

REBNY Resources:

Business Guide to the Federal Stimulus for Commercial Tenants During the Coronavirus (COVID-19) Crisis

The Real Estate Board of New York (REBNY) has created the following guide of lending and tax support programs available through the CARES Act to help commercial tenants navigate the Coronavirus (COVID-19) crisis.



LENDING SUPPORT FOR BUSINESSES

Paycheck Protection Program

Creates a new \$349 billion SBA lending program, modeled on existing 7(a) program, with 100% government guarantee. Eligible small businesses are those defined by SBA size standards (generally up to 500 employees) and include (but are not limited to):

- Businesses in the accommodation and food services sector (restaurants and hotels) are eligible with up to 500 employees at each location.
- Non-profits with fewer than 500 employees who are 501(c)3s and do not receive Medicaid funding.
- Sole proprietors, the self-employed and independent contractors.

Maximum loans are generally monthly payroll costs for 2 ½ months, not to exceed \$10 million. Payroll costs exclude compensation paid to individuals, including the self-employed, in excess of \$100,000 a year.

The bill text requires only a “good faith” certification that the economic conditions make the loan necessary, and that you will use the funds to “retain workers and maintain payroll or make mortgage payments, lease payments and utility payments.”

Subject to certain limitations, payments made under the loan during the 8-week period after origination are forgivable. Forgivable costs include money spent on eligible payroll costs (not including comp above \$100k in wages), mortgage interest, rent or utilities. The amount forgiven cannot exceed the principal of the loan.

To obtain the loans, the employer must certify that they will maintain their average full-time equivalent employment, with incentives to re-hire if employees have been furloughed.

To apply, please download the Paycheck Protection Program application [here](#).

If you have any questions, please reach out to [REBNY Government Affairs](#).

Important Note: This overview should not be construed as offering or providing legal advice in any form. The information contained herein is for informational purposes only and is not intended to be exhaustive or complete. This document is not intended to replace the reader's need to speak with their own legal counsel regarding the issues presented. All readers should seek independent legal advice where they have specific legal questions pertaining to specific legal circumstances or where otherwise appropriate.



The borrower will have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation in excess of \$100,000 annually), interest payments on mortgages, rent payments and utility payments between February 15 and June 30, 2020. Loan forgiveness will be reduced if the borrower reduces employment by a ratio similar to their reduction in employment or if borrower reduces salaries and wages by more than 25%.

Loan Program and Credit Facility to Support Impacted Industries

The legislation includes \$454 billion in support of business, States and municipalities, in the form of loans, loan guarantees and other investments through programs or facilities established by the Federal Reserve.

Eligibility for, and conditions of, assistance through Federal Reserve programs include:

- Businesses must be created or organized in the U.S. or under its laws and have significant operations in and a majority of employees based in the U.S.
- Limits on stock buybacks, payment of stock dividends and limits on executive compensation.

The Treasury Secretary is further authorized to implement a program to provide financing to banks and other lenders that make direct loans to eligible mid-size businesses with between 500-10,000 employees. Features of the program include:

- Direct loans have an annualized interest rate not higher than 2% with no principal or interest for 6 months.
- The funds will be used to retain at least 90% of its workforce at full compensation and benefits until September 30, 2020.
- The recipient intends to restore not less than 90% of its workforce that existed as of 2/1/20 and to restore full benefits to workers no later than 4 months after termination of the public health emergency declared by the HHS Secretary.
- The recipient is an entity or business domiciled in the U.S. with significant operations and employees in the U.S.
- The recipient will generally not pay dividends with respect to common stock or repurchased equity security while the loan is outstanding, not outsource or offshore jobs for term of the loan and 2 years following repayment and will remain neutral in any union organizing effort for the term of the loan.

Expanded FDIC Authority

Provides the Federal Deposit Insurance Corp. expanded authority to guarantee bank accounts and ease key lending regulations. The bill would give the FDIC greater authority to back-up accounts, including by guaranteeing business transaction accounts. The FDIC previously used the transaction account authority in the 2008 financial crisis to shore-up confidence in accounts used for payroll and other business purposes. The bill would make it easier for small banks to take advantage of streamlined capital requirements that Congress ordered regulators to establish in 2018 through the community bank leverage ratio.

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Temporary Relief from Troubled Debt Restructurings

A financial institution may elect to suspend requirements under U.S. Generally Accepted Accounting Principles for loan modifications related to the coronavirus pandemic and suspend any such determination regarding loans modified as a result of the effects of the coronavirus. Federal banking agencies and the NCUA must defer to a financial institution to make a suspension. Such elections may begin on March 1, 2020 and last no later than 60 days after the lifting of the coronavirus national health emergency.

Bankruptcy Changes

Amends the Small Business Reorganization Act to increase the eligibility threshold to file under subchapter V of chapter 11 of the U.S. Bankruptcy Code to businesses with less than \$7,500,000 of debt.



TAX SUPPORT FOR BUSINESSES

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The legislation provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee, which differ based on employer size. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

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