



COVID-19 Legislation and SBA Programs

As of April 7, 2020

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DISCLAIMER: TAA continues to monitor the developments surrounding Coronavirus (COVID-19). This document is to provide you with general information from TAA's perspective, which does not constitute legal advice. It is informational only and does not replace the advice of your own legal counsel.

Overview of Phases of COVID-19 Legislation & SBA Programs

Phase 1: Federal income tax filings and payments due on April 15, 2020 extended to July 15, 2020, without penalties or interest, regardless of amount owed.

Phase 2: “Families First Coronavirus Response Act” (FFCRA) was passed to provide financial relief for business to provide time off for employees.

Phase 3: The “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act) provides tax benefits and loans/grants for businesses and nonprofit organizations. Includes 3 programs:

1. Small Business Administration (SBA) Paycheck Protection Program (PPP)
2. Emergency Economic Injury Grants & Economic Injury Disaster Loans (EIDL)
3. Small Business Debt Relief Program

Federal and State Taxes

- Federal income tax filings and payments due on April 15, 2020 extended to July 15, 2020, without penalties or interest, regardless of amount owed.
 - Includes individuals, trusts, estates, corporations, and other non-corporate tax filers
 - Does NOT include nonprofit organizations filing Forms 990, 990-EZ, or 990-PF, due date is still April 15, 2020 (normal 6-month extension options apply)
 - DOES include nonprofits filing Form 990-T for unrelated business income tax
 - Any tax returns or payments due May 15, 2020 are still due – extension to July 15, 2020 is only applicable to April 15, 2020 due date
- Texas Workforce Commission (TWC) extended the 1st Quarter 2020 unemployment tax reports and payments to May 15, 2020
 - Due to the large amount of unemployment claims, do not start filing 1st Quarter 2020 until after April 15, 2020
 - 2nd Quarter 2020 tax reports and payments are still due June 15, 2020
- Employees:
 - Form 1040 individual income tax returns and payments automatically extended to July 15, 2020
 - 1st Quarter 2020 estimated tax payments deferred until July 15, 2020
 - 2nd Quarter 2020 estimated tax payments still due June 15, 2020 (as of April 7, 2020)
 - If taxpayer is not able to file by July 15, 2020, an additional extension is available and must be filed by July 15, 2020
- The Texas Comptroller of Public Accounts automatically extended the due date to file and pay the 2020 Texas Franchise Tax report from May 15, 2020 to July 15, 2020 to be consistent with the IRS.

Applicability Quick Guide

- **Programs applicable to small businesses with fewer than 500 employees:**
 - a. Families First Coronavirus Response Act (FFCRA)
 - b. Paycheck Protection Program (PPP)
 - c. Emergency Economic Injury Grants & Economic Injury Disaster Loans (EIDL)
 - d. SBA Debt Relief & SBA Express Bridge Loans
 - e. Employee Retention Payroll Tax Credit
 - f. Defer Payment of Employer Payroll Taxes

- **Programs applicable to 501(c)(6) Trade Associations:**
 - a. Families First Coronavirus Response Act (FFCRA)
 - b. Emergency Economic Injury Grants & Economic Injury Disaster Loans (EIDL)
 - c. SBA Debt Relief & SBA Express Bridge Loans
 - d. Employee Retention Payroll Tax Credit
 - e. Defer Payment of Employer Payroll Taxes

- **Programs applicable to businesses with 500 or more employees:**
 - a. Employee Retention Payroll Tax Credit
 - b. Defer Payment of Employer Payroll Taxes

Families First Coronavirus Response Act (FFCRA)

Eligibility:

- Employers with fewer than 500 employees
- Employees employed at least 30 days and includes full-time, part-time, temporary, on-leave employees within U.S
- Excludes independent contractors
- Includes situations in which an employee cannot work (or telework) due to a need to care for a son or daughter under age 18 because a school or place of care has been closed or a childcare provider is unavailable

General Program Information:

- Effective April 1, 2020 by the U.S. Department of Labor
- Reimburse employers with tax credit for the cost of providing employees with paid leave taken for specified reasons related to COVID-19
 - Can allocate expense for qualified health plan to qualified sick leave wages or qualified medical leave wages for purposes of credit
- Ensures workers are not forced to choose between their paychecks and the public health measures needed to combat the virus

Definitions:

Employee Leave:

- Subject to quarantine or isolation order
- Advised by health provider to self-quarantine
- Experiencing COVID-19 symptoms and seeking diagnosis

Family Leave:

- Caring for an individual described in one of the 3 categories listed under Employee Leave above
- Caring for a son or daughter whose school is closed, or
- Experiencing a “substantially similar condition” to be determined

Emergency Paid Sick Leave Act (EPSLA):

- Required paid sick leave due to an employee’s inability to work for virus-related reasons
- 10 days paid
- Employee Leave: Regular pay rate up to max of \$511/day x 10 days (totals \$5,110)
- Family Leave: 2/3 pay rate up to \$200/day x 10 days (totals \$2,000)

- Employer applies for 100% refundable credit using new Form 7200 after payroll tax paid or on Form 941, 943, 944, or CT-1

Emergency Family and Medical Leave Expansion Act (EFMLEA)

- Required paid and unpaid public health emergency leave for virus-related reasons
- 10 days unpaid and up to 10 weeks paid
 - 2/3 regular pay rate not to exceed \$200/day up to \$10,000
- Employer applies for 100% refundable credit using new Form 7200 after payroll tax paid or on Form 941, 943, 944, or CT-1

***Exception*:**

Small Business is exempt from mandated EPSLA or EFMLEA only if all of the following conditions have been met:

1. Employer employs fewer than 50 employees;
2. Leave is requested because the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
3. An unauthorized officer of the business has determined that would "jeopardize the viability" of the small business such as:
 - a. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
 - b. The absence of the employee(s) requesting EPSLA or EFMLEA would entail a substantial risk to the financial health or operational capability of the small business because of their specialized skills, knowledge of business, or responsibilities; or
 - c. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee(s) requesting EPSLA or EFMLEA, and these labor or services are needed for the small business to operate at a minimum capacity.

Paycheck Protection Program

Eligibility:

- 500 or fewer employees resided in United States or a business that operates in a certain industry and meet the applicable SBA employee-based size standards for that industry
- A small business, a 501(c)(3) and 501(c)(19) tax-exempt organization, or a Tribal business (other tax-exempt organizations are ineligible)
- Business was in operation on February 15, 2020 and had employees whom you paid salaries and payroll taxes or paid independent contractors and filed Form 1099-Misc (includes sole proprietors and independent contractors)
- Businesses are eligible if using a Professional Employer Organization (PEO) for payroll processing

Important Eligibility Caveat:

- The SBA's interim guidance appears to prohibit passive investors from claiming PPP loans. This interim guidance is now being discussed and will be the subject of lobbying efforts by NAA in the coming weeks to clarify. If a property is managed by a third party, the property manager may apply for PPP to cover the costs of their employees. Due to funds eventually being depleted, its best to go ahead and get your application in now.

General Program Information:

- 100% federally guaranteed loans to provide relief to small businesses adversely impacted by COVID-19 and encourage retaining employees on payroll
- Up to 100% of principal and interest on loans could be eligible for forgiveness if all conditions are met
- Applies to applications submitted through June 30, 2020, or until funds made available for PPP are exhausted
- \$349 Billion approved for this new 7(a) program – (As of April 7, 2020, Congressional leaders were considering adding an additional \$250 Billion to the program.)
- Self-certification of the borrower to determine eligibility
- Rely on specified documents provided by borrower to determine qualifying loan amount and eligibility for forgiveness
- No collateral or personal guarantees required
- No up-front fee or annual service fee payable to SBA
- Agent fees paid by lender and no prepayment penalty

Anticipated Documents Needed for Application SBA Form 2483:

- Payroll processor records (summary by employee)
- 2019 W-2s and W-3
- Payroll tax filings (TWC, SUTA, 941s, etc.)
- Health insurance expenses (employee and employer)
- Projected payroll costs over 8-week period following the loan
- Rent expense summary w/ 3-month forecast
- Utility expense summary with 3-month projection
- Three years historical tax returns
- Form 1099-MISC
- Most current balance sheet with debt schedule
- Monthly income statements over last 12 months
- Sole proprietors – bank records if payroll records cannot be provided

Maximum Amount Eligible to Borrow:

- The lesser of:
 - 2.5 times of average monthly payroll costs (less amount of salaries in excess of \$100,000) plus outstanding Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance”
 - \$10 million
- Payroll costs can include the following:
 - Salaries, wages, commissions, tips (excludes wages in excess of \$100,000)
 - Vacation, parental, family, medical, or sick leave
 - Allowance for separation/dismissal
 - Group health care coverage premiums
 - Retirement benefits
 - State and local payroll tax

Payment Terms:

- Maturity date of two years
- 1% interest rate
- Six-month deferment, interest will continue to accrue

Forgiveness Eligibility:

- May be eligible for forgiveness of principal plus interest if certain conditions are met:
 - Proceeds must be used to cover only specific costs during 8 weeks beginning on the date of loan origination
 - Employee compensation levels are maintained
 - Not more than 25% can be used on non-payroll related expenses which include mortgage interest, rent payments, utility payments
 - Must document the proceeds used for payroll costs – 75% of loan proceeds
- Cautions:
 - Forgiveness is not guaranteed
 - Loan forgiveness cannot exceed the principal borrowed
 - Forgivable amount is reduced if number of employees is reduced
 - Forgivable amount is reduced if greater than 25% reduction in wages paid to employees

Approved Lenders:

- All SBA 7(a) lenders
- Any federally insured depository institution or any federally insured credit union
- Farm Credit System institutions
- Depository or non-depository financing providers meeting specified condition

Emergency Economic Injury Grants

- **Eligibility:** Any small business with less than 500 employees including:
 - Small businesses
 - Sole proprietors
 - Independent contractors
 - All non-profit organizations
- Small business owners eligible to apply for advance up to \$10,000 as an emergency cash grant even if don't qualify for additional funds
- Relief for businesses currently experiencing a temporary loss of revenue as a result of COVID-19
- Loan advance does not have to be repaid under any circumstance
- Can be used for payroll, business obligations, increased productions costs due to supply chain disruptions, debts, rent, and mortgage payments

Economic Injury Disaster Loans (EIDL)

- **Eligibility:** Any small business with less than 500 employees including:
 - Small businesses
 - Sole proprietors
 - Independent contractors
 - All non-profit organizations
- EIDLs are low interest loans of up to \$2 million
- Deferred interest and principal payments up to 12 months, interest will continue to accrue
- Available to pay for expenses that could have been met had the disaster not occurred including payroll, fix debts, accounts payable and other
- CARES now waives requirement that you are unable to obtain credit elsewhere
- EIDLs are non-forgivable – low interest, long-term (up to 30 years) loans with scheduled principal and interest payments
- Annual interest rate: 2.75% for nonprofits and 3.75% for businesses
- **Important:** Businesses can apply for both PPP and EIDL programs; however, no duplication in the use of funds (no double dipping)
- Apply directly through SBA: <https://covid19relief.sba.gov/#/>

SBA Debt Relief Program

- **Eligibility:** Any small business with less than 500 employees
- SBA will automatically pay the principal, interest, and fees of current non-disaster 7(a), 504, and microloans for a period of six months.
- SBA will also automatically pay the principal, interest, and fees of new non-disaster 7(a), 504, and microloans issued prior to September 27, 2020
- 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
 - Borrower must cancel recurring payments
 - After automatic deferment, borrowers must resume making regularly scheduled payments
 - Contact your Loan Servicing Office directly if you have questions about your current loan and whether or not your loan is automatically deferred

SBA Express Bridge Loans

- **Eligibility:** Any small business with less than 500 employees
- Enables small businesses who currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly
- Provides vital economic support to small businesses to help overcome temporary loss of revenue
- Term loan or bridge gap while applying for a direct SBA EIDL loan
- Will be repaid in full or in part by proceeds from the EIDL loan

Important: Funds obtained from multiple programs CANNOT be used to cover the same expenses (no double dipping).

Employee Retention Payroll Tax Credit

Eligibility:

- All employers, including employers with 500 or more employees, are eligible
- Conditions:
 - The employer's business is fully or partially suspended by government order due to COVID-19 during the calendar quarter, or
 - The employer's gross receipts are below 50% of the comparable quarter in 2019. Once the employer's gross receipts go above 80% of a comparable quarter in 2019, they no longer qualify after the end of that quarter.
- Not available to employers receiving assistance through PPP

General Program Information:

- The Treasury Department and the Internal Revenue Service launched the credit designed to encourage businesses to keep employees on their payroll.
- Available to ALL employers, regardless of size, including tax-exempt organizations with only two exceptions:
 - State and local governments and their instrumentalities, and
 - Small businesses who take small business loans

Credit Calculation:

- The refundable tax credit is 50% of up to \$10,000 in qualified wages paid by an eligible employer whose business has been financially impacted by COVID-19.
- Applicable to wages paid after March 12, 2020, and before January 1, 2021
- Not limited to cash payments – can also include a portion of the employer provided health care
- Wages do not include paid family and/or sick leave under FFCRA for which a credit is taken

Qualified Wages:

- Employers 100 or less employees in 2019 (average):
 - Credit is based on wages paid to all employees in the calendar quarter, regardless if they worked or not. Employer still receives the credit if employees were paid and worked full-time in the calendar quarter.
- Employers with more than 100 employees in 2019 (average):
 - Credit is only allowed for wages paid to employees who did not work during the calendar quarter

How to receive credit:

- Employers can be immediately reimbursed for the credit by reducing their required deposits of payroll taxes that have been withheld from employees' wages by the amount of the credit.
- Report on quarterly payroll tax Form 941 beginning in second quarter of 2020
- If credit is greater than payroll taxes due for the calendar quarter, employer may receive an advance payment from the IRS by submitting Form 7200, Advance Payment of Employer Credits Due to COVID-19, otherwise the refund will be reflected and submitted within the Form 941.

Important Note: Please advise your CPA or accountant to determine eligibility prior to not paying employer payroll taxes as guidance is still in-process.

Defer Payment of Employer Payroll Taxes

- **Eligibility:**
 - All employers, including employers with 500 or more employees, are eligible
 - Not available to employers receiving assistance through PPP
- Employers can defer payment of the employer portion of Social Security tax (6.2%) paid over the following two years, with one-half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.
- IRS announced March 31, 2020 waiving penalties for failure to deposit payroll taxes if delayed due to implementation of new payroll tax credits
- Employer Medicare taxes (1.45%) cannot be deferred
- Employee portion of social security and Medicare taxes cannot be deferred
- Self-employed taxpayers, including Schedule C and Schedule F filers, may defer one-half of 2020 Social Security taxes for estimated tax purposes