

SMALL BUSINESS RECOVERY TOOL KIT Part 1

GET YOUR BUSINESS ON THE PATH TO RECOVERY

Florida Business Taxes

Governor DeSantis has directed the Department of Revenue to provide flexibility on the deadlines of taxes due such as corporate income tax and sales tax to assist businesses that are adversely impacted by COVID-19.

Federal Taxes

The U.S. Treasury Department and Internal Revenue Service has announced that the federal income tax filing due date is automatically extended from April 15, 2020, to July 15, 2020. Taxpayers can also defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed. This deferment applies to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate tax filers as well as those who pay self-employment tax. Please visit the IRS website at bit.ly/2U2yOUr for additional details.

- **Forgivable Loans for Small Businesses.** Impending “Phase III” response legislation would provide forgivable loans incentivizing small businesses to keep employees on payroll.
- **Emergency Grants.** The same “Phase III” bill provides affected small businesses with emergency grants of up to \$10,000.
- **Tax Incentives.** “Phase III” provides several tax incentives that could be valuable for small businesses, including an employee retention tax credit.
- **Paid Leave.** Already passed “Phase II” legislation requires paid sick and family leave for affected employees, while providing tax credits to compensate employers.

FAQ to walk small business stakeholders through this process.

How does my company participate in the program?

The **Paycheck Protection Program** operates via the Small Business Administration’s existing 7(a) lending program, through which SBA offers guarantees on loans made by participating financial institutions. Applicants apply for a 7(a) guarantee directly through a participating financial institution, and, if approved, receive an SBA guarantee on their loan.

Under this program, approved lenders will be directly delegated the authority to approve loan and forgiveness applications based on the determination that a borrower was in business on February 15 and paid employees or contractors. It remains to be seen how SBA will otherwise reorganize the 7(a) process in order to accommodate this massive expansion. While some insight into what this will look like can be gleaned from the current 7(a) process—which requires several dozen pieces of documentation

ranging from resumes to financial statements and can take several months—it is expected that implementing guidance from SBA will streamline this process substantially.

For this reason, it is difficult to estimate what the exact mechanics of the process will be for small businesses until SBA issues guidance. As of now, it is only clear that borrowers have to certify that the current public health crisis makes the loan necessary for their continued operations, and that they will use the loan to maintain their previous average number of monthly full-time equivalent employees. This good faith certification is in contrast with any specific demonstration of need, which could have slowed down the application process.

On a positive note, the legislation does outline several measures that would expedite the rollout of the program, including:

- Waiving application fees.
- Reimbursing financial institutions for processing applications.
- Extending participation to additional lenders.
- Waiving the requirement that an applicant cannot find credit elsewhere.
- Waiving requirements for collateral and personal guarantees.

What documents do I need to present to my financial institution?

Borrowers should expect to submit documentation such as payroll numbers demonstrating their eligibility to participate in the program. Additionally, the legislation explicitly requires contractors and sole proprietors to establish their eligibility with payroll tax filings, Form 1099-MISC, and documentation of income and expenses.

How do I determine if my business is eligible?

Participation in the Paycheck Protection Program is open to businesses, 501(c)3 nonprofits, and veterans' organizations that have fewer than 500 employees or meet one of SBA's industry-specific small business thresholds – found here. Sole proprietors, independent contractors, and some other self-employed individuals are also eligible.

Additionally, restaurants and hospitality businesses with multiple locations are eligible, so long as they have fewer than 500 employees per location. Affiliation rules are waived for restaurants and hospitality locations with fewer than 500 employees, franchises, and businesses financed by small business investment companies.

What expenses are covered?

SBA will offer a 100 percent guarantee on a loan amounting to the recipient's average monthly payroll costs over the previous year, times 2.5. In other words, this loan amounts to two and a half months of payroll costs. The maximum loan amount is \$10 million.

For the purposes of loan amount and forgiveness (see below), payroll is defined as consisting of: (1) salary, wage, commission, or similar compensation; (2) cash tip or equivalent; (3) payment for vacation, parental, family, medical, or sick leave; (4) dismissal or separation pay; (5) health care or retirement benefits; (6) state and local payroll taxes; and (7) payments to sole proprietors and independent contractors that are a wage, commission, income or otherwise net earnings from self-employment. The calculation of payroll costs excludes compensation to employees exceeding \$100,000 on an annualized

basis, federal payroll taxes, compensation to employees residing outside the United States, and leave for which the employer is receiving a tax credit under the “Phase II” coronavirus response.

While loan amount is calculated based on payroll costs, the loan itself can be used for a variety of essential business expenses including payroll, rent, mortgage interest, interest on debts, and utilities.

How can my loan be forgiven?

Loans made under the program can be forgiven for the total amount that the borrower spent on payroll (excluding annualized compensation over \$100,000,) mortgage interest, rent, and utilities in the eight weeks following their loan’s origination. Employers are additionally allowed to make extra payments to tipped employees to account for their loss of tips. Forgiven expenses are generally restricted to obligations undertaken before February 15 of this year.

Importantly, the forgiven debt is not counted in taxable income.

The amount of forgiveness is reduced proportionally to any reduction in the borrower’s workforce, as well as any reduction in employee salary beyond 25 percent. Borrowers that have already taken action to reduce their workforce and eliminate any reduction in staff or salary through this program, however, will not be penalized. The SBA is additionally able to issue de minimis exemptions from any reduction in forgiveness.

To calculate the portion of the borrower’s covered costs that will be forgiven, participants should multiply their eligible operating costs by the quotient of:

- Their average monthly number of full-time-equivalent (FTE) employees during the eight-week period, and;
- The borrower’s average monthly number of FTE’s during their choice of two periods—February 15, 2019-June 30, 2019 or January 1, 2020-February 29, 2020.

To achieve forgiveness, a borrower submits to their lender documents including: (1) state or federal payroll documents; (2) documentation of mortgage interest, rent, or payroll expenses; (3) certification that the information is true; and (4) any other documentation that SBA determines is appropriate. The lender will then have 60 days to determine the appropriate level of forgiveness, at which point SBA would purchase and forgive the relevant amount of the initial loan.

Any portion of the loan not forgiven will remain guaranteed by SBA and have a 10-year maturity and at most a four percent interest rate. Lenders will be required to defer payment of that loan for between six months and one year, with the ultimate deferral period set by SBA.

How does this program interact with SBA’s Economic Injury Disaster Loans (EIDL)?

Borrowers are generally restricted from receiving an EIDL loan for the same purpose as a loan issued under this program. However, borrowers with an EIDL loan unrelated to COVID-19 are allowed to participate in the program, and to refinance their EIDL loans into Paycheck Protection loans. Any EIDL grant award provided under the bill (outlined in the following section of this memo) is subtracted from a borrower’s loan forgiveness.

EIDL LOANS AND GRANTS

In addition to the Paycheck Protection Program, the CARES Act provides relief to small businesses via an expansion of SBA’s Economic Injury Disaster Loan (EIDL) program, which traditionally provides operational liquidity to small businesses in disaster areas.

Most notably, EIDL would now provide emergency \$10,000 grants to eligible businesses. These changes are in effect through the end of the year.

Who is eligible for the program?

The legislation expands eligibility for EIDL to businesses, private nonprofits, and cooperatives with fewer than 500 employees, as well as small businesses currently recognized by SBA. Independent contractors and sole proprietors are also eligible. The bill broadly expands EIDL's scope to better account for the COVID-19 outbreak by treating emergency declarations under the Stafford Act (which President Trump has already invoked) as a trigger for EIDL eligibility. During this or a similar crisis, the SBA Administrator could then, at their discretion, designate what states or subdivisions have suffered sufficient economic damage to justify small businesses in those areas receiving EIDL loans.

Is this a grant or a loan?

While *EIDL* is traditionally a loan program, the CARES Act would provide \$10 billion for SBA to temporarily offer grants through the program. When applying for an EIDL loan, any eligible applicant could request an advance on that loan of up to \$10,000, which SBA would be obligated to fulfill within three days. While this payment is technically an advance, it explicitly does not need to be repaid, even if the applicant is denied for their loan. It is, for all intents and purposes, a grant.

How do I apply?

In order to receive a grant, eligible businesses must first apply for an EIDL loan, self-certify their eligibility under penalty of perjury, and request an advance on their loan. To streamline the disbursement of grants, the legislation waives several items normally required for the EIDL application process, including: (1) a personal guarantee on advances and loans over \$200,000; (2) the requirement that applicants have been in business for more than one year; and (3) the requirement that applicants cannot find credit elsewhere. The process is further expedited by allowing applicants with apply solely with a credit score, rather than tax documentation.

What can my grant be used for?

EIDL grants can be used for: (1) providing paid sick leave to employees unable to work due to COVID-19; (2) maintaining payroll during business disruptions; (3) meeting increased costs arising from supply chain disruption; (4) making rent or mortgage payments; and (5) repaying obligations that cannot be met due to revenue loss.

How does this grant interact with the Paycheck Protection Program?

A grant received under this program would be counted against any forgiveness an applicant receives under the Paycheck Protection Program.

For further information please refer to TOOL Kit Part 2