Brewers Association: Frequently Asked Questions (FAQs) About the CARES Act and other Small Business Administration Loan Programs

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020 and is intended to help small and large businesses, individuals, and the health care sector weather the economic storm caused by the unprecedented COVID-19 Pandemic.

What is available to small businesses under the CARES Act?

Paycheck Protection Program

The 7(a) loan program is the Small Business Administration's (SBA) primary program for providing financial assistance to small businesses. Under its Paycheck Protection Program (PPP), the CARES Act would increase the maximum 7(a) loan amount to $10 million, expand allowable uses of 7(a) loans, and permit forgiveness of significant amounts of the loan based on certain requirements. Under the CARES Act, the covered loan period for this program is February 15, 2020 through June 30, 2020.

Loan Terms and other important information:

- 1 percent interest rate.
- Borrower and lender fees for PPP loans are be waived.
- The SBA "credit elsewhere" test and personal guarantee and collateral requirements are waived during the covered period.
- Lenders are required to provide complete deferment of PPP loan payments for 6 months, including payment of principal, interest, and fees. However, interest on PPP loans will accrue during the deferment period.
- 2-year loan term.
- Existing loans made under the SBA's Economic Injury Disaster Loan (EIDL) program between January 31, 2020 and April 3, 2020 can be refinanced under the PPP loan.
    - If your EIDL loan was used for payroll costs, your PPP loan must be used to refinance your EIDL loan.

Who is eligible for PPP loans?

The CARES Act expands eligibility for 7(a) PPP loan funds to include, in addition to small businesses: any business concern, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or Tribal business that employs no more than the greater of 500 employees (including affiliates) or, if applicable, the size standard in number of employees established by the SBA for a particular industry. The SBA generally measures employees (including affiliates) employed by the business on a full-time, part-time or other basis for each pay period during the preceding 12 months. The SBA has provided guidance that this calculation will be based on the preceding completed 12 calendar months as of the date of application for a PPP loan.

Businesses in the Accommodation and Food Services industries (NAICS code beginning with 72) with more than one physical location and less than 500 employees per physical location are also eligible, as are sole proprietors, independent contractors and certain other self-employed individuals.

The SBA's affiliation rules are waived for businesses in the Accommodation and Food Services Industries (NAICS Code beginning with 72), businesses operating as a franchise assigned a franchise identifier code by the SBA, and businesses that receive financial assistance from a licensed Small Business Investment Company. (Application and waiver of the affiliation rules must be carefully examined on a case-by-case basis to ensure eligibility).

The SBA's industry size standard for breweries (NAICS code 312120) is 1,250 employees. *See* SBA Table of Size Standards. So any brewery with 1,250 or fewer employees, and who meets the program's other requirements, is likely eligible for a PPP loan.

- For the purposes of counting the number of employees a business concern has, an employee is defined as those who are employed on a full-time, part-time or other basis.
- Generally, independent contractors are not considered employees.
- Owners are generally considered employees and their compensation counts towards the loan calculation.

Drinking Places (including tap rooms and bars) are assigned the NAICS Code 722410. As a result, these businesses are eligible if they have 500 or fewer employees; they are also eligible if they have more than one physical location and less than 500 employees per location. For the purposes of determining the number of employees of these businesses, the SBA's affiliation rules are waived as the businesses are assigned a NAICS code beginning with 72.

It is important to note, however, that a business concern has only one *primary* industry and NAICS codes cannot be combined or split. So an applicant can only base its eligibility on NAICS code 722410, if "Drinking Places" is its primary industry. In determining a business's primary industry, the SBA considers, among other factors, "distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal year. SBA may also consider other factors, such as distribution of patents, contract awards, and assets." *See* 13 CFR § 121.107.

An Applicants must also make several good-faith certifications in its application, including:

- The applicant was in operation on February 15, 2020 and has employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a form 1099-MISC.
- Current economic uncertainty makes the loan request necessary to support ongoing operations of the applicant.
- The funds will be used to retain workers and maintain payroll costs and for other approved uses.

How do you calculate your maximum loan amount?

Your maximum PPP loan amount will be the lesser of:

- Your average total monthly payroll costs for calendar year 2019 multiplied by 2.5, plus any outstanding amount of an EIDL made between January 31, 2020 and April 3, 2020 that you would like to refinance under the PPP loan (minus any $10,000 EIDL advance received); or
- $10 million.

Loan amounts for seasonal or new businesses (which cannot demonstrate average monthly payrolls for the 12-month period) are calculated using a modified version of the above formula:

- Seasonal employers calculate payroll costs using average total monthly payments for either: (1) the 12-week period beginning February 15, 2019; or (2) at the election of the eligible recipient, the period from March 1, 2019 through June 30, 2019.
- Employers who were not in business between February 15, 2019 and June 30, 2019 calculate payrolls costs using average total monthly payments for payroll costs incurred between January 1, 2020 and February 29, 2020.

What is included in the definition of payroll costs?

Under the CARES Act, “payroll costs” means the sum of payments of any compensation with respect to employees that is—

- Salary, wage, wage, commission, or similar compensation;
- Payment of cash tip or equivalent;
- Payment of 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; or
- Payment of State or local tax assessed on the compensation of employees

Payroll costs DO NOT include:

- The compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the covered period;
    - This only applies to cash compensation in excess of $100,000 and not to non-cash benefits.
- Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period (February 15, 2020 through June 30, 2020);
    - This includes the employer and employee portions of federal Social Security and Medicare taxes, as well as federal income taxes.
- Any compensation of an employee whose principal place of residence is outside of the United States;
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116–127); or
- Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116–127).

For the purposes of payroll costs calculations, the compensation of all employees—full-time, part-time, or other basis—are counted. Owners' salaries are also generally included.

**Note that according to SBA guidance, payroll costs associated with independent contractors should be not included in the loan calculation as independent contractors are separately eligible for PPP loans. See* SBA Interim Final Rule (Apr. 2, 2020).

How can I spend the loan funds?

The CARES Act expands the allowable uses of PPP loan funds during the covered period—from February 15, 2020 through June 30, 2020. These uses include:

- Payroll costs;
- Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries, commissions, or similar compensations;
- Payments of interest on any mortgage obligation (which shall not include any prepayment
- of or payment of principal on a mortgage obligation);
- Rent (including rent under a lease agreement);
- Utilities; and
- Interest on any other debt obligations that were incurred before the covered period.

***Note that SBA guidance and regulations have stipulated that "at least 75% of the PPP loan proceeds shall be used for payroll costs." See* SBA Interim Final Rule (Apr. 2, 2020).**

Will my loan be forgiven?

Under the CARES Act, a loan recipient is eligible for loan forgiveness in an amount equal to the sum of the below costs incurred and payments made during the 8-week period following the origination of the loan.

- Payroll costs.
- Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).
  - Defined as "any indebtedness or debt instrument incurred in the ordinary course of business that—(A) is a liability of the borrower; (B) is a mortgage on real or personal property; and (C) was incurred before February 15, 2020."
- Any payment on any covered rent obligation.
  - Defined as "rent obligated under a leasing agreement in force before February 15, 2020."
- Any covered utility payment.
  - Defined as "payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020."

The 8-week period following the origination of the loan begins on the date the lender makes the first disbursement of the loan to the borrower. The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval. *See* Paycheck Protection Program Loans: Frequently Asked Questions (FAQs) (Apr. 8, 2020).

***SBA guidance and regulations have stipulated that not more than 25% of a loan forgiveness amount may be attributable to non-payroll costs. See* SBA Interim Final Rule (Apr. 2, 2020).**

**Note also that the universe of allowable uses of loan funds is broader than the list for which funds can be forgiven. Thus, to ensure maximum forgiveness, borrowers would need to limit non-payroll uses of loan funds to those listed above.*

How do reductions in workforce and pay affect forgiveness?

A PPP loan recipient's amount of forgiveness will be reduced in proportion to a reduction in number of employees based on a formula that compares the average number of full-time equivalent employees per month during the 8-week period following the origination of the loan to the average number of full-time equivalent employees per month between February 15, 2019 and June 30, 2019, or between January 1, 2020 and February 29, 2020, at the election of the borrower. Please find the specific formula as set out in the CARES Act below:

> **REDUCTION BASED ON REDUCTION IN NUMBER OF EMPLOYEES.—**
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> (A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced, but not increased, by multiplying the amount described in subsection (b) by the quotient obtained by dividing—
>
> (i) the average number of full-time equivalent employees per month employed by the eligible recipient during the covered period (the 8-week period following the origination of the loan); by
>
> (ii)(I) at the election of the borrower—
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> (aa) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019; or
>
> (bb) the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on January 1, 2020 and ending on February 29, 2020; or
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> (II) in the case of an eligible recipient that is seasonal employer, as determined by the Administrator, the average number of full-time equivalent employees per month employed by the eligible recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.
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> (B) CALCULATION OF AVERAGE NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the average number of full-time equivalent employees shall be determined by calculating the average number of full-time equivalent employees for each pay period falling within a month.

The forgiveness amount may also be reduced by the amount of any reduction in total employee salary or wages beyond 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the 8-week period following the origination of the loan

REDUCTION RELATING TO SALARY AND WAGES.—

(A) IN GENERAL.—The amount of loan forgiveness under this section shall be reduced by the amount of any reduction in total salary or wages of any employee described in subparagraph (B) during the covered period (the 8 week period following the origination of the loan) that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.

(B) EMPLOYEES DESCRIBED.—An employee described in this subparagraph is any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000.

However, to incentivize employers to rehire workers an employer will not be penalized for the above described reductions in number of full-time equivalent employees or employee pay that occurred between February 15, 2020 and April 26, 2020, if those reductions are eliminated by June 30, 2020. The relevant CARES Act provision is below:

(5) EXEMPTION FOR RE-HIRES.—

(A) IN GENERAL.—In a circumstance described in subparagraph (B), the amount of loan forgiveness under this section shall be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act.

(B) CIRCUMSTANCES.—A circumstance described in this subparagraph is a circumstance—

(i) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the number of full-time equivalent employees of an eligible recipient; and

(II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the number of full-time equivalent employees;

(ii) in which—

(I) during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment of this Act, there is a reduction, as compared to February 15, 2020, in the salary or wages of 1 or more employees of the eligible recipient; and

(II) not later than June 30, 2020, the eligible employer has eliminated the reduction in the salary or wages of such employees; or

(iii) in which the events described in clause (i) and (ii) occur.

Will I be taxed for the forgiven amount?

No, forgiven PPP loans are excluded from gross income under the CARES Act.

How do I apply?

The PPP loan program became active on April 3, 2020 for small businesses and sole proprietorships. The program will be active for independent contractors and self-employed individuals on April 10, 2020.

Applicants can apply through an existing SBA-approved lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. You can find SBA lenders near you by clicking here and locating your local SBA District Office for more information. The SBA has a list of the 100 most active 7(a) lenders.

The U.S. Department of the Treasury's website has additional resources about PPP loans and the application form. Along with the application form, you will need to provide the lender payroll documentation.

Can I apply for more than 1 PPP loan?

No. The SBA and Treasury Department determined, through regulation, that an eligible recipient can only receive one PPP loan.

What happens if the $349 billion for the PPP programs runs out?

If the money appropriated for this program runs out, it will be up to Congress to take additional action to appropriate more funds. As a result, it is advisable to submit an application for a PPP loan as soon as practicable.

Employee Retention Credits

The CARES Act also provides for an "employee retention" tax credit against an eligible employer's 6.2% share of Social Security payroll taxes. The credit is equal to 50% of the first $10,000 of qualified wages paid to employees. An employer is eligible for the tax credit if during any calendar quarter of 2020 it either has: (1) operations fully or partially suspended due to a governmental order related to the COVID-19 pandemic; or (2) a 50% or greater decline in gross receipts compared to the same quarter the prior year.

For employers with more than 100 full-time employees, the tax credit only applies to wages for employees who are not working for COVID-19-related reasons. Employers with fewer than 100 full-time employees can apply the tax credit to wages paid to all employees during the applicable time periods described above, regardless of whether they continue to provide services.

***These tax credits are not available to employers receiving a PPP loan.**

Payroll Tax Deferral

Under the CARES Act, employers may defer payments of payroll taxes for 2020 over the following two years. They must be paid in two installments: half of the amount will be required to be paid by December 21, 2021 and the other half by December 31, 2022.

***Businesses receiving loan forgiveness under the CARES Act are not eligible for these payroll tax deferments*.**

Expanded Unemployment Benefits

The CARES Act also enhances unemployment benefits for those unemployed as a result of COVID-19 by providing an additional $600 per week in benefits through July 31, 2020.

The law also eliminates waiting periods, making unemployed workers immediately eligible, and extends benefits for an additional 13 weeks.

Subsidies for Existing 7(a) Loans

Under the CARES Act, the SBA will pay the principal, interest, and associated fees that are owed on existing (made before enactment of the CARES Act) 7(a) loans, Community Advantage (504) loans, and microloans loans for 6 months beginning on the next payment due date.

- For such loans that are already on deferment, the SBA's payments will begin with the next payment due date after the deferment period.

The SBA will also pay the principal, interest and associated fees that are owed on 7(a) loans, Community Advantage (504) loans, and microloans made between March 27, 2020 and September 27, 2020 for 6 months beginning with the first payment due date on the loan.

- **Note that the eligible 7(a) loans made during this period do not include PPP loans.*

What other SBA programs are available to small businesses?

Economic Injury Disaster Loans (EIDL)

Economic Injury Disaster Loans (EIDL) are available when a Governor makes a disaster declaration pursuant to the Stafford Act and the President approves of the declaration. The EIDL program can provide up to $2 million of financial assistance to a small business. The actual size of the loan is based on the amount of economic injury a business suffers.

The CARES Act expanded the EIDL program and loosened some of the requirements on businesses to make it easier to obtain funds. Under the law, between January 31, 2020 and December 31, 2020, the entities eligible for an EIDL are expanded to include, in addition to small business concerns, private non-profit organizations, and small agricultural cooperatives: businesses with less than 500 employees (including affiliates), sole proprietors and independent contractors, Employee Stock Ownership Plans (ESOPs) with not more than 500 employees, cooperatives with not more than 500 employees, and a tribal business concern with not more than 500 employees.

As explained above, the employee threshold for breweries to qualify as a small business is 1,250 employees. Also note that the SBA's affiliation rules *are not waived* for EIDLs.

Important features of EIDLs:

- EIDLs offer up to $2 million in assistance to small businesses
- Interest rate is 3.75% for small businesses and 2.75% for non-profits.
- SBA offers long-term repayments, up to a maximum of 30 years.
- The CARES Act waives the personal guarantee requirement for EIDLs up to $200,000 for those obtained between January 31, 2020 and December 31, 2020.
- The CARES Act waives the requirement that a business must have been in business for the 1-year before the disaster. However, the CARES Act requires that the business must have been in operation by January 31, 2020.
- The CARES Act provides that SBA's approval of an EIDL loan may be based solely on a business' credit score, without requiring a business to provide tax returns. Further, a prior bankruptcy is not disqualifying.
- For all EIDLs above $25,000, a general security interest in business assets will be used for collateral instead of real estate.
    - *The general waiver of a collateral requirement does not apply to EIDLs.
- *Borrowers cannot use EIDLs and PPP loans for the same purposes.
    - If your EIDL loan obtained between January 31, 2020 and April 3, 2020 was used for payroll costs and you receive a PPP loan, the PPP loan must be used to refinance your EIDL loan.

Under the CARES Act, EIDL applicants can receive an emergency $10,000 advance payment within three days of application.

- **Applicants will not be required to repay the advance, even if they are ultimately denied the full EIDL.**
- Any EIDL advance will be subtracted from an applicant's maximum PPP loan amount.
- Unlike PPP loans, there is no additional loan forgiveness available for EIDLs.
- An EIDL advance can be used for paid sick leave, payroll, rent and mortgage payments, meeting increased costs to obtain materials unavailable form the applicant's original source due to interrupted supply chains, and repaying obligations that cannot be met due to revenue losses.

Unlike PPP loans, EIDLs are administered directly by the SBA. You can apply for an EIDL here.

SBA Express Loans

The CARES Act also temporarily increased the maximum amount of an SBA Express Loan from $350,000 to $1,000,000. More information on Express Loans can be found here.

SBA Express Bridge Loans

The Express Bridge Loan Pilot Program allows small businesses with an existing relationship with an SBA Express lender to quickly access up to $25,000. On March 25, 2020, the program was expanded to include small businesses adversely affected by the COVID-19 pandemic. Although Express Bridge Loans are normally only made up to six months after a disaster declaration, they are available in connection with COVID-19 disaster declarations through March 13, 2021.

Learn more about the program here and access the full program guide here.