CBIZ COVID-19 Q&A

CORONAVIRUS DISASTER RELIEF

Following are the basic tenets of the recently passed Coronavirus Phase 2 and Phase 3 stimulus bill, the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act). The Families First Coronavirus Response Act (FFCRA) Phase 2 legislation focuses on sick and family leave, additional unemployment benefits, and offsetting payroll tax credits. The CARES Act provides up to $350 billion in relief for small businesses.

The CARES Act was passed on Friday, March 27, 2020, and the following is our understanding of the facts and situation based on the information released so far. The FAQ is geared towards SBA loans and other benefits for small businesses. The current environment is fluid and evolving, so some of the details below could change as the government sheds more light on the applicable provisions. We will continue providing updates as they arrive. State and local governments are also stepping in to help businesses, please let us know if you have any questions regarding that.

Lastly, if you believe you may even qualify for any of these loan arrangements, apply as soon as possible to get in line. We expect delays to increase as more and more businesses apply for the loans. Also, the larger the amount of loan that you need, the less likely it will be funded within the next few weeks. Reach out to your current lender or bank and see if they can process any of the SBA loan applications for you. If they cannot process your application or if you need to make contact with a bank or lender, let us know. CBIZ has many trusted relationships with lenders and banks and is happy to introduce you to them to speed up the application process. Due to the KYC rules, there may be a delay as a new bank or lender processes your application.

IMPORTANT DETAILS

The SBA already had two major types of loan assistance to small businesses: the 7(a) Loan Program and the 504 Loan Program. 7(a) loans are applied for through commercial banks, while the 504 Loan Program is handled directly by the SBA. Under the CARES Act, 7(a) loans are available in amounts of up to $10,000,000 for many types of small businesses. Currently, the 7(a) loans are on hold through June as the Paycheck Protection Plan loans (discussed below) are using the traditional 7(a) application process.

Recent legislation also expanded current disaster relief loans, also known as Economic Injury Disaster Loans (EIDLs), to provide relief for the coronavirus pandemic. See below for further details regarding EIDLs.

The CARES Act also has created Paycheck Protection Plan (PPP) loans. PPP loans allow you to maintain your payroll expenses. These loans can be forgiven if you meet certain requirements such as maintaining payroll for 8 weeks or employing by June 30 the same number of the full-time equivalent workers you employed on the date of the loan.

Lastly, be aware that though there are many benefits in the three phases of the stimulus bill, there is a degree of interaction. For example, obtaining the PPP loan may disqualify you from other provisions of the stimulus bill.

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FREQUENTLY ASKED QUESTIONS

1. Where and how do I apply?

For the coronavirus EIDLs, the application is completed through an online portal, which is seeing increasingly heavy traffic. There will be times when the portal is down due to too much traffic: https://disasterloan.sba.gov/ela/

You can apply for the Paycheck Protection Plan (PPP) loans through the traditional 7(a) loan process. This means you should reach out to your lender or bank.

2. What is the application process?

Your bank or lender will have details on the application process for the new PPP loans. For EIDLs, please see above for the online portal where you can submit your application. Once you have completed the EIDL application online through the portal, an SBA representative will then review your credit history and the economic injury suffered by the business to determine the amount of the EIDL. Note that EIDLs may be adjusted after closing if the borrower's circumstances change (e.g., increased for unexpected costs or reduced due to insurance proceeds).

3. What are the specific qualification requirements for PPPs and EIDLs?

While your bank will have details on the qualification requirements for PPP loans, there are specific requirements to qualify for this Economic Injury Disaster Loan (EIDL), both of the following requirements must be met:

- A disaster declaration must have been issued for the area in which the business is located; and
- The business must have incurred economic injury as a result of such disaster. EIDL borrowers are required to:
  - Prove that you are not able to obtain credit elsewhere;
  - Have a credit history acceptable to the SBA; and
  - Show the ability to repay all loans.

All US states have been declared as a disaster area due to the virus.

4. What are the specific loan terms for Paycheck Protection Plan (PPP) loans?

Note that the deadline to apply for this loan is June 30th, 2020. Unlike traditional SBA 7(a) loans, no personal guarantee will be required to receive funds and no collateral needs to be pledged. Similarly, the requirement that a business show that it cannot obtain credit elsewhere has been waived.

Instead of these requirements, borrowers must certify that the loan is necessary due to the uncertainty of current economic conditions; that they will use the funds to retain workers, maintain payroll, or make lease, mortgage, and utility payments; and that they are not receiving duplicative funds for the same uses.

Also, payments of principal, interest, and fees will be deferred for at least 6 months, but not more than 1 year. The interest rate will be capped at 0.5%. The SBA will not collect any yearly or guarantee fees for the loan, and all prepayment penalties are waived. The loan needs to be forgiven or fully paid by the end of 2 years. The SBA has no recourse against any borrower for non-payment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose.

5. How soon can I apply?

You can apply for EIDLs immediately. Regulations and forms are still being put in place for PPP loans. However, if interested, reach out to your bank regarding 7(a) loan and PPP loan applications as soon as possible.For EIDL's, you can apply at https://disasterloan.sba.gov/ela/

As mentioned above, the portal will be down at times due to heavy traffic.

6. How much loan assistance is available under the stimulus bill for EIDLs and PPP loans?

For the EIDL, up to $2,000,000 is available in disaster relief because of the coronavirus. The SBA will work directly with state Governors to provide targeted, low-interest loans to small businesses and non-profits that have been severely impacted by the Coronavirus (COVID-19). The SBA's Economic Injury Disaster Loan (EIDL) program provides small businesses with working capital loans of up to $2 million that can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.

Also, this loan is a low-interest loan to businesses, renters, and homeowners located in regions affected by federally declared disasters. However, for purposes of this loan, small business owners in all US states and territories are currently eligible as all states and territories are federally affected regions.

Lastly, borrowers may receive a $10,000 emergency advance within three days of applying for an EIDL grant. If the application is denied, the borrower is not required to repay the $10,000 advance. The emergency advance can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue losses. For PPPs, the maximum loan amount can reach up to $10 million.

7. Can I apply for the $2 million EIDL Program and also PPP loans?

Yes, you can apply for assistance through the $2,000,000 EIDL loan and PPP loans. However, each loan cannot be used for the same purpose.

Also, if you received an EIDL related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes.

At the same time, you cannot take out both an EIDL and a PPP for the same purpose. Remaining portions of the EIDL, for purposes other than those laid out in loan forgiveness terms for a PPP loan, would remain a loan. If you took advantage of an emergency EIDL grant award of up to $10,000 mentioned in Question 6 above, that amount would be subtracted from the amount forgiven under PPP.

8. If any of the loan applications are approved, when will funding be disbursed?

Congress's intent is to get the PPP loan proceeds in the borrowers hand as soon as possible. However, it is anticipated that it will take 3 to 4 weeks, if not more. Your bank will have more details on timing as the pandemic continues and more applications are submitted.

The Small Business Administration has stated that review of applications for the coronavirus related EIDLs will take approximately five days. If approved, disbursement of funds will occur three weeks after approval. Importantly, as the number of applicants increases, the timeline before funding is released will likely increase to more than three to four weeks.

The SBA also advises to make sure you have all the documentation necessary on the loan checklist, such as tax returns and financial information, before starting the application. Small businesses need to be able to show that the loans will be used for working capital to pay current expenses, including payroll, rent, mortgage, accounts payable and utilities, i.e., overhead for the business. The disaster loan cannot be used for the purpose of replacing anticipated sales that were lost.

9. What are the terms for the forgiveness of the loan (when/how is the loan forgiven)?

PPP loans are potentially 100% forgiven if you meet the requirements for forgiveness, discussed in Question 21 further below. However, any amount forgiven would be reduced based on a formula to account for any reduction in employees or compensation during a specified period.

10. What are the primary terms (rate, amortization period) for both loans?

For EIDLs, the current interest rate for small businesses is 3.75% and 2.75% for non-profits. Long-term repayment plans are available for up to 30 years to ensure loan payments are kept affordable. Terms are determined based on each borrower's ability to repay on a case-by-case basis.

If your PPP loan does not qualify for 100% forgiveness, there can be a maximum interest rate of 0.5% for the remaining balance. The maximum term is 2 years, but you may be able to defer payment for 6 months to a year, prior to the 2 year maturity.

11. Will this loan be subordinate to my primary loans (i.e., take a second position on collateral)?

We are awaiting further guidance on this subject. Generally SBA loans are subordinate to primary loans. Further, the PPP loan requires no collateral security for the SBA. However, there may be exceptions and it is also important to review the contractual terms to determine the level of subordination for your SBA loan.

Also, it is possible to discharge (eliminate) your obligation to pay back an SBA loan. However, any assets that were pledged as collateral for the loan will still have a lien even if bankruptcy occurs.

For loans through the 7(a) Loan Program, other than the PPP, loans which exceed $25,000 must be secured to the extent possible. SBA will not decline a loan if you don't have enough collateral, but will ask for whatever collateral is available which may include real estate owned by a business' principals. The SBA's loan programs usually do not have the loans as highest priority.

12. What is the current underwriting process, i.e., who will make the credit decision (bank loan committee, SBA officer, etc.)?

The banking institution through which you apply for the 7(a) loan or PPP loan will have details on the specific underwriting process. Note that traditional bank SBA lenders have underwriting and approval authority from the SBA. The CARES Act also further grants these banks this authority without the SBA potentially revisiting the decision to grant the loan and thus "second guess" the bank, thereby giving them more flexibility and an accelerated time to grant the loan.

For EIDLs, see Question 2 above: an SBA representative will determine the amount of the EIDL based on the application.

13. What other considerations do I need to make?

Whether applying for EIDLs or PPPs, ensure you have all of your financial documents to smooth out and hopefully speed up the application process.

There is a potential deferral of up to 12 months on the EIDLs disbursed because of the coronavirus pandemic. Ensure that your financials are current, apply for the $2,000,000 relief, and apply for a deferral request as soon as possible. See Question 17 further below for documents you should consider having on hand if you are going to apply for any of the loans.

14. What is the payroll tax holiday?

The payroll tax holiday allows employers to defer the employer portion of their social security payroll tax liability (i.e., 6.2% of wages), including an identical amount of self-employment tax for the self-employed, for the period:

- Beginning March 27, 2020, and
- Ending December 31, 2020

Businesses taking advantage of this holiday must repay 50% of the amount deferred by the end of 2021, and the remaining 50% by the end of 2022. The employee portion of social security taxes remains due and must be withheld (as well as any other portion of the self-employment tax for the self-employed).

Importantly, this benefit is not available if you have debt forgiven on a covered loan under PPP. This means that if you anticipate obtaining a PPP loan and believe it will be forgiven, you should not use the payroll tax holiday, as that means any delayed payments of the deferred payroll tax will be subject to late payment penalties from the date originally due.

15. What type of benefit is there to retaining employees?

There is also a new payroll tax credit applying to retention of employees. The refundable credit is against the employer component of employment tax (Social Security and Railroad Retirement) equal to 50% of "qualified wages" paid by an "affected employer". The credit covers employee wages paid after March 12, 2020 and through and including December 31, 2020. Importantly, employers are not eligible for the credit if they are also receiving a loan under the SBA Paycheck Protection Program under 7(a) (note that this applies regardless of whether the loan is ultimately forgiven).

Qualified wages do not include those paid under the paid sick or paid family leave programs of the Phase 2 legislation, and are defined as follows:

- For small employers (100 or fewer full full-time employees), an amount equal to the first $10,000 of all compensation paid to the employee during the quarter for which operations were suspended or in which the company had a significant decline in gross receipts,
- For large employers, an amount equal to the first $10,000 of compensation, including healthcare benefits, paid to employees who are not working due to a coronavirus shutdown order

Eligible employers include any employer carrying on a trade or business during the 2020 tax-year whose business operations are fully or partially suspended due to orders from a governmental authority limiting commerce, travel, or group meetings due to the COVID-19 pandemic, and employers with gross receipts that are less than 50 percent of their gross receipts for the same quarter in the prior year. In the latter case, the credit terminates when gross receipts exceed 80 percent of their gross receipts for the same calendar quarter in the prior year.

Businesses are precluded from obtaining both the retention credit under the CARES Act and either a "Work Opportunity Tax Credit" under Internal Revenue Code (IRC) Section 51 or an "Employer Credit for Paid Family and Medical Leave" under IRC Section 45S.

Businesses can take both the Employee Retention Credit and the FFCRA credit. See Question 29 below for further details about the FFCRA credit.

16. How is the payroll credit calculated and what are its benefits?

The credit is a dollar for dollar tax offset against payroll taxes including withheld federal income taxes, employee share of FICA taxes, and employer's share of FICA taxes for all employees. Employers are able to retain the amounts otherwise due from March 27, 2020 December 31, 2020, making access to the cash immediate. Instructions for reporting have not been issued. If a refund owed, employers can get an expedited advance from the IRS by submitting a streamlined claim form that will be released shortly. The IRS has stated they will try to process these forms within two weeks or less. Importantly, the benefit is not available if a company has a PPP loan forgiven. See Question 14, above.

17. Is there paperwork available that we can complete while waiting for final 7(a) forms to be released to banks? I've heard conflicting information varying from "a lot of forms are ready now" to "forms won't be ready for 30 days"

While the CARES Act provides 30 days from March 27th to issue regulations and provide application forms, we expect they will be available by mid-April. Here is a list of items we suggest clients gather as soon as possible, along with actively reaching out to their banking relationships:

- SBA Form 1919 or corresponding SBA Form 912, if applicable
- Articles of Incorporation/Organization of each borrowing entity
- By Laws/Operating Agreement of each borrowing entity
- Driver's Licenses of all owners
- Payroll Expense verification documents to include:
    - IRS Form 941 and 944,
    - Payroll Summary Report with corresponding bank statement,
    - If a Payroll Summary Report is not available, Employee Pay Stubs as of February 15, 2020 (or corresponding period) with corresponding bank statement, and,
    - Breakdown of payroll benefits (vacation, allowance for dismissal, group healthcare benefits, retirement benefits, etc.)
- 1099s (if Independent Contractor)
- Certification that all employees live within the United States. If any do not, provide a detailed list with corresponding salaries of all employees outside the United States.
- Trailing twelve-month profit and loss statement (as of the date of application) for all applicants
- Most recent Mortgage Statement or Rent Statement (Lease)
- Most recent Utility Bills (Electric, Gas, Telephone, Internet, Water, etc.)

18. Are international employees eligible? What about contractors working for my business?

See Question 22 below, employees must be living within the United States. Contractors may qualify so long as the compensation is not more than $100,000 per year. We are awaiting further guidance regarding contractors.

19. When can I expect funding to occur for an EIDL loan and PPP forgivable loan?

We are expecting four weeks, but that is changing on daily basis. Keep in mind, the emergency loan program was increased from $350,000 to $1,000,000. So, if you are in a cash crunch situation, talk to your bank and you should be able to obtain $1M in 10 days. We have never seen that, but the bank processing your loan application should be able to give you more certainty on that process.

20. I own multiple companies (Real estate LLC, Operating company, Employee company, etc.), which company should apply for which loan?

Once again, the bank will be able to direct you through this process as well. The CARES Act is really only focused on the operating portions of the business and it does provide affiliation rules, see Question 30 further below.

21. How is the PPP loan amount calculated?

Generally, the loan amount will be determined by multiplying 2.5 times the average monthly payroll costs incurred during the 1-year period before the date on which the loan is made plus the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of $10 million.

For borrowers under the Paycheck Protection Program (PPP), the loan forgiveness will equal the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):

- Payroll costs (not to exceed $100,000 of annualized compensation per employee); and
- Payments of interest on any mortgage loan incurred prior to February 15, 2020 (note that language in the CARES statute also includes interest on ordinary course company indebtedness with security on "personal property". It is expected this will be clarified for the banks granting these loans. In either case, the forgiven amount may not include principal repayments of either mortgages or loans); and
- Payment of rent on any lease in force prior to February 15, 2020; and
- Payment on any utility for which service began before February 15, 2020.

It is important to mention that the amount forgiven is not considered taxable income to the borrower.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee's prior year compensation (any employee whose annualized compensation for any pay period exceeds $100,000 is not counted). A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020, as long as the employee is rehired or replaced by June 30, 2020.

Any amount outstanding after considering the amount forgiven will be repayable by the maturity date of 2 years from the loan issuance.

22. What type of expenses are included in the monthly average that is multiplied by 2.5 to determine the amount of the forgivable loan? I've heard of Health insurance, the Employer portion of FICA taxes, Employer 401(k) matches, 1099 Contractor expenses, Part-time employees, etc.

"Payroll costs" include:

- payments for salary, wage, commission, or similar compensation;
- payments for cash tip or equivalent,
- payments for vacation, parental, family, medical, or sick leave;
- allowance for dismissal or separation;
- payments required for the provisions of group health care benefits;

- payments of any retirement benefit;
- payment of state or local tax assessed on the compensation of employees;
- payments of any compensation to or income of a sole proprietor or independent contractor that is an amount not more than $100,000 in 1 year, as prorated for the covered period.

"Payroll costs" do not include:

- the compensation of an individual employee in excess of an annual salary of $100,000, as pro-rated for the covered period;
- taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code (i.e., FICA, RRTA, and income tax withholdings); compensation of an employee whose principal place of residence is outside of the United States; and
- qualified sick leave wages or qualified family leave wages for which a credit is already allowed under the Families First Coronavirus Response Act

23. Does the stimulus bill account for LLC owner guaranteed payments and K-1 SE income?

Currently, we believe such payments and income will be lendable and forgivable to the amount of $100,000 for up to two months, so $16,667.

24. What 12 month period is used to determine the monthly expense average to calculate the amount of the forgivable loan in Question 4 above?

The date typically referred to as prior to COVID-19 may be February 15, 2020, but at the moment no certain date has been specified. We anticipate that regulations, once they are available, will clarify this.

As mentioned above, the maximum amount of the loan is set by formula (average monthly payroll prior to the loan origination times 2.5 plus the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of $10 million.

25. For determining the target headcount to be maintained per the forgivable loan terms, how is the target headcount number determined? Is it headcount on date of application, date of loan closing, average headcount, etc.? How do part time employees get treated in the calculation?

Please see Question 22 above. We will also have further details once more information comes out.

26. How will headcount be calculated during the 8 week "measurement period", to determine if my company maintained headcount to maximize the loan forgiveness? How do part time employees and 1099 contractors affect this calculation?

Please see Question 22 above. We will also have further details once more information comes out.

27. Is there a deferral period for loan payments required on the forgivable loan? Is it the same for EIDLs?

Payments are deferred for six to twelve months on both the EIDLs and PPP loan amounts that were not forgiven.

28. Are all banks equally ready to handle the 7(a) applications?

No, you will have to check with your bank to see if they can handle these applications. We will have a list available of trusted banks that process the 7(a) and other Stimulus bill related loans. Ultimately, loans are made by SBA-approved lenders that have the delegated authority to make the loans without requiring approval from the SBA (SBA Authorization is not required for each individual loan). This should help expedite the application and closing process.

29. Does my business qualify for the Families First Coronavirus Response Act (FFCRA)?

The FFCRA requires private employers with fewer than 500 employees to provide paid sick leave and family leave for certain COVID-19 related absences. The 500 employee rule is subject to FMLA integrated employer regulations and distinct aggregation rules. The FFCRA includes payroll tax benefits to help offset the cost associated with these employee benefits.

Employers covered by FFCRA will be allowed a credit against the Social Security tax for each calendar quarter in an amount equal to 100 percent of the qualified sick leave wages paid per employed individual per day.

The credit amount is generally limited to 10 days in total per individual and capped at

- i) The individual's compensation up to $511 per day for an individual who is subject to a Federal, State, or local quarantine or isolation order due to COVID-19 or seeking a medical diagnosis for COVID-19 symptoms, and
  Two-thirds of the individual's compensation up to $200 per day for an employee caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, or the child care provider of such son or daughter is unavailable, due to COVID–19 precautions. The amount of this credit is increased by the amount of tax imposed by the Medicare tax on qualified sick leave wages.
- ii) The second component of the program mandates paid family leave for an additional 10 weeks (i.e., 50 business days) to employees who are unable to work because they must care for a child under the age of 18 affected by a school or daycare closure on account of coronavirus. The first 2 weeks of such benefits are to be provided as paid sick leave, as previously discussed.

Employers covered by FFCRA will also be allowed a credit against the payroll tax imposed for each calendar quarter in an amount equal to 100 percent of the qualified emergency family leave wages paid per employed individual per day. This amount is generally capped at two-thirds of the individual's compensation up to $200 per day per individual and $10,000 in total for all calendar quarters. The amount of this credit is increased by the amount of Medicare tax on qualified family leave wages.

30. What are additional considerations for obtaining benefits under the Family and Medical Leave Expansion Act and the Emergency Paid Sick Leave Act?

The DOL explains that being "unable" to work or telework means that an employer has work available, but one of the specified paid reasons for leave under the FFCRA prevents the employee from being able to do so.

If an employer offers the ability to work the same number of hours per day but different hours, the employee is able to work and leave is unnecessary unless:

- The reason for leave prevents the employee from working that schedule;
- The employee has a qualifying paid sick leave absence; or
- The employee cannot telework due to the need to care for a child. Note, however, that if an employee can telework while caring for the child, leave is unavailable.

The DOL provides generally that employees and employers may agree to intermittent and incremental use of emergency paid sick leave (EPSL) and emergency paid Family and Medical Leave benefits (FMLA+), but then seems to divide the remaining guidance into two situations—whether the employee is teleworking, or working onsite.

For employees who are teleworking, whether taking time off under EPSL or FMLA+, employer and employee may agree to intermittent leave for any of the covered reasons. But for employees who are working on the employer's premises, intermittent EPSL is only permitted for employees who are taking leave for school closures or childcare unavailability (again, only if the employer agrees). Employees taking EPSL for one of the other five reasons under the Act must take such leave in full-day increments (because the intent of the FFCRA is to prevent employees who may be ill or caring for those who are ill from possibly spreading the virus to other individuals in the workplace).

Per the DOL, if the worksite closes, employees do not receive, or continue to receive, FFCRA leave. It does not matter whether:

- The closure occurs before or after the law takes effect;
- An employee is on leave when closure occurs;
- An employer furloughs an employee;
- The worksite temporarily closes and the employer says it will reopen in the future.

This is true whether the worksite closes for lack of business or per a federal, state, or local directive. If this occurs, an employee's only recourse is to seek unemployment benefits. For further details, please reach out to your employee benefits service provider and/or payroll service provider.

31. How are affiliates treated for these loans?

Generally, entity "affiliates" are combined for purposes of determining the number of employees. For PPP Loans, SBA regulations on entity affiliations are waived for:

- Accommodation and food services businesses with 500 or fewer employees;
- Franchise businesses that are approved on the SBA's Franchise Directory; and
- Any business that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act.