

## Frequently Asked Questions: Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)

The CARES Act includes several measures to assist small businesses, including loan programs and tax relief measures – all with the goal of preventing workers from losing their jobs and small businesses from going out of business due to economic losses caused by the COVID-19 pandemic. Outlined below are answers to the most frequently asked questions about these loans and relief measures, including eligibility, terms and conditions, and how to apply.

### 1) What loan and relief options are available to restaurant owners?

- **Paycheck Protection Program (PPP).** The CARES Act contains a key provision that provides \$349 billion for small businesses through federally backed loans under a modified and expanded Small Business Administration (SBA) 7(a) loan guarantee program called the Paycheck Protection Program. The goal of the PPP is to help restaurants retain and/or rehire employees by providing an eight-week loan, equal to 2.5x an average monthly payroll, with the loan amount capped at \$10 million. If the employer can retain their full-time equivalent (FTE) employees without significantly reducing salaries, the borrowing employer is eligible for 100% loan forgiveness. More details below under the “Paycheck Protection Program” section.
- **Economic Injury Disaster Loan (EIDL).** The SBA’s EIDL program is available for certain businesses located in an area affected by a disaster – such as public health disaster – that have suffered substantial economic injury as a result of such disaster. The CARES Act includes \$10 billion to expand the SBA EIDL program to additional eligible businesses impacted by the COVID-19 pandemic. The maximum amount available to eligible small businesses is \$2 million, but the actual loan amount is limited to the economic injury as determined by the SBA. The applicant can also request an advance of not more than \$10,000 within three days of when the SBA receives the applicant’s application. More details below under the “Economic Injury Disaster Loan” section.
- **Employee Retention Tax Credit (ERTC).** The tax credit provides all businesses with a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 pandemic. Employers with 100 or fewer employees may claim the credit for all employee wages, regardless of whether the employer is fully operating or partially or fully shut down. Companies with more than 100 employees may claim the credit for employees who are on the payroll but not currently working due to the crisis. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an employee for wages paid from 3/13/2020 12/31/2020.
  - Employers who participate in the PPP are not eligible for ERTC.

### 2) My business is currently closed – does that affect my eligibility for these incentives?

- No, your business’s operating status does not necessarily change eligibility for these programs. The PPP is focused on the retention of employees on employer payrolls, even if the business remains closed.

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- 3) When do these loan programs and tax relief measures begin and where do I go to learn more?**
- Federal agencies are preparing guidance and implementing regulations for publication soon. But you can begin preparing now by reviewing what you need for [loans through the Small Business Administration](#) (SBA), [tax relief details](#) for ERTC and Payroll Tax Holidays, and discuss with your local lender and/or accounting resources.

### Key Aspects of the Paycheck Protection Program (PPP)

- 4) How do I apply for PPP loan?**
- Through your local SBA-approved lender. The SBA will be providing guidance on how to apply for the PPP loan and how to find a qualified lender in your area.
  - Borrowers who have outstanding SBA loans may also want to contact their existing lenders to inquire about applying for loans under the PPP.
- 5) What businesses are eligible for the PPP?**
- Any business in operation on February 15, 2020 with no more than 500 employees. However, a business in the restaurant, foodservice, catering, and hotel industry with more than one physical location qualifies for a single loan if it employs no more than 500 employees at each physical location if they operate under the North American Industry Classification System code beginning with 72 ([Accommodation and Food Services – U.S. Census Bureau](#)). For purposes of eligibility, the SBA’s affiliate rules are waived for businesses in the hospitality and restaurant industries, and franchises approved on the SBA’s Franchise Directory.
- 6) What is the PPP maximum loan amount?**
- Each eligible business can receive the lesser of \$10 million or 2.5 times the average total monthly payroll costs incurred during the one-year period before the date of loan. For a seasonal employer, the business calculates the average total monthly payments for payroll during the 12-week period beginning February 15, 2019, or at the choice of the business, March 1, 2019, and ending June 30, 2019. There is a cap at \$10 million.
  - A business can choose an eight-week period to utilize the PPP loan during the February 15, 2020 to June 30, 2020 time period.
- 7) Are there any collateral or personal guarantee requirements?**
- No. The Act does not require collateral or personal guarantees.

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### 8) What can you use the loan for?

- Payroll costs, including: compensation to employees; payment required for group health care benefits (including insurance premiums); retirement benefits; state and local employment taxes; interest payments on mortgage obligations; other debt obligations incurred before February 15, 2020 (but not any payments or prepayments of principal); rent; and utilities.
- Loan funds cannot be used for employee/owner compensation over \$100,000; compensation of employees with a principal place of residence outside the United States; paid leave wages already covered by Phase 1 (the Families First Coronavirus Response Act); or taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code.

### 9) How does the PPP loan forgiveness work?

- Borrowers are eligible for loan forgiveness for the covered 8-week period, commencing from the loan origination date. The amount of loan forgiveness is equal to the sum of the employer’s expenses, including: payroll costs, rent payments, utility payments, and mortgage interest payments (not including any prepayment or payment of principal on a covered mortgage obligation) made during the covered 8-week period.
- NOTE: The amount of loan forgiveness may be reduced if the employer reduces the number of employees as compared to the prior year, or if the employer reduces the pay of any employee by more than 25% as of the last calendar quarter. Employers who rehire workers previously laid off because of the crisis will not be penalized for having a reduced payroll for the beginning of the relevant period. Importantly, forgiveness may also include additional wages paid to tipped workers.
- Borrowers must apply for loan forgiveness through their lender, and produce the following:
  - Documentation verifying the number of Full-Time Equivalent Employees (FTEs) on payroll and pay rates for pre- and post- covered periods, including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings;
  - Documentation of rent, mortgage interest, and utility payment;
  - Certification that the documentation referenced above is true and correct.

### 10) I’ve read the CARES Act requires businesses receiving federal assistance to be neutral in labor organizing activities. Do labor neutrality requirements apply to my restaurant’s participation the PPP loan program?

- No. The certification requirements that a business will remain neutral in a union organizing effort for the term of the loan are only contained within the Economic Stabilization Fund (ESF) direct lending program.

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### **Economic Injury Disaster Loan (EIDL)**

#### **11) What businesses are eligible for Economic Injury Disaster Loans (EIDLs)?**

- Businesses with not more than 500 employees, including small businesses (plus sole proprietorships), independent contractors, private non-profits, and more.

#### **12) How much would my business be eligible to receive?**

- Within three days of applying for an EIDL, an eligible applicant can request an emergency advance of up to \$10,000 – this is a grant payment that does not need to be repaid, even if the applicant is ultimately found to be ineligible for the EIDL.
- EIDLs are lower interest loans of up to \$2 million, with principal and interest deferment available for up to 4 years, which are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

#### **13) What’s the time period for an EIDL – and can I apply for that and a PPP loan?**

- Emergency EIDLs are available from January 31, 2020 – December 31, 2020. Whether a business has already received an EIDL unrelated to coronavirus or if one is received for the coronavirus-related EIDL (or grant) between January 31, 2020 and June 30, 2020, a business can also apply for a PPP loan. If a business ultimately receives a PPP loan or refinances an EIDL into a PPP loan, any advance amount received under the EIDL grant would be subtracted from the amount forgiven in the PPP.
- However, a business cannot use the EIDL for the same purpose as the PPP loan. For example, if a business uses its EIDL to cover payroll for certain workers in April, its PPP loan cannot be used for payroll for those same workers in April, although you could use it for payroll in March or for different workers in April.

### **Additional Tax Relief**

#### **14) What other tax relief options are available?**

- **Employee Retention Tax Credit.** Described on page one.

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- **Qualified Improvement Property (QIP).** Businesses now have the ability to write off costs for improved facilities immediately – rather than 39 years – and the QIP fix is retroactive, so many entities that made these improvements in 2018 and 2019 will now be able to amend their tax returns.
  - Tax professionals can help you determine if you should amend your 2018 and 2019 tax returns to obtain money back from the government now.
- **Modifications for Net Operating Losses (NOLs).** The Act relaxes limitations on a company’s use of losses from prior years. This provision provides that a loss from 2018, 2019, or 2020 can be carried back five years.
- **Delay of Employer Payroll Taxes.** Employers can delay payment of the employer share of payroll taxes via the Social Security program. The deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. NOTE: Deferral is not provide to employers receiving assistance through the Paycheck Protection Program.

### For additional information:

- [“Paycheck Protection Program FAQs for Small Businesses,”](#) prepared by the U.S. Senate Committee on Small Business and Entrepreneurship.
- [“The Small Business Owner’s Guide to the CARES Act,”](#) prepared by the U.S. Senate Committee on Small Business and Entrepreneurship.
- [“Coronavirus \(COVID-19\): Small Business Guidance & Loan Resources,”](#) U.S. Small Business Administration (SBA).