

April 1, 2020

Understanding the CARES Act

Programs for Employers

The CARES Act

\$250 billion in
cash payments
to families and
individuals

\$260 billion in
unemployment
insurance
benefits

**\$377 billion in small
business loans**

\$500 billion for
distressed
companies

\$150 billion for
hospitals for
equipment and
infrastructure

\$150 billion to states
and localities

First, a word about EIDL Emergency Grants . . .

Apply for an EIDL Loan at [SBA.gov](https://www.sba.gov/eidl)

And a brief word about bankruptcy . . .

Expanded Bankruptcy Relief

The Small Business Reorganization Act (SBRA) of 2019 took effect in February. Its intent is to make Chapter 11 bankruptcy more attractive to small business debtors. The **CARES Act** expands upon the SBRA.

Debt limit now \$7.5m
(up from \$2.7m)

The debtor alone
proposes the
reorganization plan
within 90 days of filing

A standing trustee will
be appointed to oversee
each small business
case.

No creditors committee

The plan can modify the
rights of the holder of
an interest on the
debtor's primary
residence

Plan must provide all of
the debtor's projected
disposable income to be
received during the
term of the plan.

Paycheck Protection Program (PPP)

What is the PPP, and who is eligible?

How can I use proceeds of a PPP Loan?

How much can I borrow under the PPP?

Why should I take advantage of the PPP?

How will loan forgiveness work?

What else should I know?

What is the PPP?

\$377 billion

- Provides immediate cash assistance to “small” businesses for operating expenses.

Loan Program

- Allows businesses to apply to have their PPP Loan forgiven for proceeds used for eligible expenses, including payroll.

Who is Eligible?

Businesses < 500 employees

Small businesses as defined by the SBA Size Standards

501(c)(3) nonprofits, 501(c)(19) veteran's organization, and Tribal business concerns described in section 31(b)(2)(C) of the Small Business Act, with < 500 employees.

Sole proprietors and independent contractors.

Businesses that receive financial assistance from Small Business Investment Act Companies without regard to affiliation

Hotels, motels, restaurants, and franchises with fewer than 500 employees at each physical location.

What are allowable uses?

- Payroll costs
- Costs related to the continuation of health care benefits
- Employee compensation (up to \$100,000 per individual)
- Mortgage interest obligations
- Rent
- Utilities
- Interest on debt incurred before February 15, 2020

How much can I borrow?

Lesser of

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graph TD; A[Lesser of] --> B["$10 million"]; A --> C["2.5x avg. previous 12 months payroll"];
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\$10 million

2.5x avg. previous
12 months payroll

Seasonal employers can calculate based on their average 12 week payroll costs beginning February 15, 2019 (or at the election of the seasonal business, March 1, 2019).

Why should I take advantage of the PPP?

- No personal guarantees required. Does not require a borrower to pledge its assets as collateral.
- SBA will waive associated fees.
- Principal and interest payments will be deferred for 6 months.
- Fixed interest rate of 0.50% for two years.

How will loan forgiveness work?

- All or a portion of a PPP Loan may be forgivable.
- Loan proceeds put toward the following may be forgiven:
 - Payroll costs
 - Interest on mortgage incurred before 2/15/20
 - Rent under lease agreement in force before 2/15/20
 - Utilities
- The amount eligible for forgiveness will be reduced proportionally by a reduction in:
 - The head count of full time employees retained, compared to the prior year; and
 - Pay of any employee beyond 25% of their prior year compensation.

What should I do about my employees right now?

To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire workers previously laid off by 6/30/20 will not be penalized for having a reduced payroll at the beginning of the period.

Re-Hire



Furlough

What do I need to do to have my PPP loan forgiven?

Borrowers will need to prove that the loan proceeds went to approved uses during the 8-week period after loan proceeds are received. Documentation could include:

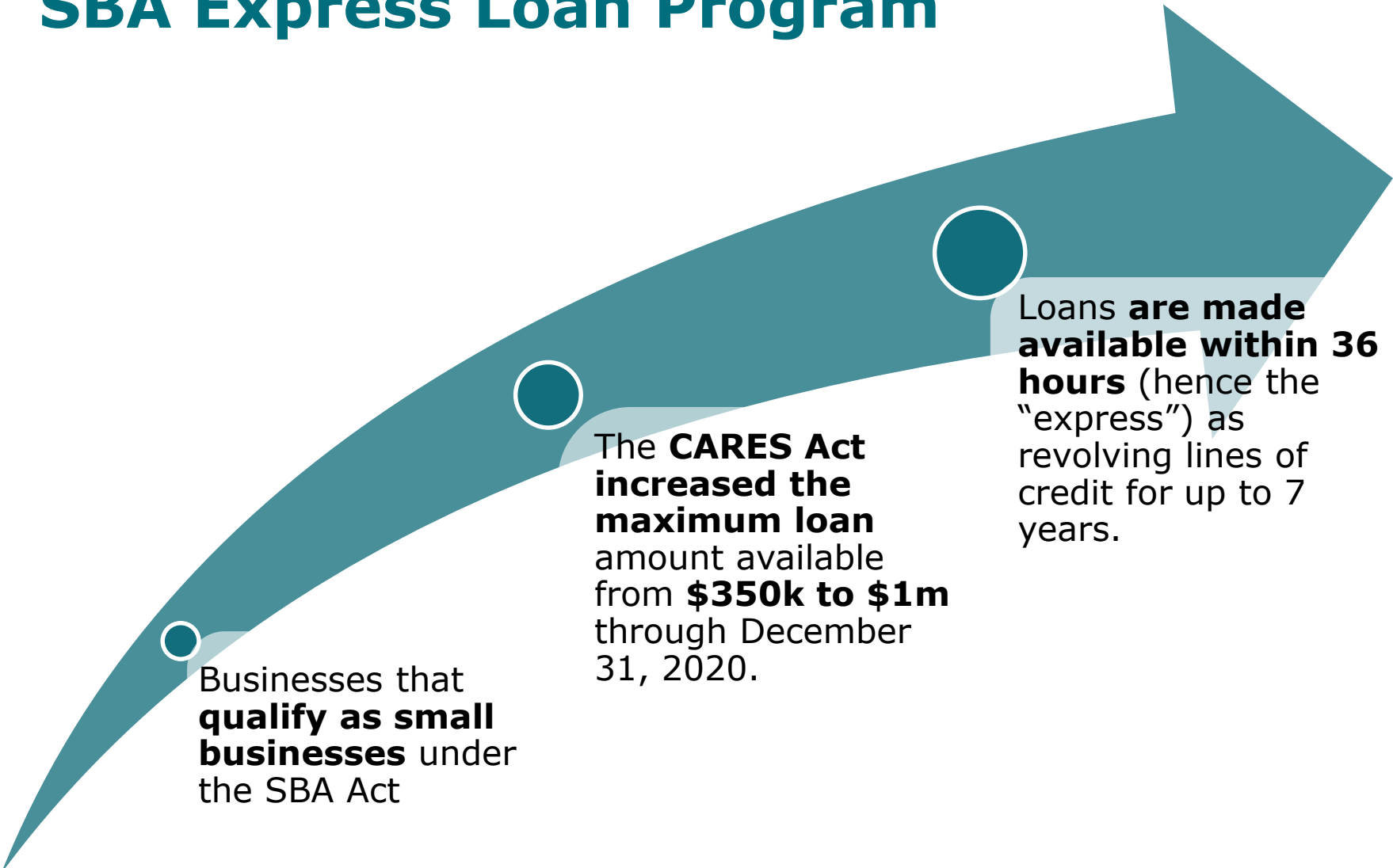
Payroll tax
filings

Unemployment
insurance
filings

Receipts of
payment,
records of
checks

More CARES Act Relief for Small Business

SBA Express Loan Program



Businesses that **qualify as small businesses** under the SBA Act

The **CARES Act** increased the **maximum loan** amount available from **\$350k to \$1m** through December 31, 2020.

Loans **are made available within 36 hours** (hence the "express") as revolving lines of credit for up to 7 years.

Employee Retention Tax Credit (“ERTC”)

- Eligible employers that continue to pay their employees are eligible for a credit equal to 50% of qualified wages, capped at \$5,000 credit (on \$10,000 of wages) per employee.
- Credit is not available to a business that has taken an SBA loan. It’s an either / or proposition.

ERTC Eligibility

- To be eligible, employer must:
 - › Be actively conducting business in 2020;
 - and***
 - › Experience a partial or complete suspension of business under a shutdown order; ***or***
 - › Experience a greater than 50% decline in gross receipts.
- Decline in gross receipts measured on a quarterly basis, by comparing quarter's receipts against prior year, same quarter.
- Once credit triggered, it remains available until (1) shutdown is lifted; (2) quarter in which business has recovered to 80% of prior year's receipts; or (3) 12/31/20 if neither occurs.

ERTC – Qualified Wages

- “Qualified wages” eligible for 50% credit differs, based on size of employer:
 - › For employers with more than 100 FTEs in 2019, qualified wages are only those paid to people retained but not working. Also, qualified wages cannot represent a wage increase.
 - › For employers with 100 FTEs or fewer, qualified wages are not limited to those paid to people not working.

Claiming ERTC

- Offset employer's portion of the Social Security tax, after reduction for certain credits, including for paid family and sick leave under FFCRA.
- If the credit exceeds the applicable taxes in a calendar quarter, excess credit is an overpayment refunded to the employer.

CARES Act Unemployment

Background – structure of unemployment:

- Joint state-federal program;
- States administer own programs, with own eligibility criteria and amounts;
- All CARES Act unemployment expansions require agreements between states and U.S. Department of Labor.
- DOL reimbursing state for amounts spent.

Pandemic Unemployment Assistance

- Applies from 1/27/20 – 12/31/20.
- Capped at 39 weeks.
- Covers workers ineligible for unemployment under state law
 - › Because they have exhausted;
 - › Because they are self-employed, independent contractor, etc.
 - › Because they need leave for one of many COVID-19-related reasons that might not be covered under state law.
- Amount as would be determined under state law, plus an additional \$600.
- Available for full and partial unemployment.

Pandemic Unemployment Assistance – Expanded Bases

Workers must “self certify” that they are capable of and available to work but unable or unavailable to work or telework for certain reasons.

- Diagnosis / experiencing symptoms;
- Family / household member diagnosed;
- Providing care to family member with COVID-19;
- Has primary caregiving responsibility for a child unable to attend school;
- Cannot reach workplace because of quarantine or advice of health care provider . . .
- Has become breadwinner after head of household died from COVID-19;
- Has had to quit working as a direct result of COVID-19; or
- Has a work location that is closed as a direct result of COVID-19.

Federal Pandemic Unemployment Compensation

- Available to all individuals on unemployment, regardless of whether for reasons related to COVID-19.
- Additional \$600 per week, through July 31, 2020.
- Additional 13 weeks of benefits (ending 12/31/20) on top of amount available under state law.
 - › Requires active pursuit of work.
- First week of unemployment covered.

Relief for Unemployment Direct Payers

- Direct payers (i.e. those who do pay for claims and do not pay into the system), federal government will pay state 50% of all claims paid between 3/13/20 and 12/31/20.
- State, in turn, is required to use this money to reimburse direct payers for amounts paid into the unemployment fund in lieu of contributions during this period.

SBA Loan or ERTC?

If you have the luxury of choosing – what's better?

- Circumstances under which ERTC will be a better option appear to be limited.
 - › ERTC is limited to 50% of qualifying wages, capped at \$5K per employee, while loan can cover all (covered) payroll costs over an 8-week period.
 - › Headcount / payroll need to maintained during the loan to maximize forgiveness, but no bar on instituting layoffs / furloughs after 8 week period if necessary; so flexibility after 8-week period maintained.

If not eligible or able to get SBA loan: ERTC, furloughs, or both?

- If over 100 employees, may claim ERTC only on wages paid to employees not working.
 - › Business decision: pay employees wages to not work (with a 50% credit capped at \$5K per employee) or furlough and send to unemployment?
- If under 100 employees, may claim on all wages.
 - › Claim for all and continue to pay employees working and not working; or
 - › Combo tax credit / furlough: claim tax credit on employees for whom there is work, and furlough those for whom there is none.

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