

# [ ADVOS. ]

## COVID-19 BUSINESS RELIEF PROGRAMS FOR SMALL BUSINESS (<500 EMPLOYEES)

Summary as of 2020-0421 (updates in green)

*This summary is for high-level informational purposes, based on the information currently available, and is not intended as legal counsel. The relief programs described here are subject to change, and the provisions of the programs are merely summarized here. Please reach out to your ADVOS lawyer for counsel specific to your situation. If you are not an ADVOS client, please reach out to Whitney Harper ([whitney.harper@advoslegal.com](mailto:whitney.harper@advoslegal.com) or 904-567-5311) with questions.*

Program	Eligibility	Benefits	Concerns and Risks
<p><b>Families First Coronavirus Relief Act (“FFCRA”):</b></p> <p><b>Emergency Family and Medical Leave Expansion Act</b></p> <p><b>and</b></p> <p><b>Emergency Paid Sick Leave Act</b></p>	<p>Applies to employers with fewer than 500 employees whose employees took leave under the EFMLEA or EPSLA</p> <p>Determination of # of employees is made at the time when the employee requests leave, and includes all employees (FT, PT, temp, on leave) in the US, and all employees of affiliated entities. Count of employees excludes employees who are laid off or furloughed and have not been rehired.</p>	<p><b>Tax Credit for Paid Sick/Family Leave</b></p> <p>If the employer has to pay sick leave or family leave under the Emergency Family and Medical Leave Expansion Act or the Emergency Paid Sick Leave Act (both are part of FFCRA), then the employer can take a tax credit for 100% of the sick/family leave wages paid plus health plan expenses.</p> <p>Excess tax credit is treated as a refund to employer.</p>	<p><b>Cannot double-dip with the PPP’s forgivable loan</b></p> <p>Employers that prefer the PPP’s forgivable loan can opt out of the tax credit.</p>

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<p><b>CARES Act: Paycheck Protection Program (“PPP”)</b></p> <p><b>PPP loans are no longer available – all funds appropriated for this program have been used. Congress is currently debating additional appropriations.</b></p> <p><b>We encourage you to stay connected with your banker if you have not received a PPP Loan and want to apply if a second wave opens up.</b></p> <p>Note that the latest regulations are “interim final” regulations; final regulations are forthcoming and may include further changes.</p>	<p>Business or nonprofit (includes self-employed, sole proprietors, and independent contractors) has no more than 500 employees (or the number set for its industry by the SBA, if greater). Note that affiliation rules apply unless the borrower is under NAICS code 72, is a franchise listed by the SBA, or receives financial assistance from a licensed Small Business Investment Company.</p> <p>[We anticipate that the SBA’s rules for determining the size of an entity will apply here – average number of employees for each pay period in the prior 12 months (presumably from the date of application), counting all FT, PT and temp employees, and all employees of any affiliates (using SBA’s affiliation rules).]</p>	<p><b>Forgivable Loan (Forgiveness NOT counted as taxable income)</b></p> <p><b>Loan amount:</b> 2.5x the average monthly payroll costs for calendar year 2019 or the 12 months prior to the application date (conflicting information in the regulations and the new application), plus the amount of any EIDL Loan the borrower already has if it was made after Jan 31, 2020 and before the PPP Loans became available (presumably, refinancing the EIDL into this PPPL), up to a maximum of \$10m</p> <p>Note: “payroll costs” are broad and include salary, wages, commissions, tips, PTO, severance pay, payroll taxes (may exclude federal payroll taxes), and benefit costs and premiums, but EXCLUDE the following:</p> <ul style="list-style-type: none"> <li>• compensation of individuals in excess of \$100k/year (include the first \$100k, exclude the excess)</li> <li>• compensation of individuals residing outside the US</li> <li>• certain taxes</li> <li>• sick and family leave wages if you take tax credit for them under FFCRA</li> </ul> <p><b>Forgiveness amount:</b> costs incurred and payments made during the 8 weeks after loan origination, for the following purposes:</p> <ul style="list-style-type: none"> <li>• payroll costs (as defined above –</li> </ul>	<p><b>75% of Forgivable Amount Required to be Payroll</b></p> <p>Because of the anticipated high demand, SBA will require that at least 75% of the forgivable amount of the loan must be for payroll costs</p> <p><b>Reduction in Forgiveness</b></p> <p>If the employer reduces its headcount (# of full-time equivalent employees) or reduces the pay of individual employees by more than 25% during the period from Feb. 15 – June 30, 2020, the amount to be forgiven is reduced. However, reduction can be “cured” if employer brings the number of FTEs back up and eliminates any reduction of pay by June 30, 2020.</p> <p><i>See “PPP Forgiveness Reductions” section below for more detail.</i></p> <p><b>Amount Not Forgiven Converts to Loan</b></p> <p>The amount not forgiven converts to a loan with a 2 year maturity, interest at 1.0%, and all payments deferred for 6-12</p>

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	<p>Business in operation before February 15, 2020</p> <p>Business had employees for whom it paid salaries and payroll taxes or independent contractors if paid and reported on Form 1099</p> <p>No longer requires all 20% owners to be US Citizens or Legal Permanent Residents</p>	<p>the \$100k limitation applies here, so you can be forgiven for up to \$100k of comp to each individual, prorated for 8 weeks, as part of this component)</p> <ul style="list-style-type: none"> <li>○ Payroll costs do NOT include payments to independent contractors</li> <li>● rent or mortgage insurance payments of borrower (if incurred under an agreement in place prior to Feb. 15, 2020)</li> <li>● utilities of borrower (electricity, gas, water, transport, telephone, internet) if service began before Feb. 15, 2020</li> </ul> <p><b>Non-recourse Loan.</b> No personal guarantee or collateral required, no recourse against business owners or officers in the event of nonpayment, as long as funds were used for permitted purposes.</p>	<p>months from the date on which the forgiveness amount is determined. The loan is non-recourse (see “Benefits”), and there is no prepayment penalty.</p> <p><b>Track Forgivable Costs</b></p> <p>Once you receive PPP loan proceeds, consider holding them in a separate account, and using that account to pay for the forgivable costs so the tracking is clear.</p> <p><b>Effort to Purchase American-Made Goods</b></p> <p>The new application requires a certification that the borrower will, to the extent possible, purchase only American-made equipment and products.</p>

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<p><b>CARES Act: Economic Injury Disaster Loan (“EIDL”) and Grants</b></p> <p><b>The EIDL Program (for both loans and grants) is no longer available – all funds appropriated for this program have been used.</b></p> <p><b>SBA indicates that applications previously submitted are being processed, but no new applications are being accepted. We presume that NOT all previously submitted applications will be funded unless additional appropriations are made.</b></p>	<p>Business (includes self-employed, sole proprietors, cooperatives, ESOPs, Tribal businesses, and independent contractors) with no more than 500 employees</p> <p>Affiliation rules apply</p>	<p><b>EIDL Loans – Relaxed Requirements</b></p> <p>Loans are available up to \$2m, amount is dependent on proven impact.</p> <p>Waives personal guarantee on advances and loans not exceeding \$200k and requirement that business has been operating for 1 year (business just has to be in operation on Jan. 31, 2020), as well as requirement that applicant cannot obtain credit elsewhere.</p> <p>Approval can be granted based solely on credit score, without tax returns and transcripts.</p> <p><b>Emergency Grants Available (up to \$10k)</b></p> <p>Applicants for the EIDL Loan can request an “advance” of up to \$10k at the time of application. This amount is paid to the applicant within 3 days, and is NOT subject to repayment (even if the applicant does not ultimately take, or is denied, the EIDL Loan). Grant to be used for emergency purposes, including sick pay related to COVID, maintaining payroll during disruptions/slowdowns, meeting increased costs due to interrupted supply chain, making rent or mortgage payments, and repaying obligations that can’t be met due to revenue losses.</p> <p><b>The amount of the grant is \$1k per employee (as of Jan. 31, 2020), up to \$10k.</b></p>	<p><b>Emergency Grants offset PPP Loan Forgiveness</b></p> <p>If the business receives both an Emergency Grant and a PPP loan, the amount of the Emergency Grant will reduce the amount of the PPP loan forgiveness.</p> <p><b>Emergency Grants end Dec. 31, 2020</b></p> <p>Emergency grants cannot be issued after Dec. 31, 2020.</p> <p><b>Personal Guarantees &amp; Collateral</b></p> <p>Personal guarantees are required for loans in excess of \$200k, and collateral is required for loans in excess of \$25k.</p> <p><b>Term &amp; Interest</b></p> <p>30 year amortization; 3.75% interest rate</p>

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<p><b>CARES Act: Subsidy for SBA 7(A) Loans (Debt Relief)</b></p>	<p>All businesses with existing SBA 7(A) loans (other than loans under the PPP), and SBA 7(A) loans made within 6 months of the enactment of the Act (enactment was March 27, 2020 – so loan must be made by Sept. 27, 2020)</p>	<p><b>SBA Makes 6 Months of Payments (Principal and Interest)</b></p> <p>The SBA will make the principal and interest payments on 7(A) loans for 6 months, beginning with the next payment due after enactment of the Act. If a loan is under deferment, the SBA’s 6 months of payments will begin on the first payment due after the end of deferment.</p> <p>The borrower does not have to repay this amount.</p>	<p><b>N/A</b></p>
<p><b>CARES Act: Employee Retention Credit for Employers Subject to Closure (or with Significant Decline)</b></p>	<p>Carrying on business during 2020, and experienced one of the following:</p> <ul style="list-style-type: none"> <li>• a calendar quarter during which the operation of the business was suspended (fully or partially) due to government orders related to COVID-19 (a “Suspension Quarter”)</li> <li>• a period beginning with the first calendar quarter beginning</li> </ul>	<p><b>Credit Against Employment Taxes for 50% of Eligible Wages</b></p> <p>Eligible wages for employers with more than 100 employees in 2019: wages paid by the employer for periods when the employee <b>is not providing services</b> due to the suspension or decline.</p> <p>Eligible wages for employers with 100 or fewer employees in 2019: all wages paid by the employer to employees during a Suspension Quarter or during a Decline Period (even if the employee provided services).</p> <p>Applies to wages paid after March 12, 2020 and before Jan. 1, 2021. Capped at \$10k per employee.</p> <p>Note: wages credited here cannot represent a raise vs the 30 days prior to the credit period.</p>	<p><b>Cannot combine with PPP Loan</b></p> <p>Business can elect not to take this credit.</p>

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	<p>after Dec. 31, 2019 during which the gross receipts of the business were less than 50% of the gross receipts for the same quarter/prior year, and ending with the first calendar quarter following a calendar quarter for which gross receipts are greater than 80% of gross receipts for the same quarter/prior year (a "Decline Period")</p>	<p>Credit can be taken as an advance payment.</p>	
<p><b>CARES Act: Delay of Payment of Employer Payroll Tax</b></p>	<p>All employers</p>	<p><b>Defer Payment of Employer-side Payroll Tax</b></p> <p>Defer payment of 50% of payroll taxes due for the period from March 27, 2020 through Dec. 31, 2020. Half the deferred amount is due on Dec. 31, 2021. Remainder is due on Dec. 31, 2022.</p>	<p><b>Cannot combine with PPP Loan</b></p> <p>If the employer took a loan (whether or not forgiven) under the PPP, it cannot use this deferral.</p>

## PPP FORGIVENESS REDUCTIONS

The existing legislation and interim final rules provide some guidance regarding the calculation of PPP forgiveness amounts and reductions to forgiveness, but there are many areas that will require significant clarification. We anticipate that SBA and Treasury will issue additional guidance regarding forgiveness in the coming days, but have summarized here the existing guidance regarding reductions to forgiveness.

- **REDUCTION DUE TO PROPORTION OF PAYROLL COSTS TO TOTAL FORGIVENESS AMOUNT.** 75% or more of the forgiven amount must be “Payroll Costs”. Although SBA has not released specific instructions regarding this calculation, our understanding based on the existing legislation and guidance is that if Payroll Costs constitute less than 75% of the total amount of forgivable costs, then the total amount forgiven will be reduced by an amount such that the forgivable Payroll Costs are equal to 75% of the total amount forgiven.
  - For example, if the total forgivable costs are \$120k, and total Payroll Costs are \$75k, then the amount to be forgiven will be reduced to \$100k, so that the Payroll Costs are 75% of the total amount forgiven.
  - NOTE: It is unclear in what order the reductions will apply, and also unclear whether reductions due to reductions in FTEs or pay will effectively reduce the amount of “Payroll Costs” that can be counted as part of the 75% for purposes of this calculation. Until further guidance is released, we would encourage employers to model several different “order of operations” scenarios to prepare for the various potential outcomes.
- **REDUCTION DUE TO REDUCTION IN NUMBER OF EMPLOYEES.** Reduction of forgiveness based on reduction in number of employees will apply if the employer’s “average number of full-time equivalent employees (“FTEs”) per month” during the 8 weeks after the employer’s loan is funded is less than EITHER (at the employer’s option):
  - The average number of FTEs per month employed from Feb 15, 2019 through June 30, 2019 (Note: this is 2019, not 2020), OR
    - **Note:** If the employer is a seasonal employer as defined by the SBA, then this is the period that would apply, and the employer cannot elect the Jan 1 – Feb 29, 2020 period.
  - The average number of FTEs per month employed from Jan 1, 2020 through Feb 29, 2020.
  - NOTES:
    - We do not yet have very clear guidance from the regulations as to how SBA will define an “FTE,” or how the count of FTEs will work (existing legislation says FTEs are counted based on the average number of FTEs during each pay period that falls within the month, but the covered period is 8 weeks, which might fall across 3 months, so there’s some lack of clarity there).
    - This is about the **number** of FTEs, not the actual people. So, if an employee is laid off or resigns, you could replace them with someone else (and that person could be in another role, presumably at a different pay rate,



etc.). However, we caution employers to be careful about rehiring the same person at a lower pay rate, as that might trigger the reduction in forgiveness due to reduction in pay (below).

- The amount of this reduction is expressed as a percentage of the total forgivable amount – the average number of FTEs/month during the 8 week post-loan period, divided by the average number of FTEs/month during the selected comparison period.
- **REDUCTION DUE TO REDUCTION IN PAY OF CERTAIN EMPLOYEES.** Reduction of forgiveness based on reduction in salary/pay applies if the employer reduces the “total salary or wages” of any employee who is making \$100k/year or less by more than 25% during the 8-week period after the employer’s loan is funded, as compared to the most recent full quarter during which the employee was employed before the 8-week period.
  - NOTES:
    - The triggers here are reductions for individual employees, and not total payroll numbers. So, if the employer reduced one employee by 30% (assuming the employee was making less than \$100k before the reduction), that would trigger the reduction in forgiveness, even if the employer’s overall payroll costs only went down by 10%.
    - Based on the use of these terms throughout the legislation, it seems likely the “total salary or wages” is calculated without reference to any commissions or bonuses, and only looking at base pay (salary or hourly wages), though the language is not particularly clear.
    - This reduction is dollar-for-dollar. So, if the employer reduced one employee’s pay by \$25k (for an employee who was making less than \$100k/year prior to the reduction), and that amount represented more than 25% of the employee’s “total salary or wages,” the employer’s total forgivable amount is reduced by \$25k as well.
- **REMEDY FOR REDUCTIONS TO FTEs OR PAY MADE PRIOR TO APRIL 26.** If an employer is subject to reduction in forgiveness because it reduced its number of FTEs or the pay of employees by more than 25% between February 15, 2020 and April 26, 2020, the employer has an opportunity to “cure” the layoff or pay cut (or both, if both occurred). To cure and eliminate the reduction in forgiveness, the employer must, by June 30, 2020, rehire to eliminate the reduction in the number of FTEs (does NOT have to be a rehire of the same people or roles), or eliminate the reduction in pay for the employee(s) whose pay was reduced by more than 25% (or both, if both occurred).
  - NOTE: No “cure” is available for headcount reductions or reductions in pay occurring after April 26, 2020.

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**Note regarding programs for larger enterprises:**

*There are additional programs available for “Severely Distressed Sectors” and for mid-sized businesses (500 to 10k employees). These programs allow for loans to the Severely Distressed Sectors and mid-sized businesses, and impose additional restrictions on executive compensation, restrict the ability of the business to pay dividends/distributions to owners, and restrict the ability to offshore jobs, in addition to other restrictions. These restrictions do NOT apply to the programs for small businesses listed above. If you have more than 500 employees and would like to discuss these programs, please contact us.*