

USG COVID-19 Resources

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DISCLAIMER

This presentation is ONLY intended as an informational presentation.

This presentation is NOT intended as legal, tax, financial or to be construed to be providing you guidance for your business' interests.

PLEASE reach out to your corporate counsel, attorneys, CPAs or other financial or legal professionals BEFORE taking any actions as described in this presentation.

Reliance on any information in this presentation is AT YOUR OWN RISK.

1. Small Business Resources
 - Payroll Protection Program (PPP)
 - Economic Injury Disaster Loans & Grants
2. Midsize & Large Business Programs - Treasury Loans
3. Tax Code Changes
4. Paid Sick Leave/Family Medical Leave Support
5. Critical Business Designations

The Small Business Owner's Guide to the *COVID-19 Resources*:

<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>

Do you need:

Capital to cover the cost of employee retention? The Paycheck Protection Program might be right for you.

A quick infusion of a smaller amount of cash to cover you right now? Consider an Emergency Economic Injury Loan or Grant.

Keeping up with payments on your current or potential SBA loan? The Small Business Debt Relief Program could help.

Paycheck Protection Program (PPP) Loans

- Provides cash-flow assistance through 100% federally guaranteed loans to employers who maintain their payroll during this emergency.
- If employers *maintain their payroll, the loans would be forgiven*
- PPP has a host of attractive features
 - Forgiveness of up to 8 weeks of payroll based on employee retention and salary levels
 - No SBA fees
 - At least six months of deferral with maximum deferrals of up to a year.
- Eligible entities will be able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020. This program would be retroactive to February 15, 2020, in order to help bring workers who may have already been laid off back onto payrolls. **Loans are available through June 30, 2020.**

Who is eligible for the loan?

- A small business that employs 500 employees or fewer, or if your business is in an industry that has an *employee*-based size standard through SBA that is higher than 500 employees.
- A restaurant, hotel, or a business that falls within the North American Industry Classification System (NAICS) code 72, “Accommodation and Food Services,” and each of your locations has 500 employees or fewer, you are eligible. Independently owned franchises with under 500 employees, who are approved by SBA, are also eligible.
- Sole proprietors, independent contractors, gig economy workers, and self-employed individuals are all eligible for the Paycheck Protection Program.

What is the maximum amount I can borrow?

The amount any small business is eligible to borrow is 250% of their **average monthly payroll expenses**, up to a total of \$10 million.

This amount is intended to cover 8 weeks of payroll expenses and any additional amounts for making payments towards debt obligations.

This 8-week period may be applied to any time frame between February 15, 2020 and June 30, 2020.

How can I use the money so that the loan will be forgiven (turned into a grant)?

The amount of principal that may be forgiven is equal to the sum of expenses for:

- Payroll (See Chart)
 - Existing interest payments on mortgages
 - Rent payments
 - Leases
 - Utility service agreements.
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- **Other business expenses like inventory can be paid for but will NOT be forgiven.**

Included in Payroll

- Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent)
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees

NON-ELIGIBLE COSTS

- Employee/Owner Compensation over \$100,000
- Taxes under Chapters 21, 22 & 24
- Employees whose residence is OUTSIDE of the US
- Qualified Sick and Family Leave Credits from the **Families First Coronavirus Response Act**

How much of my loan will be forgiven? The purpose of the program is to help employee retention at their current base pay.

- If you keep **ALL** employees, **ALL** of the loan will be forgiven:
 - Payroll costs **plus** any payment of interest on any covered mortgage obligation (not including any prepayment or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation **plus** and any covered utility payment.
- If you lay off employees, the forgiveness will be reduced by the % decrease in the number of employees. If your total payroll expenses on workers making less than \$100,000 annually decreases by more than 25 percent, loan forgiveness will be reduced by the same amount.
- If you have already laid off some employees, you can still be forgiven for the full amount of your payroll cost if you rehire your employees by June 30, 2020.

How to Apply:

<https://home.treasury.gov/cares>

Go to the section "Assistance for Small Businesses"

OR

<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

These grants provide an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19 within three days of applying for an SBA Economic Injury Disaster Loan (EIDL).

To access the advance, you first apply for an EIDL and then request the advance. **The advance does not need to be repaid under any circumstance**, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.

What is an EIDL and what is it used for?

EIDLs are lower interest loans of up to \$2 million, with principal and interest deferment at the Administrator's discretion, that are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

Those eligible are the following with 500 or fewer employees:

- Sole proprietorships, with or without employees
- Independent contractors
- Cooperatives and employee owned businesses
- Tribal small businesses

If I get an EIDL and/or an Emergency Economic Injury Grant, can I get a PPP loan?

If you ultimately receive a PPP loan or refinance an EIDL into a PPP loan, any advance amount received under the Emergency Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP. However, you cannot use your EIDL for the same purpose as your PPP loan. For example, if you use your EIDL to cover payroll for certain workers in April, you cannot use PPP for payroll for those same workers in April, although you could use it for payroll in March or for different workers in April.

- \$46 billion for direct Treasury loans to passenger and cargo air carriers and businesses “critical to maintaining national security”
- \$454 billion for loans and loan guarantees under Section 13(3) of the Federal Reserve Act, administered by Treasury
 - Direct loans from Treasury
 - Lender loans financed by Treasury for mid-sized businesses

Treasury can make direct loans to businesses of any size

- Must be U.S. Business **AND** have significant operations and majority of employees
- Loan terms - Treasury implementing regulations – supposed to be at market rates and no longer than 5 years
- More restrictions on borrowers than SBA - For term of the loan + one year
 - No stock buybacks, dividends or capital distributions
 - Employees above \$425,000 salary in 2019 can't receive more and are limited to 2X severance
 - Employees with compensation over \$3 million in 2019 can't make more than \$3 million + half the amount over \$3 million.

Mid-Size Business Loans

- Business with 500-10,000 employees
- Interest rate of no more than 2%, and no P&I payments for at least the first 6 months (longer at Secretary's discretion)
- CARES Act did not explicitly limit compensation, but need to await final Treasury Regs

- **Must Certify:**

- Uncertainty of economic conditions makes loan necessary to support ongoing operations
- Funds used to retain at least 90% of the recipient's workforce at full compensation and benefits until Sept 30, 2020
- Intends to restore 90% of workforce as of Feb 1, 2020, and restore all reduced compensation and benefits no later than 4 months after the end of the federal public health emergency
- Domiciled in the U.S. with significant operations and employees in the U.S.
- Not a debtor in a bankruptcy proceeding
- No dividends on common stock or repurchase public equity securities while the loan is outstanding
- No outsourcing or offshoring of jobs for term of loan PLUS 2 years after completing repayment
- No changes to existing collective bargaining agreements for term of loan and 2 years after completing repayment
- Remain neutral in any union organizing effort during the term of the loan

- Employment Tax Credit
- Employer Payroll Taxes Suspension
- Net Operating Losses

Employment Tax Credit

- “Qualified” employers receive a credit against employment taxes of 50% of “qualified wages” for every employee for the period 3/13/20-12/31/20
- “Qualified Employers” are either:
 - Business fully or partially suspended due to government action
 - Suffered a decline in gross receipts over a period beginning in the quarter when gross receipts were less than 50% compared to the same quarter in the prior year and ending in the quarter when gross receipts exceed 80%
- “Qualified wages” cannot exceed \$10,000 for any employee
 - For employers with more than 100 employees, only wages paid for employees not providing services because of the shutdown or decline
 - For employers with 100 employees or less, all wages paid during the period of shutdown or decline

Payroll Tax Collection Delay

- Deferral through the end of 2020 for Social Security 6.2% tax
- 50% payable January 1, 2021, other 50% payable January 1, 2022
- Does not apply if a Paycheck Protection Plan loan is forgiven

Net Operating Loss Carryback and TI Limitation

- The 2017 tax reform package (TCJA) eliminated the carryback net operating losses to prior tax years
 - ❖ CARES Act allows carrybacks for 2018, 2019 and 2020, allowing carryback to five prior taxable years
- TCJA limited net operating losses to no more than 80% of taxable income
 - ❖ CARES Act allows 100% offset for taxable years before January 1, 2021

The **Families First Coronavirus Response Act (FFCRA or Act)** requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

The Department of Labor's (Department) Wage and Hour Division (WHD) administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date through December 31, 2020.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Generally, the Act provides that covered employers must provide to **all employees**:

- Two weeks (up to 80 hours) of **paid sick leave** at the employee's **regular rate of pay** where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of **paid sick leave** at **2/3 the employee's regular rate of pay** because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

In addition, a covered employer must provide to **employees that it has employed for at least 30 days:**

- Up to an additional 10 weeks of **paid expanded family and medical leave at 2/3 the employee's regular rate of pay** where an employee is unable to work due to a bona fide need for leave to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19.

Tax Credits:

Covered employers qualify for **dollar-for-dollar reimbursement through tax credits** for all qualifying wages paid under the FFCRA.

Qualifying wages are those paid to an employee who takes leave under the Act for a qualifying reason, up to the appropriate per diem and aggregate payment caps.

Applicable tax credits also extend to amounts paid or incurred to maintain health insurance coverage.

For more information, please visit <https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

Who is a “Covered Employer”

The paid sick leave and expanded family and medical leave provisions apply to private employers with fewer than 500 employees.

Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or child-care unavailability if the leave requirements would jeopardize the viability of the business as a going concern (you must apply for a waiver from the Department of Labor – how to do this will be forthcoming from the Department)

See the Employer Fact Sheet Here: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) has designated what the Federal government believes are those industries with a "special responsibility" to continue operations during COVID-19.

It is important to note that CISA's guidance is "intended to support State, Local, and industry partners in identifying the [critical infrastructure sectors](#) and the essential workers needed to maintain the services and functions Americans depend on daily and need to be able to operate resiliently during the COVID-19 pandemic response."

CISA's guidance is NOT a "federal mandate" and it is not meant to be, rather it is designed to be a roadmap for the state and local officials to utilize as they organize their individual responses to the threat posed by COVID-19.

There are 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States:

- Chemical
- Commercial Facilities
- Communications
- Critical Manufacturing
- Dams
- Defense Industrial Base
- Emergency Services
- Energy
- Financial Services
- Food & Agriculture
- Government Facilities
- Healthcare & Public Sector
- IT
- Nuclear Reactors, Materials & Waste
- Transportation Systems
- Water & Wastewater

<https://www.cisa.gov/publication/guidance-essential-critical-infrastructure-workforce>

From the US Department of Commerce:

I would strongly urge you to advise senior leaders in your companies to have their plant managers reach out to local public health officials and their local Mayors to educate them on this guidance. Because, when a closure order goes out (or is crafted) Governors will rely on Mayors and local public health officials to determine which facilities will be accepted. Leaning forward now, to educate local officials on the role each facility plays in the support of public health and hygiene will be hugely helpful to prevent shortages or other issues.

Questions?