

Questions and Answers from Making the CARES Act Work for Your Company

April 7, 2020

Brad Nott – Atlantic Union Bank

1 - Who can apply for a PPP Loan?

Eligible Businesses:

- Small businesses, nonprofits, Tribal business concerns, and veteran's organizations that:
- Have less than 500 employees or the applicable size standard for the industry as provided by SBA, or
- Are sole proprietors, self-employed individuals, or independent contractors
- Were in business on Feb. 15, 2020

2 - How much can a company apply for?

The lesser of:

- 2.5X average monthly payroll costs during the 1-year period* before the date on which the loan is made, or
- \$10 million

*For new businesses, the measurement period would be Jan. 1 to Feb. 29, 2020

The legislation also temporarily increases the maximum amount for an SBA Express loan from \$350,000 to \$1 million through December 31, 2020

3 - What are the terms of the loan?

They differ per bank, but all are similar and very attractive terms. For example, Atlantic Union Bank loan will be 1% interest, no fee to the borrower, 6 months of interest only and 2-year term out.

4- Are these loans secured or do they have recourse to individuals –

No and No

5- What amount can be forgiven?

Loan recipients will be eligible for loan forgiveness for an 8-week period after the loan's origination date in the amount equal to the sum of the following costs incurred during that period:

- Payroll costs (compensation above \$100,000 excluded)
- Payment of interest on mortgage obligation

- Rent obligations
- Utility payments

The amount forgiven cannot exceed the amount borrowed.

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. The amount of loan forgiveness will be reduced by the amount of any reduction in total employee salary or wages during the covered period that is in excess of 25 percent of the total salary or wages.

Payroll documentation and documentation of expenses are required to receive forgiveness, to ensure the forgiveness was used to retain employees and pay expenses.

Borrowers that rehire laid off workers by June 30 won't be penalized for having a smaller workforce at the beginning of the period.

Borrowers with tipped workers may receive loan forgiveness for the additional wages paid to those employees.

Lenders have 60 days to issue a decision on the application.

The canceled loan amount will not count towards gross income for tax purposes

Doug Jones – Fahrenheit Advisors

6 -So much has been talked about the Paycheck Protection Program, what other SBA support is available?

1 -Economic Injury Disaster Loan Emergency Assistance

2 -Express Bridge Loan Pilot Program

Express Bridge Loan Pilot Program allows small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly. These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be a term loans or used to bridge the gap while applying for a direct SBA Economic Injury Disaster loan. If a small business has an urgent need for cash while waiting for decision and disbursement on an Economic Injury Disaster Loan, they may qualify for an SBA Express Disaster Bridge Loan. – up to \$25,000, fast turnaround, rolled in EIDL

3 -SBA to make payments on SBA loans on behalf of borrowers – some of our clients have already received notification

-The SBA will automatically pay the principal, interest, and fees of current 7(a), 504, and microloans for a period of six months.

-The SBA will also automatically pay the principal, interest, and fees of new 7(a), 504, and microloans issued prior to September 27, 2020.

4-Deferments on SBA Serviced Disaster Loans

For current SBA Serviced Disaster (Home and Business) Loans: If your disaster loan was in “regular servicing” status on March 1, 2020, the SBA is providing automatic deferments through December 31, 2020.

Interest will continue to accrue on the loan.

Monthly payment notices will continue to be mailed out which will reflect the loan is deferred and no payment is due.

The deferment will NOT cancel any established Preauthorized Debit (PAD) or recurring payments on your loan – you must cancel.

Borrowers preferring to continue making regular payments during the deferment period may continue remitting payments during the deferment period. SBA will apply those payments normally as if there was no deferment.

After this automatic deferment period, borrowers will be required to resume making regular principal and interest payments. Borrowers that cancelled recurring payments will need to reestablish the recurring payment.

5 - SBA information on Economic Injury Disaster Loan Emergency Advance

This loan advance will provide up to \$10,000 of economic relief to businesses that are currently experiencing temporary difficulties.

Overview

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. Funds will be made available following a successful application. This loan advance will not have to be repaid.

Eligibility

The SBA’s Economic Injury Disaster Loan provides vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing as a result of the COVID-19 pandemic.

This program is for any small business with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organization or 501(c)(19) veterans organizations affected by COVID-19.

Businesses in certain industries may have more than 500 employees if they meet the SBA’s size standards for those industries.

The Economic Injury Disaster Loan advance funds will be made available within days of a successful application, and this loan advance will no

Ryan McEntire – Brown Edwards

7- What are the different Payroll Based Relief provisions under the FFCRA (Families First Coronavirus Response Act) and the CARES (Coronavirus Aid, Relief, and Economic Security) Act?

Payroll Based Relief Programs

Description	FFCRA Credits	CARES Act Employee Retention Credit	CARES Act Employer Payroll Tax Payment Deferral
Criteria/Eligibility	ER's with less than 500 EE's	Government-ordered shutdown or a significant reduction in gross receipts; does not take advantage of PPP Loan	Any Employer
Purpose	Refundable payroll tax credit equal to 100% of required emergency sick leave, capped at either \$2,000 or \$5,111 per employee depending reason for leave.	- Impacted by forced closure or quarantines. - Seen 50% drop or more in revenues in the quarter. Effective until gross receipts greater than 80% of gross receipts for same quarter last year. - Cannot take credit and apply for PPP Loan.	Employers not eligible if they plan to seek forgiveness of PPP loan.
Requirements	Track and report COVID-19 eligible sick time and family leave wages paid.	Government-ordered shutdown or a significant reduction in gross receipts; does not take advantage of PPP Loan	Any Employer
Maximum Amount	80 Hours/EE for sick leave up to \$10,000/EE for family leave.	Up to \$10K/EE, not to exceed the ER tax.	Only applied to Employer Share of Social Security Tax.
Speed to Get Money	ER's can apply the credit to payroll tax liability, seek immediate refund for excess or request a refund on the quarterly payroll tax filing.	Immediate, if elected	Immediate, if elected.
Repayment	N/A	N/A	Repaid over 2 years beginning in 2021.
Covered Period	April 1, 2020 to December 31, 2020.	Wages paid after March 12, 2020 and before January 1, 2021.	Deposits due for the period beginning March 27, 2020 to December 31, 2020.
Primary Benefit	COVID-19 related sick pay and family leave reimbursable.	Significant or complete reduction of payroll tax for period.	Manage cash flow by postponing employer payroll tax.
Ability to Combine with Other Programs	N/A - Except PPP loan proceeds cannot be used/forgiven for FF wages covered by credit.	Employee retention credits and loans made under PPP cannot be combined.	Tax deferrals and loans under PPP cannot be combined in most circumstances.

8 - May an Eligible Employer receive both the tax credits for the qualified leave wages under the FFCRA and the Employee Retention Credit under the CARES Act?

Yes, if an Eligible Employer also meets the requirements for the Employee Retention Credit, it may receive both credits, but not for the same wage payments.

Section 2301 of the CARES Act allows certain employer subject to a full or partial closure due to COVID-19 or experiencing a significant decline in gross receipts a tax credit for retaining their

employees. This employee retention credit is equal to 50% of qualified wages (including allocable qualified health plan expenses) paid to employees after March 12, 2020 and before January 1, 2021, up to \$10,000 in qualified wages for each employee for all calendar quarters. However, the qualified wages for the Employee Retention Credit do not include the amount of qualified leave wages for which the employer received TAX credits under THE FFCRA.

9- May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?

Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as "payroll costs" for purposes of receiving loan forgiveness under Section 1106 of the CARES Act.

10 - Is a company eligible for both the SBA loan and retention credit?

Receiving an SBA loan disqualifies an otherwise eligible employer from taking advantage of the retention credit. In other words, it appears the disqualifier is receiving the loan itself and not receiving loan forgiveness. According to 2301(j), "If an eligible employer receives a covered loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, such employer shall not be eligible for the credit under this section."

11- Is a company eligible for both the deferral of employer payroll taxes if the SBA loan is forgiven?

The deferral of employer payroll taxes is indeed not allowed if an SBA loan is forgiven under certain sections. But loan forgiveness has no bearing on the retention credit – the retention is cut off by receiving the particular type of SBA loan noted above. According to 2302(a)(3), "This subsection shall not apply to any taxpayer if such taxpayer has had indebtedness forgiven under section 1106 of this Act with respect to a loan under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act, or indebtedness forgiven under section 1109 of this Act."

12- May an Eligible Employer receive both the tax credits for qualified leave wages under the FFCRA and a Small Business Interruption Loan under the CARES Act?

Yes. However, if an Eligible Employer receives tax credits for qualified leave wages, those wages are not eligible as "payroll costs" for purposes of receiving loan forgiveness under section 1106 of the CARES Act.

13 - What are other business/personal tax provisions to be aware of in the CARES act?

Qualified Improvement Property Fix – now back to 15 years and can amend 2018 & 2019 to claim bonus depreciation.

Modification of Business Interest Limitation from 30% to 50% for 2019 and 2020. Companies can amend 2019 if already filed.

Modification to Net Operating Loss rules for 2018, 2019 and 2020 to remove the 80% limitation on use and allows 5-year carryback (previously carryback was not allowed)

Waiver of RMD on IRA/Qualified plan payments for 2020

Above the line deduction for \$300 of cash contributions even if taxpayer does not itemize.

The 50% of AGI limitation for individual contributions is suspended for 2020 and the corporate limitation is 10% limitation is moved to 25% of taxable income.

Ability to withdraw up to \$100,000 of retirement funds without the 10% early withdrawal penalty and have income spread over three years. Can also recontribute the funds back to make up without regard to the existing contribution cap.