan amount is \$25,000.
7. Applicants can have an existing SBA Disaster Loan and still qualify for an EIDL for this disaster, but the loans cannot be consolidated.

## **F. HOW TO APPLY for Section 7(a) and 7(b) loans**

1. **For the SBA Section 7(a) Paycheck Protection Program**
  - a. Apply at any lending institution that is approved to participate in the program through the existing SBA 7(a) lending program.
    - i. <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>
  - b. Find a bank: <http://www.denisehatcher.com/banks-offering-ppp-loans/>
  - c. Paycheck Protection Program (PPP) Application Form:
    - i. <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>
2. **For the SBA Section 7(b) Economic Injury Disaster loan**
  - a. Applicants may apply online using the Electronic Loan Application (ELA) via SBA's secure website at
    - i. <https://disasterloan.sba.gov/ela/>
  - b. COVID-19 ECONOMIC INJURY DISASTER LOAN APPLICATION direct link: <https://covid19relief.sba.gov/#/>
  - c. Paper loan applications can be downloaded from [www.sba.gov/disaster](http://www.sba.gov/disaster).
  - d. Completed applications should be mailed to:
    - i. U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.
  - e. Disaster Loan Application Forms (Fillable and Paper Forms)
    - i. <https://disasterloan.sba.gov/ela/Information/PaperForms>
  - f. SBA disaster assistance customer service center contact information:
    - i. 1-800-659-2955 (TTY: 1-800-877-8339), e-mail: [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).
3. **SUBMIT YOUR APPLICATION AS SOON AS POSSIBLE for Section 7(a) and 7(b) loans**
  - a. Recheck the filing requirements to ensure that all the needed information is submitted.
  - b. The biggest reason for delays in processing is due to missing information.
  - c. Make sure to complete all filing requirements before submitting the application and forms.
  - d. If more funds are needed, applicants can submit supporting documents and a request for an increase.
  - e. If less funds are needed, applicants can request a reduction in the loan amount.
  - f. If the loan request is denied, the applicant will be given up to six months in which to provide new information and submit a written request for reconsideration.
4. **INFORMATION TYPICALLY NEEDED FOR AN APPLICATION for Section 7(a) and 7(b) loans**
  - a. Monthly Sales Figures, As Necessary
  - b. Monthly and/or Annual Profit & Loss for Application
  - c. Personal Financial Statements, As Needed for Applications
  - d. Schedule of Liabilities Listing All Fixed Debts
  - e. Completion of All Loan Documents
  - f. Tax Return Transcripts or Tax Information Authorization (IRS Form 4506T)
  - g. Personal Financial Statements for Applications
  - h. Schedule of Liabilities Listing All Fixed Debt
5. **OPTIONS FOR APPLYING FOR LOANS for Section 7(a) and 7(b) loans**
  - a. First Option: Do it Yourself
    - i. FAQ: <https://disasterloan.sba.gov/ela/Home/Questions>
    - ii. <https://disasterloan.sba.gov/ela/Information/ApplyOnline>
    - iii. A lending institution that is approved to participate
  - b. Second Option: Hire a tax or loan professional to assist you.

## **G. EMPLOYEE PROVISIONS**

1. **EMPLOYEE RETENTION CREDIT - Section 2301 CARES Act**
  - a. <https://www.irs.gov/newsroom/irs-employee-retention-credit-available-for-many-businesses-financially-impacted-by-covid-19>
  - b. Payroll Tax Credit 50% of qualifying wages (IRC Section 3121(a)) paid to employees.
    - i. Applies to qualified wages paid after March 12, 2020, and before January 1, 2021.
    - ii. Wages taken into account are not limited to cash payments, but also include a portion of the cost of employer provided health care which may include the employer's contribution to the employees' health



insurance costs but will exclude any amounts that the employer already received a tax credit for under EFMLA or EPSL

- c. To receive the Employee Retention Credit for a calendar quarter:
  - i. The employer must be an “eligible employer” carrying on a trade or business, including a tax-exempt organization, in 2020 that either:
    - a. Was fully or partially suspended during one or more calendar quarters due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19; or
    - b. Experienced a significant and continuing decline in gross receipts for one or more calendar quarters in which the trade or business remained open.
    - c. A significant decline in gross receipts occurs in a calendar quarter, beginning after December 31, 2019, when gross receipts of the trade or business are fewer than 50% of the gross receipts for the same calendar quarter in the prior year.
- d. The maximum amount of qualified wages taken into account with respect to each employee for all calendar quarters is \$10,000, so that the maximum credit for qualified wages paid to any employee is \$5,000. Qualifying wages are based on the average number of a business's employees in 2019.
  - i. Employers with less than 100 employees: If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless if they worked or not. If the employees worked full time and were paid for full time work, the employer still receives the credit.
  - ii. Employers with more than 100 employees: If the employer had more than 100 employees on average in 2019, then the credit is allowed only for wages paid to employees who did not work during the calendar quarter.
- e. An Eligible Employer may receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act.
  - i. This can be done but not for the same wages. The amount of qualified wages for which an Eligible Employer may claim the Employee Retention Credit does not include the amount of qualified sick and family leave wages for which the employer received tax credits under the FFCRA.
- f. This tax credit is not available to employers that receive the PPP loan.
  - i. If an eligible employer receives a covered loan under paragraph (36) of section 7(a) SBA as added by section 1102 of this Act, such employer shall not be eligible for the credit under this section.
- g. The credit is allowed against the employer portion of social security taxes under IRC Section 3111(a), the portion of taxes imposed on railroad employers under RRTA Section 3221(a) that corresponds to the social security taxes under section IRC 3111(a).
- h. The Employee Retention Credit is refundable if it exceeds the employer’s Social Security payroll tax liability for the calendar quarter.
- i. The Treasury will waive any penalty for the failure to make a deposit of the employer’s applicable employment taxes for the period at issue if the failure to deposit was in reasonable anticipation of this credit..
- j. Claiming the Employee Retention Credit
  - i. Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.
  - ii. Eligible employers will report their total qualified wages and the related health insurance costs for each quarter on their quarterly employment tax returns or Form 941 beginning with the second quarter. If the employer's employment tax deposits are not sufficient to cover the credit, the employer may receive an advance payment from the IRS by submitting [Form 7200, Advance Payment of Employer Credits Due to COVID-19](#).
  - iii. Eligible employers will report their total qualified wages and the related credits for each calendar quarter on their federal employment tax returns, usually Form 941, Employer’s Quarterly Federal Tax Return.
  - iv. In anticipation of receiving the credits, eligible employers can fund qualified wages by accessing federal employment taxes, including withheld taxes, that are required to be deposited with the IRS or by requesting an advance of the credit from the IRS.
  - v. An eligible employer may fund the qualified wages by accessing federal employment taxes, including those that the eligible employer already withheld, that are set aside for deposit with the IRS, for other wage payments made during the same quarter as the qualified wages.
  - vi. An eligible employer that pays qualified wages to its employees in a calendar quarter before it is required to deposit federal employment taxes with the IRS for that quarter may reduce the amount of federal employment taxes it deposits for that quarter by half of the amount of the qualified wages paid in that calendar quarter.
  - vii. The eligible employer must then account for the reduction in deposits on the Form 941 for the quarter.
  - viii. An eligible employer will not be subject to a penalty under Code section 6656 if:
    - a. it paid qualified wages to its employees in the calendar quarter before the required deposit,

- b. the amount of federal employment taxes that it does not timely deposit, reduced by any amount of federal employment taxes not deposited in anticipation of the credits claimed under the FFCRA, is less than or equal to the amount of the eligible employer's anticipated Employee Retention Credit for the qualified wages for the calendar quarter at the time of the required deposit, and
  - c. it did not seek payment of an advance credit by filing Form 7200, Advance Payment of Employer Credits Due to COVID-19, as to any portion of the anticipated credits by which it reduced its deposits.
- ix. The credits are fully refundable. If any calendar quarter the amount of the credit the Eligible Employer is entitled to exceeds the employer portion of the social security tax on all wages (or on all compensation for employers subject to RRTA) paid to all employees, then the excess is treated as an overpayment and refunded to the employer under IRC sections 6402(a) and 6413(a). Consistent with its treatment as an overpayment, the excess will be applied to offset any remaining tax liability on the employment tax return and the amount of any remaining excess will be reflected as an overpayment on the return. Like other overpayments of federal taxes, the overpayment will be subject to offset under IRC section 6402(a) prior to being refunded to the employer.

## 2. **NEW FEDERAL LEAVE LAW CHANGES**

- a. The CARES Act also makes several changes to the recently enacted FFCRA. Most employers all already familiar with the provisions of that law, which establishes new paid leave requirements as part of new Emergency Paid Sick Leave and Emergency Paid Family and Medical Leave requirements. The DOL recently announced that those new leave requirements will go into effect on 04-01-20.
- b. CARES Act adds new language to the EFMLA to address leave entitlement under that provision for "rehired employees". The new language states that for purposes of the EFMLA, the term "employed for at least 30 calendar days" includes an employee who was laid off on or after March 1, 2020, had worked for the employer for not less than 30 of the last 60 calendar days prior to their layoff, and was rehired.
- c. This provides that rehired employees who meet those criteria will be eligible for EFMLA without having to "restart the clock" on the 30-day requirement.
- d. The CARES Act also includes language facilitating the ability of employers to obtain an "advance" refunding of tax credits by withholding employment tax deposits (and not being penalized for doing so).
- e. The IRS recently announced that it would be issuing guidance on this point to help employers manage cash-flow challenges associated with the new leave requirements.

## 3. **FAMILIES FIRST CORONAVIRUS RESPONSE ACT (FFCRA) BUSINESS TAX CREDIT PROVISIONS (Phase 2 Relief Bill)**

- a. The Families First Coronavirus Response Act ("FFCRA") enacted March 18, 2020 has among its emergency supplemental appropriations, 3 tax credit provisions aimed at helping business owners provide paid medical leave for employees, owner-employees and self-employed individuals.
- b. The three tax credits are calculated and implemented in a similar way, however, there are differences. They are broken down by the Emergency Paid Sick Leave Tax Credit, the Emergency Family and Medical Leave Tax Credit, the Health Insurance Tax Credit Portion and the Paid Sick Leave or Family Medical Leave Tax Credit for Self-Employed.
- c. The filing process and refund mechanism have not yet been established yet.  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

## 4. **SELF-EMPLOYED SICK LEAVE AND FMLA CREDIT (part of the FFCRA)**

- a. For self-employed, the credits are calculated exactly the same. Daily pay amount for self-employed is calculated by determining average daily self-employment income, which is the net earnings from self-employment for the taxable year divided by 260.
- b. For example, we have a Schedule C taxpayer who had net income of \$50,000 last year. \$50,000 divided by 260 equals \$192.31. The daily pay rate would be \$192.31 for this self-employed taxpayer. Since this is lower than \$200, the amount of credit for one day would be \$192.31.
- c. Total credit for the quarter is limited to what the employer portion of social security tax would have been. It's the 7.65% portion the employer pays in addition to salary & wages. The credit cannot exceed this amount.
- d. Credits can be taken in First Quarter 2020, but the IRS likely will not have a revised 941 ready
- e. Employers that qualify for both the Sick Paid Leave and FMLA credits can take both in a period, but can only use one per day.
- f. If an employee takes less than a full day of leave, that day counts toward the 10-day maximum
- g. Self-employed must not be able to work the day of sick leave or FMLA.

5. **EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (part of the FFCRA)**
  - a. Emergency FMLA Expansion Act expires December 31, 2020.
  - b. Certain employers provide up to 12 weeks of leave (unpaid for the first 10 days and paid for the remaining 10 weeks) to employees who are prevented from working (or teleworking) due to caring for child whose school/daycare has been closed or is unavailable because of the coronavirus.
  - c. Employers Subject to this act are private employers with less than 500 employees and governmental agencies.
  - d. Exclusions: Employers of health care providers or emergency responders may elect to exclude such.
  - e. The Secretary of Labor may issue regulations that exclude employers with less than 50 employees if providing the Emergency FMLA leave would jeopardize the ongoing viability of the business.
  - f. Eligible employees must be employed for at least 30 calendar days.
    - i. Qualifying Reasons to take Emergency FMLA Leave
      - a. Leave is only available to employees unable to work or remote work because of the need to care for a child whose school/daycare is closing or unavailable because of the coronavirus.
      - b. Exhaustion of other leave time: An employee may elect to substitute any accrued paid time off, including vacation, personal, or sick leave prior to taking the leave time under the Emergency Paid Leave Act
  - g. Employers are not prohibited from applying an employee's other accrued leave time (personal, sick, vacation, paid time off) prior to providing paid leave under the Emergency Paid Leave Act.
  - h. Qualifying employers must provide 12 total weeks of leave.
  - i. The first 10 days of leave may be unpaid (but, see requirements of Emergency Paid Sick Leave).
  - j. Employees who take (up to) an additional 10 weeks of leave must be paid at a rate of at least two-thirds of their regular rate of pay for up to the 10-week period they are taking Emergency FMLA Leave.
  - k. Limitations on paid leave per employee are \$200 per day and \$10,000 in the aggregate.
  - l. Leave payments are subject to employee FICA, income tax withholding, Medicare taxes and employer Medicare taxes; they are exempt from employer 6.2% FICA taxes.
  - m. Employer may qualify for a payroll tax credit for the qualified leave wages, any qualified health plan expenses (employee pretax portion and employer portion) allocable to the qualified leave wages and the employer's share of Medicare taxes (1.45%) on the qualified leave wages.
  - n. Employers may be eligible to file Form 7200 for advance payment of employer tax credits or may be eligible to retain the federal employment tax that would otherwise be deposited, including federal income tax withheld, and both the employee's and employer's share of social security and Medicare taxes.
6. **EMERGENCY PAID SICK LEAVE (part of the FFCRA)**
  - a. In the case of an employee who has been quarantined with COVID-19 symptoms or is caring for someone who is quarantined by a medical professional for symptoms a credit is available under the Emergency Sick Leave portion of the Act.
  - b. Full-time employees receive 80 hours maximum, while part-time employees receive the number of hours normally worked in a two-week period.
  - c. No minimum employment period to qualify.
  - d. The credit for an employee quarantined due to COVID-19 is the lesser of \$511 per day or the employees daily pay up to a maximum of 10 days. The total tax credit being \$5,110 per employee between March 18, 2020 and December 31, 2020.
  - e. The credit for an employee caring for someone is the lesser of \$200 or the employees daily pay per day up to a maximum of 10 days. The total tax credit being limited to \$2,000 per employee between March 18, 2020 and December 31, 2020.
  - f. Employer may qualify for a payroll tax credit for the qualified sick leave wages and the employer's share of Medicare taxes (1.45%) on the qualified sick leave wages.
  - g. Paid sick leave payments are subject to employee FICA, income tax withholding, Medicare taxes and employer Medicare taxes; they are exempt from an employer's 6.2% FICA taxes
  - h. The credit is capped at the lesser of 7.65% of total wages for the quarter representing the employer portion of social security and Medicare taxes or the actual credit calculation.
  - i. Employers may be eligible to file Form 7200 for advance payment of employer tax credits OR may be eligible to retain the federal employment tax that would otherwise be deposited, including federal income tax withheld, and both the employee's and employer's share of social security and Medicare taxes
7. **HEALTH INSURANCE TAX CREDIT**
  - a. A tax credit is available for employer portion of health insurance premiums. It is only for the actual amount of premium the employer is paying and does not include the portion for the employee.

- b. The employer can take a credit for those health insurance premiums only for those employees who are out & qualify under Emergency Paid Sick Leave or Emergency Family & Medical Leave. The total credit cannot exceed 7 .65% of total wage.
8. **DEFERMENT OF PAYROLL TAXES – SECTION 2302 CARES ACT**
- a. Employer portion of any Social Security taxes for the period beginning on March 27, 2020 and ending before January 1, 2021 (the “Payroll Tax Deferral Period”).
  - b. Payroll tax deferral period is the period beginning on the date of enactment of the CARES Act (March 27, 2020) and ending before Jan. 1, 2021, i.e., December 31, 2020. (CARES Act Section. 2302(d)(2)).
  - c. Under the CARES Act, (i) 50% of the employer portion of any Social Security taxes for the Payroll Tax Deferral Period are generally deferred until December 31, 2021
  - d. Not available to employers who participate in Paycheck Protection Program AND receive debt forgiveness.
  - e. Applicable taxes are ONLY employer FICA taxes (6.2%) and are deferred to the following dates
    - i. 50% until December 31, 2021 AND
    - ii. 50% until December 31, 2022
  - f. The remaining 50% amount of the employer portion of any Social Security taxes are generally deferred until December 21, 2022.
  - g. The CARES Act states that the deferral of the employer portion of Social Security taxes generally does not apply if the employer had any loan authorized by the SBA forgiven under CARES Act.
  - h. Does not apply to Medicare taxes.
  - i. Employers must be mindful that wage payments late in 2020 might trigger a deposit requirement based on the employer’s usual deposit schedule, because the deferral is not triggered by the liability date (e.g., a payroll date on December 31) but instead by the deposit deadline (e.g., January 2, 2021).
  - j. The deadline for depositing the employer share of social security tax for wage payments made in late December 2020 is not deferred if the deposit deadline occurs in early 2021.
  - k. The IRS is expected to revise Form 941, Employer’s Quarterly Federal Tax Return, to track the employer’s decision to defer tax deposits.
  - l. An employer or self-employed individual may not defer tax payments under Section 2302 if it takes advantage of the small business loan forgiveness provisions of the CARES Act, including:
    - i. Electing to have debt forgiven under section 1106 of the CARES Act with respect to a loan under Section 7(a) of the Small Business Act (15 U.S.C. 636(a)), added by Section 1102 of the CARES Act, **or**
    - ii. Electing to have debt forgiven under Section 1109 of the CARES Act.
    - iii. If an employer has been approved for a PPP loan, [see Section 1\(t\)](#)
9. **EMPLOYER STUDENT LOAN REPAYMENT EXCLUSION (Section 2206, The CARES Act)**
- a. Under IRC 127, qualifying payments made as a fringe benefit under an Educational Assistance Program (EAP) are excluded from the employee’s gross income and are deductible to the employer.
  - b. The CARES Act allows for a temporary provision for employers to pay up to \$5,250 of an employee’s student loan debt on a tax-free basis.
  - c. Employer payments can be for the loan’s interest or principal for qualified education loans as defined in IRC Section 221(d)(1).
  - d. From March 27, 2020 through December 31, 2020 employers may pay the lender directly or reimburse the employees up to \$5,250 for qualifying loan repayment assistance or other educational assistance payments.
    - i. The educational reimbursement amount can temporarily be excluded from the employee’s taxable income.
  - e. These employer payments may limit the employee’s student loan interest deduction as there cannot be a double benefit.
  - f. Essential business employers seeking ways to reward or retain employees during the pandemic should consider whether tax-free payment of student loan debts would meet payroll and employee-acknowledgment objectives.
  - g. If your company currently sponsors an EAP, student loan payments may now be made under the current EAP document.
  - h. Companies wishing to newly implement an EAP in order to take advantage of this tax-favored student loan repayment assistance opportunity can do so by properly adopting a written plan document satisfying IRS content requirements.
10. **IRS GUIDELINES FOR CLAIMING PAYROLL TAX CREDITS**
- a. The Internal Revenue Service (IRS) has released additional guidance for employers who receive payroll tax credits under the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
  - b. Failure-to-deposit penalties are waived during pandemic.

- c. The IRS is providing employers temporary relief from failure-to deposit penalties imposed by Section 6656 of the Internal Revenue Code if:
  - i. (1) an employer pays qualified leave wages or qualified retention wages in the calendar quarter before the required deposit;
  - ii. (2) the amount of federal employment taxes the employer does not timely deposit is less than or equal to the employer's anticipated credits for qualified leave wages; and
  - iii. (3) the employer did not seek advance payment of the credit by filing Form 7200 for the same wages.
- d. FORM 7200- Advance Payment of Employer Credits Due to COVID-19
  - i. Released and is available for wages beginning April 1, 2020.
  - ii. This can be filed by employers that report wages on quarterly Form(s) 941, 943, or 944 and qualify for any of the following payroll tax credits: Emergency FMLA Credit, Emergency Paid Sick Leave Credit, or Employee Retention Credit.
  - iii. Although self-employed individuals may qualify for credits, they may NOT file Form 7200 to receive them.
  - iv. Employment taxes that are available for the credits include withheld federal income tax, and both the employee and employer share of social security and Medicare taxes with respect to all employees.
  - v. This form is filed only if the credit has not already been claimed in full when making the normal payroll tax deposit.

## H. BUSINESS PROVISIONS

### 1. BUSINESS INTEREST DEDUCTION

- a. 30% limitation on 163(j) business interest expense deductions is generally increased to 50% for any taxable year beginning in 2019 or 2020.
- b. A company can generally elect to use their 2019 adjusted taxable income (which is likely higher than their 2020 adjusted taxable income) for purposes of computing the business interest expense deduction for the 2020 taxable year.
- c. 163(j) business interest limitation adjustments for 2019 partnerships are made at the partner level partially in 2019 and partially in 2020 subject to special elections.
- d. 50% limitation does generally apply to S corporations.
- e. Instead, the CARES Act provides that, unless a partner elects out, (i) 50% of any excess business interest of the partnership for any taxable year beginning 2019 is generally fully deductible and (ii) the remaining 50% of any excess business interest of the partnership would continue to be generally subject to the applicable limitations enacted under the TCJA.

### 2. NOL CARRYBACK LIMITATION

- a. The Tax Cuts and Jobs Act of 2017 (the "TCJA") generally eliminates the ability of taxpayers to carryback any net operating loss.
- b. The CARES Act (i) generally removes the TCJA carryback limitation with respect to NOLs arising in a taxable year beginning after December 31, 2017 and before January 1, 2021 (i.e., 2018, 2019 and 2020 for calendar year taxpayers).
- c. Generally, provides that such NOLs can be carried back to each of the five taxable years preceding the taxable year of such loss.
- d. With respect to NOLs arising in a taxable year beginning on or after January 1, 2021, such NOLs are generally not eligible to be carried back to prior taxable years.

### 3. NOL 80% LIMITATION

- a. The TCJA also generally limited the ability of taxpayers to carryforward any NOLs; specifically, the TCJA provided that a taxpayer could generally only use NOLs to offset 80% of the taxpayer's taxable income.
- b. The CARES Act generally suspends the 80% limitation with respect to any taxable year beginning before January 1, 2021 and, thus, such NOLs (whether from being carried forward or carried back) can generally be used to fully offset taxable income with respect to any taxable year beginning before January 1, 2021.
- c. The 80% limitation enacted by the TCJA would generally continue to apply to taxable years beginning on or after January 1, 2021.

### 4. EXCESS BUSINESS LOSS REMOVED UNTIL 2021

- a. The limit on deducting businesses losses in excess of \$250,000 (single) or \$500,000 (joint) will be temporarily repealed backdated to 2018, not taking effect until 2021.

5. **FULL RECOVERY OF CORPORATE AMT CREDITS FOR TAX YEARS BEGINNING IN 2019**

- a. AMT was repealed as part of the TCJA. Corporate AMT credits were to be available as refundable credits over several years ending in 2021.

**I. INDIVIDUAL PROVISIONS**

1. **QUALIFIED IMPROVEMENT PROPERTY**

- a. The CARES Act corrects a “glitch” in the TJCA and provides that “qualified improvement property” is generally eligible for bonus depreciation. The CARES Act notes that this correction should be treated as if were included in the TJCA (i.e., retroactive).
- b. Qualified improvement property is now 15-year property instead of 39-year property effective 1/1/2018.
- i. The modification corrects an oversight from the TCJA affecting certain restaurant and retail businesses property.
- ii. This property once again qualifies for bonus depreciation.

2. **WAIVERS ON RETIREMENT PLANS AND FUNDS (Section 2202 The CARES Act)**

- a. This waives the 10% early withdrawal penalty for Coronavirus-Related Distributions (CRD) up to 100,000 (in aggregate) from qualified retirement accounts.
- i. Made on or after January 1, 2020 until December 31, 2020.
- ii. From qualified retirement accounts for COVID-19 purposes.
- iii. Income inclusion can happen over 3 years and the amount can be contributed back into the plan within 3 years.
- b. Qualified eligible retirement plans include:
- i. an employee retirement account 401(k),
- ii. an individual retirement account described in section 408(a),
- iii. an individual retirement annuity described in section 408(b) (other than an endowment contract),
- iv. an annuity plan described in section 403(a),
- v. an annuity contract described in section 403(b), and
- vi. an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).
- c. The waiver is available to “qualified” individuals:
- i. diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC);
- ii. Whose spouse, or dependent must meet one of the below requirements was diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC); or
- iii. who experience adverse financial consequences as a result of:
- a. being quarantined, being furloughed, or laid off, work hours reduced due to COVID-19;
- b. unable to work due to lack of childcare due to COVID-19;
- c. closure or reduced hours of a business owned or operated by the individual due to COVID-19;
- d. or other factors as determined the U.S. Treasury Secretary.
- d. Income Inclusion:
- i. In the case of any coronavirus-related distribution, unless the taxpayer elects not to have this apply for any taxable year, any amount required to be included in gross income for such taxable year shall be so included ratably over the 3-taxable-year period beginning with such taxable year.
- e. Repayment of the distributed funds:
- a. Must happen during the 3-year period beginning the day after the date on which the individual receives a Coronavirus-Related Distribution (CRD) without having the amount recognized as income for tax purposes.
- b. Income taxes will still be owed on withdrawn amounts that are not repaid.
- c. Individuals are permitted to pay tax on the CRD income over a 3-year period.
- d. Repayment would be treated as a tax-free rollover when repaid to the plan.
- i. The repayment does not affect the annual contribution limits.
- ii. CRDs are exempt from the 20% mandatory withholding that normally applies to certain retirement plan distributions.
- iii. Individuals are required to sign a certification of the reason for the CRD.
- a. Plan administrators are not required to verify such certifications.
- f. Tax-favored withdrawals from Retirement Plans – In General, Section 72(t) of the IRC shall not apply to any coronavirus-related distribution.



- g. **Consult with your tax professional and financial advisor regarding this option about how it may affect your tax position.**
3. **RETIREMENT ACCOUNT LOANS (Section 2202 The CARES Act)**
- a. The CARES Act temporarily doubles the retirement plan loan limits for qualified individuals eligible for a CRD to:
    - i. the lesser of \$100,000 or 100% of the participant's vested account balance.
  - b. For loans taken from a qualified retirement plan 401(a), 410(k), 403(b) and government plans.
  - c. To qualify, the loan must be made within 180 days after the enactment of The CARES Act, March 26, 2020.
    - i. This period is: March 27 to September 23, 2020.
  - d. The participant is not subject to income tax on the amount borrowed from the 401(k) if paid back within 5 years.
  - e. Individuals with an outstanding loan from their retirement plan that was taken before the CARES Act can delay the loan repayment for up to one year.
    - i. Interest will continue to accrue on the delayed payments.
    - ii. the one-year delay would not count toward the maximum five-year repayment period for plan loans.
4. **Required Minimum Distributions Waived for 2020 - (Section 2203 of The CARES Act)**
- a. Required Minimum Distribution requirements do not apply for calendar year 2020. This includes distributions with a required beginning date occurring in calendar year 2020 and such distribution not having been made before January 1, 2020.
  - b. This includes holders of traditional IRAs, defined contribution plans (including 401(k), profit-sharing plans and 403(b) plans) and owners of Roth 401(k), 401(a) plan, 403(a) or 403(b) annuity plan, or 457(b) government plan
  - c. **Inherited IRAs**
    - i. Inherited IRAs are also normally subject to RMDs. If you inherited the account prior to 2020, you're required to take distributions based on your own life expectancy.
    - ii. Beneficiaries who inherit 2020 & later are required to draw down the inherited account in 10 years per the Secure Act.
    - iii. The Secure Act, which took effect at the start of 2020, raised the RMD start age to age 72.
    - iv. However, beneficiaries of inherited IRAs can skip the distribution this year only.
    - v. If you turned 70½ in 2019, you had until April 1 of this year to take your very first RMD. You also would have to take your 2020 distribution by the end of this year.
  - d. **If you took an RMD already in 2020:**
    - i. You can redeposit the withdrawal into the IRA within 60 days of having taken the distribution and if you haven't made rollovers from one IRA to another in the last 12 months, you can put the return the RMD.
    - ii. The taxes that were withheld from the withdrawal will have to be replaced also.
  - e. **RMD can still be made in 2020**
    - i. RMDs are waived for 2020, but they can still be taken.
    - ii. Tax Strategy: Consider taking the withdrawal from your IRA and converting that portion to a Roth IRA.
  - f. **What is not included in the Section 2203 RMD Waiver**
    - i. RMDs Not Waived for Defined Benefit (DB) Plans. DB plans are not eligible for 2020 RMD waivers.
    - ii. Substantially equal periodic payments (SEPP)
      - a. Under Internal Revenue Code 72(t), substantially equal periodic payments are penalty-free distributions from the retirement account.
5. **TAXPAYER RELIEF CHECKS (ECONOMIC IMPACT PAYMENT) - SECTION 2201 RECOVERY REBATES OF THE CARES ACT**
- a. Economic Impact Payment of \$1,200 for individuals and \$2,400 for married couples.
  - b. If you make less than 150,000 Married, 112,500 Head of Household, 75,000 Single in 2019, file your return immediately.
  - c. If you make less than that in 2018 and haven't filed 2019, you will get the rebate sent directly to your account.
  - d. The \$1,200 amount decreases by \$5 per every \$100 earned after that, zeroing out at \$99,000. For married couples, the phaseout range is \$150,000 to \$198,000.
  - e. \$500 per dependent age 16 and under.
  - f. Dependents 17 years and older are not eligible for the \$500 or the \$1,200.
  - g. The IRS will direct deposit the recovery rebate using the based on the information on the 2018 or 2019 tax return.
  - h. If a 2018 or 2019 has been filed but no direct deposit information was given, the check will be mailed but will have the option of:
    - i. "We will create a web-based system for people where [if] we don't have their direct deposit [information], they can upload it so that they can get the money immediately as opposed to checks in the mail." Mnuchin, U.S. Sec. of Treasury
  - i. For those receiving Social Security and Disability, the IRS will use the information on file.

- j. No direct deposit information:
  - i. In the coming weeks, Treasury plans to develop a web-based portal for individuals to provide their banking information to the IRS online, so that individuals can receive payments immediately, as opposed to checks in the mail.
- k. Those who do not file a tax return will need to file a simple tax return to receive an economic impact payment.
  - i. IRS.gov/coronavirus will soon provide information instructing people in these groups on how to file a 2019 tax return with simple, but necessary, information including their filing status, number of dependents and direct deposit bank account information.
  - ii. "Low-income taxpayers, senior citizens, Social Security recipients, some veterans and individuals with disabilities who are otherwise not required to file a tax return will not owe tax," IRS.
- l. The IRS will post all key information on <https://www.irs.gov/coronavirus> as soon as it becomes available.

#### 6. **FEDERAL STUDENT LOAN PAYMENT DEFERMENT**

- a. Automatic suspension of monthly payments from March 13, 2020 to September 30, 2020.
- b. For direct loans, Perkins loans, and Federal Family Education Loans owned by the Department of Education.

#### 7. **CHARITABLE DEDUCTIONS**

- a. **All taxpayers**, whether taking itemized or standard deduction, are now able to receive certain deductions to their charitable contributions. The deductions available include:
  - i. **Deduct up to \$300** of charitable cash contributions. (No itemization required).
  - ii. The normal 60% adjusted gross income (AGI) limitation on "qualifying contributions" is suspended for taxpayers who itemize. Qualifying contributions require:
    - a. (1) cash contribution to a qualifying organization (501(c)(3)), and
    - b. (2) election by the taxpayer to suspend the limitation.
    - c. A qualifying contribution does not include contributions to a donor advised fund or 509(a)(3) supporting organizations.
  - iii. Partners in partnerships and shareholders in S-corporations make the required election at the individual level, not the entity level.
  - iv. For C-corporations, qualifying contributions go from the 10% taxable income limit to a 25% taxable income limit.
  - v. Any contribution in excess of the contribution base (which is usually AGI) will be treated as a carryover.

#### J. **UNEMPLOYMENT INSURANCE PROVISIONS** - The CARES Act created three new UI programs.

1. **Pandemic Unemployment Compensation (PUC) – (The PUC is considered taxable income.)**
  - a. From the date the bill is signed through July 31, 2020.
  - b. All regular UI and Pandemic Unemployment Assistance claimants will receive their usual calculated benefit plus an additional flat \$600 per week in compensation.
  - c. PUC is a flat amount to those on UI, including those who are receiving a partial unemployment benefit check.
  - d. PUC may be paid either with regular UI payment or at a separate time but must be paid on a weekly basis.
  - e. PUC is not income for purposes of eligibility for either Medicaid or CHIP, SNAP and housing assistance
  - f. This applies to weeks of unemployment beginning after the state agrees to participate in the program through 07-31-20
2. **Pandemic Emergency Unemployment Compensation (PEUC) – (The PEUC is considered taxable income.)**
  - a. Provides an additional 13 weeks of state UI benefits.
  - b. Will become available after someone exhausts all their regular state UI benefits.
  - c. To receive, workers must be actively engaged in searching for work.
  - d. The bill explicitly provides, however, that "a State shall provide flexibility in meeting such work search requirements in case of individuals unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.
  - e. One-week "waiting period" waived.
3. **Pandemic Unemployment Assistance (PUA) – (The PUA is considered taxable income.)**
  - a. **Benefit Provided:**
    - i. The PUA will equal the minimum weekly benefit amount described in the Stafford Act Disaster Unemployment Assistance (DUA) program, which is the model for the PUA program (CFR 625.6 of Title 20), **plus the \$600 per week** federally funded supplement (similar to that provided to UI recipients under the PUC).

- ii. PUA benefits are calculated the same way as they are for the federal Disaster Unemployment Assistance program under the Stafford Act, which is the model for the PUA program.
  - iii. PUA will have a minimum benefit that is equal to one-half the state's average weekly UI benefit (about \$190 per week).
- b. Provides emergency unemployment assistance to workers who are left out of regular state UI benefits.
- c. Provides emergency unemployment assistance to workers who have exhausted their state UI benefits.
  - i. Up to 39 weeks of PUA are available to workers who are immediately eligible to receive PUA.
- d. The program will expire on December 31, 2020, unless otherwise extended.
- e. Provides income support to many workers who are shut out of the state UI systems
- f. Workers who are eligible for state UI are not eligible for the PUA program.
- g. Those eligible for PUA include self-employed workers, including independent contractors, freelancers, workers seeking part-time work, and workers who do not have a long-enough work history to qualify for state UI benefits.**
- h. Workers are not eligible for PUA if they can either telework with pay or are receiving paid sick days or paid leave.
  - i. Workers must be authorized to work to be eligible for PUA, meaning that undocumented workers will not qualify.
  - j. The PUA program will run from January 27, 2020 through December 31, 2020.
- k. Workers will be eligible for retroactive benefits and can access benefits for a maximum of 39 weeks, including any weeks for which the person received regular UI.
- l. Eligibility will sunset on December 31, 2020 absent any extensions.
- m. Applicants will need to provide self-certification that they are (1) partially or fully unemployed, OR (2) unable and unavailable to work because of one of the following circumstances:
  - i. They have been diagnosed with COVID-19 or have symptoms of it and are seeking diagnosis;
  - ii. A member of their household has been diagnosed with COVID-19;
  - iii. They are providing care for someone diagnosed with COVID-19;
  - iv. They are providing care for a child or other household member who can't attend school or work because it is closed due to COVID-19;
  - v. They are quarantined or have been advised by a health care provider to self-quarantine;
  - vi. They were scheduled to start employment and do not have a job or cannot reach their place of employment as a result of a COVID-19 outbreak;
  - vii. They have become the breadwinner for a household because the head of household has died as a direct result of COVID-19;
  - viii. They had to quit their job as a direct result of COVID-19;
  - ix. Their place of employment is closed as a direct result of COVID-19; or
  - x. They meet other criteria established by the Secretary of Labor.
  - xi. **Apply at your state unemployment website.**
- n. Church Employees
  - i. Churches are exempt from both federal and state unemployment taxes, so their employees are typically ineligible to receive unemployment benefits. PUA provides unemployment compensation for individuals not eligible for regular unemployment insurance or any extensions to unemployment insurance. This will provide benefits to eligible self-employed workers and independent contractors.
  - ii. The NCDES system will be ready to accept claims for this assistance April 24, 2020.
  - iii. The NCDES is working to modify their systems to make sure people receive proper and accurate payments. If you are due any benefits prior to the full implementation of these programs, you will be paid retroactively.
- o. Additional Resources for Unemployment for North Carolina
  - i. <https://des.nc.gov/need-help/covid-19-nc-unemployment-insurance-information>
  - ii. <https://des.nc.gov/need-help/covid-19-information/federal-unemployment-assistance/pandemic-unemployment-assistance>
  - iii. <https://des.nc.gov/need-help/covid-19-information/federal-unemployment-assistance/pandemic-unemployment-assistance>
  - iv. The Division of Employment Security has received official guidance from the U.S. Department of Labor on how to implement the three unemployment programs of the federal CARES Act.
  - v. The NCDES is working to modify their systems to make sure people receive proper and accurate payments. If you are due any benefits prior to the full implementation of these programs, you will be paid retroactively.

- K. **Paycheck Protection Flexibility Act** - To amend the Small Business Act and the CARES Act to modify certain provisions related to the forgiveness of loans under the paycheck protection program, to allow recipients of loan forgiveness under the paycheck protection program to defer payroll taxes, and for other purposes. Signed into law June 5, 2020. The provisions are:
1. Current PPP borrowers can choose to extend the eight-week period to 24 weeks, or they can keep the original eight-week period. New PPP borrowers will have a 24-week covered period, but the covered period can't extend beyond Dec. 31, 2020.
  2. PPP borrowers must spend at least 60% on payroll or none of the loan will be forgiven. This replaces the 75% threshold that allowed for a reduction of a portion of the loan if the 75% threshold was not met. The co-sponsors of the bill in the House intended the sliding scale to remain in effect at 60%. Slight changes could be made to the bill to restore the sliding scale.
  3. Borrowers can use the 24-week period to restore their workforce levels and wages to the pre-pandemic levels required for full forgiveness. This must be done by Dec. 31, a change from the previous deadline of June 30.
  4. The legislation includes two new exceptions allowing borrowers to achieve full PPP loan forgiveness even if they don't fully restore their workforce. Previous guidance already allowed borrowers to exclude from those calculations employees who turned down good faith offers to be rehired at the same hours and wages as before the pandemic. The new bill allows borrowers to adjust because they could not find qualified employees or were unable to restore business operations to Feb. 15, 2020, levels due to COVID-19 related operating restrictions.
  5. New borrowers now have five years to repay the loan instead of two. Existing PPP loans can be extended up to 5 years if the lender and borrower agree. The interest rate remains at 1%.
  6. The bill allows businesses that took a PPP loan to also delay payment of their payroll taxes, which was prohibited under the CARES Act.
  7. Extends the deferral period before loan payments begin from a fixed 6 months to the time at which a final forgiveness decision is rendered by the SBA. For borrowers who do not seek forgiveness, the deferral period lasts 10 months.

L. **SOURCES - To obtain further information please visit these Additional Resources:**

United States Congress

- <https://www.congress.gov/bill/116th-congress/house-bill/748/text>
- <https://www.congress.gov/bill/116th-congress/house-bill/266>
- <https://www.congress.gov/bill/116th-congress/house-bill/7010/text>

Internal Revenue Service

- <https://www.irs.gov/coronavirus>
- <https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know>

U.S. Department of Treasury

- <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>
- <https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>
- <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- <https://home.treasury.gov/system/files/136/PPP--IFRN%20FINAL.pdf>
- <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>
- <https://home.treasury.gov/system/files/136/Interim-Final-Rule-on-Loan-Increases.pdf>
- <https://home.treasury.gov/system/files/136/PPP-IFR-Loan-Forgiveness.pdf>
- <https://home.treasury.gov/system/files/136/PPP-IFR-SBA-Loan-Review-Procedures-and-Related-Borrower-and-Lender-Responsibilities.pdf>
- <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

Small Business Administration

- <https://disasterloan.sba.gov/ela/Home/Questions>
- <https://www.sba.gov/partners/lenders/7a-loan-program/types-7a-loans>
- <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>
- <https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources#section-header-0>
- <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>
- <https://covid19relief.sba.gov/#/>
- [https://www.sba.gov/sites/default/files/articles/EIDL Information and Documentation - 3-30-2020 FINAL 2 pm.pdf](https://www.sba.gov/sites/default/files/articles/EIDL%20Information%20and%20Documentation%20-%203-30-2020%20FINAL%202%20pm.pdf)
- [https://www.sba.gov/sites/default/files/resource\\_files/EIDL-BDO Presentation March 26 0.pdf](https://www.sba.gov/sites/default/files/resource_files/EIDL-BDO%20Presentation%20March%2026%200.pdf)
- <https://disasterloan.sba.gov/ela/Declarations/Index>
- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>
- <https://disasterloan.sba.gov/ela/Information/PaperForms>
- [https://www.sba.gov/sites/default/files/SDOLoanFactSheet Oct 2011.pdf](https://www.sba.gov/sites/default/files/SDOLoanFactSheet%20Oct%202011.pdf)
- <https://www.wisconsinbdc.org/wp-content/uploads/sites/2/2020/03/Non-Profit-and-Associations-Documents-Requirements.pdf>
- <https://www.sba.gov/sites/default/files/2018-06/SOP%2050%2030%209-FINAL.PDF>
- <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-8>
- <https://www.sba.com/funding-a-business/government-small-business-loans/ppp/fag/seasonal-business-calculation/>

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- [https://www.sba.gov/sites/default/files/2020-04/Paycheck-Protection-Program-Frequently-Asked-Questions\\_04%2024%2020.pdf](https://www.sba.gov/sites/default/files/2020-04/Paycheck-Protection-Program-Frequently-Asked-Questions_04%2024%2020.pdf)
- <https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf>

U.S. Department of Labor

- <https://www.dol.gov/coronavirus>
- <https://www.dol.gov/agencies/whd/pandemic/ffcr-a-employee-paid-leave>

U.S. Chamber of Commerce

- <https://www.uschamber.com/report/guide-sbas-economic-injury-disaster-loans>
- [https://www.uschamber.com/sites/default/files/uscc\\_covid19\\_sb-economic-injury-disaster-loans.pdf](https://www.uschamber.com/sites/default/files/uscc_covid19_sb-economic-injury-disaster-loans.pdf)
- [https://www.uschamber.com/sites/default/files/uscc\\_ppp\\_forgiveness-guide.pdf](https://www.uschamber.com/sites/default/files/uscc_ppp_forgiveness-guide.pdf)

House Committee on Ways and Means

- <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/UC%20FAQ.pdf>

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