

# Understanding Your Obligations under COVID-19 Business Relief Programs

(PART I)

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On behalf of  
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# Agenda

Introduction – Part I

Overview of Pandemic Related Business Legal Issues

Category I: Financial Relief

Obligations under Federal Relief Programs

Obligations under State & Local Relief Programs

Unemployment

Introduction – Part II

Category II: Other Impacts on Business Operations

Contracting

Taxes

Insurance

Health and Safety

Families First Coronavirus Response Act

Personal Financial Relief

Conclusion

# Introduction

What I thought I'd be wearing for the apocalypse.



What I am actually wearing.



## Key Pandemic-Related Business Legal Issues

- ▶ Retaining employees.
- ▶ Meeting debt obligations.
- ▶ Tax relief.
- ▶ Insurance coverage—now COVID *and* looting related!
- ▶ Contract obligations.
- ▶ Health and safety.
- ▶ Personal economic relief.
- ▶ Everything else.

# Select Federal Relief Programs

## Small Business Administration (SBA) Disaster Assistance

### ▶ Economic Injury Disaster Loan (EIDL) Emergency Advance

Loan advances of up to \$10,000 to provide economic relief to businesses currently experiencing temporary loss of revenue. Small businesses, nonprofits and independent contractors are all eligible to apply. At this time, however, only *agricultural business* applications will be accepted due to limitations in funding.

### ▶ Express Bridge Loans

Enables small businesses which currently have a business relationship with an SBA Express Lender to access up to \$25,000 quickly to help overcome the temporary loss of revenue. If a small business has an urgent need for cash while waiting for a decision on an EIDL application, they may qualify for an Express Bridge Loan, which will be repaid in by proceeds from the EIDL loan.

### ▶ Small Business Debt Relief Program

Provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504 and microloans. Under these loans, SBA will automatically cover all payments including principal, interest and fees for 6 months. This relief is not available for PPP or EIDL loans.

### ▶ Paycheck Protection Program (PPP)

Forgivable loans to small businesses and nonprofit organizations to pay employees. SBA will forgive loans if all employees are kept on the payroll for 8 weeks and the money is used for payroll, rent, mortgage interest, or utilities. Loans are available for entities that meet SBA small business size standards, self-employed/independent contractors, and certain nonprofits including 501(c)(3)s, 501(c)(19)s, and tribal business concerns with fewer than 500 employees. *A second round of PPP funding is pending.*

Track spending of loan proceeds. Place in a separate checking account if feasible.

<b>Week</b>	<b>Payroll - 75% of Proceeds</b>	<b>Health Insurance Premiums</b>	<b>Retirement Plan Contributions</b>	<b>Rent / Lease Payments</b>	<b>Interest on Debt Incurred before 2/15/2020</b>	<b>Utility Payments</b>
<b>1</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>2</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>3</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>4</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>5</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>6</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>7</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>8</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

## PPP Forgiveness – *Start Date TBD*

Both principal and accrued interest forgivable if funds used for allowed purposes:

- ✓ Funds must be used within an 8-week (56 day) **Covered Period**—starting either the day you receive funds OR a slightly different **Alternative Payroll Covered Period** of 8 weeks as you elect to align with payment cycles.
- ✓ At least 75% must be spent on payroll—based on full employment levels as of February 15, 2020, at no less than 75% of 2019 annualized wages or seasonal calculation. **Verify eligible payments with your Accountant.**

For self-employed individuals and sole proprietors, payroll costs are payments of any compensation that is a wage, commission, income, net earnings from self-employment, or similar compensation.

See Exceptions to Definition of Payroll Costs below.

- ✓ No more than 25% can be spent on other allowable costs which include:
  - **Mortgage Interest** – interest (NOT principal) on any business mortgage incurred before February 15, 2020.
  - **Rent** – on any business lease payments in force before February 15, 2020.
  - **Utilities** –electricity, gas, water, transportation, phone or internet service which began before February 15, 2020.

✓ Restore employment by June 30, 2020, to total average weekly full-time equivalency (FTE) and salary levels for any changes made between Feb. 15, 2020, and April 26, 2020, with the following exceptions:

- (1) position for which a good-faith, written offer to rehire was made during Covered Period which was rejected, or
- (2) any employee during the Covered Period (a) fired for cause, (b) voluntarily resigned, or (c) voluntarily requested a reduction in hours.

And only if the position was not filled by a new employee.

✓ You may use the PPP Loan proceeds to pay the above items going back to February 15, 2020.

NOTE: paying backpay may cause those employees to have to repay any unemployment they received for that time period.

## Exceptions to the definition of payroll costs

Payroll costs do NOT include:

- ✘ Profit distributions to owners of S Corporations or LLC's.
- ✘ Compensation of any individual of over \$100,000 per year, based on annualizing the salary from February 15, 2020, through June 30, 2020 (applies only to cash compensation, not to non-cash benefits, such as employer contributions to retirement plans, group health care and employment taxes assessed on compensation—but **confirm with your accountant**).
- ✘ Federal employment taxes.
- ✘ Compensation for employees whose principal place of residence is outside of the United States.
- ✘ Sick leave wages or family leave wages for which Families First Coronavirus Response Act (FFCRA) allows a payroll tax credit.
- ✘ Payments to independent contractors.

## FTE Reduction Safe Harbor

Exempts Borrowers from loan forgiveness reduction based on FTE employee levels, may also be available if both of the following conditions are met:

- ✓ Borrower reduced its FTE employee levels in the period beginning February 15, 2020, and ending April 26, 2020; and
- ✓ Borrower then restored its FTE employee levels by not later than June 30, 2020, to its FTE employee levels in the Borrower's pay period that included February 15, 2020.

If employment restoration requirements are not met or any funds are used for purposes other than those described above, **the amount of loan eligible for forgiveness is reduced** accordingly.



## Additional Obligations

**Intentional misuse of PPP funds** will lead to required repayment in full and additional liability, including **civil and/or criminal charges** for fraud. The government will also have **recourse against owners, shareholders, members and partners** of that business.

Knowingly making a **false statement to obtain forgiveness** of an SBA-guaranteed loan is punishable by imprisonment from 2 to 30 years and/or a fines from \$5,000 to \$1,000,000 (depending on the specific U.S. code violation).

Receipt of a loan through any SBA program constitutes Federal financial assistance and carries with it the application of certain **nondiscrimination obligations** until the loan is paid or forgiven. SBA regulations provide that the recipient may not discriminate on the basis of race, color, religion, sex, handicap, age, or national origin with regard to goods, services, or accommodations offered. See 13 C.F.R. § 113.3(a).

## So make sure...

- ✓ Tax documents submitted are **consistent with those submitted to the IRS** and/or other agencies. Lenders can share tax information with the SBA to ensure compliance with PPP requirements.
- ✓ Keep track of all **supporting documentation** because the SBA may request additional information to evaluate eligibility for PPP loan and loan forgiveness.
- ✓ Be able to prove that the **current economic uncertainty** makes the loan necessary to support ongoing operations. (For loans under \$2 million, SBA will assume certification was made in good faith, but loans over \$2 million will be subject to actual review by SBA—*details still pending.*)

Important

### DOCUMENTATION TO KEEP:

- ✓ Number of full-time equivalent employees and pay rates.
- ✓ Payroll and other permitted expenditures made during the Covered Period.
- ✓ Payment documentation on eligible mortgage, lease and utility obligations.
- ✓ Proof of need for loan—*e.g.*, bank statements, receivables, income statements, invoices, documentation of mandated closures, customer cancellations, etc.
- ✓ *See* Loan Forgiveness Application and SBA forgiveness guidance (as to be released) for more.

## Bottom Line

Be able to justify to the SBA that:

- ✓ you were entitled to the PPP Loan,
- ✓ you used the PPP Loan proceeds in the allowed manner, and
- ✓ the portion of the PPP Loan you had forgiven was the correct amount.

# State Relief Programs



## District of Columbia

DC is offering **Small Business Recovery Microgrants** in response to the pandemic crisis. Award amounts are based on:

- restrictions that have been imposed,
- economic injury you have experienced,
- type of business,
- number of employees, and
- length of time in business.

Small Businesses	Non-Profits	Independent Contractors / Self-Employed
<ul style="list-style-type: none"><li>• Your principal office is physically located in Washington, DC; and</li><li>• You meet Small Business Administration definition of small business</li><li>• At least one of the following statements are true:<ul style="list-style-type: none"><li>• More than 50% of the business is owned by District residents</li><li>• More than 50% of my gross receipts originate in the District</li><li>• More than 50% of my employees are District residents</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Your main office is located in Washington, DC</li><li>• You have registered as a not-for-profit organization with DCRA</li><li>• You are not a national or global organization, meaning your services do not extend beyond the DMV region (except for art and cultural non-profits)</li></ul>	<ul style="list-style-type: none"><li>• You are a Washington, DC resident operating a business in Washington, DC as a sole proprietor</li><li>• You pay self-employment taxes</li><li>• You are not eligible to receive unemployment insurance benefits, as determined by DOES</li></ul>

## Submission Requirements:

- ✓ Federal Tax ID/EIN (or Social Security Number for self-employed)
- ✓ Documentation of business owner' state residency (*such as a driver's license*)
- ✓ Payroll or roster of employees and their states of residence (*dated for the week prior to March 11, 2020*)
- ✓ Financial Documents:
  - 2018 federal tax return
  - 2019 income statement showing monthly sales
  - 2020 year-to-date (January - March) income statement
  - Supporting documentation for potential revenue in April 2020 (*such as proof of canceled contracts, revenue-generating events, etc.*)
- ✓ Other Supporting Documentation (as may be required by Lender) such as **Certificate of Good Standing**

See <https://coronavirus.dc.gov/recovery-business>.



## Maryland

Maryland also has a variety of Funding & Incentives in response to the pandemic including but not limited to Tax Credits, Grants, Loans and Loan Guarantees.

**Emergency Relief Manufacturing Fund** - helps manufacturers to produce personal protective equipment (PPE) and other items needed by the State, Maryland-based hospitals and healthcare facilities, and emergency and first responders.

Also programs for arts, heritage area, and agricultural-based entities.

Maryland Department of Commerce **Small Business COVID-19 Relief Grant and Loan Programs:**

See <https://commerce.maryland.gov/fund/maryland-small-business-covid-19-emergency-relief-fund-programs>

Offers interim working capital to assist Maryland small businesses and nonprofits with disrupted operations due to COVID-19, intended to compliment relief secured from bank, business interruption insurance and financial partners.

## Requirements:

- not to exceed 3 months of cash operating expenses
- 50 or fewer employees.
- Must be established prior to March 9, 2020.
- Business must be in good standing.
- Applicants must have W-2 employees on their payroll.
- Annual Revenues to exceed \$5 million as evidenced by Financial Statement or other financial documentation.
- Business or nonprofit is expected to seek longer term funding through its bank, SBA or other source.
- Eligible uses include: working capital to support payroll, rent, mortgage, utility expenses or other expenses that occur in the ordinary course of operations.

## Proof of financial stress or disrupted operations:

- ✓ Notices from **tenants closing operations** and not paying rent caused by loss of income.
- ✓ Notice of **inability to make loan payments** due to reduced sales, suspended operations.
- ✓ **Increased cost** related to COVID-19 prevention measures.
- ✓ Notice of **disrupted supply network** leading to shortage of critical materials.
- ✓ **Other circumstances** subject to review on a case by case basis.

See <https://govstatus.egov.com/md-coronavirus-business>.

## Prince Georges County

### The Prince George's County **COVID19 Business Recovery Initiative (BRI)**

Providing up to \$100,000 to support up to 6 months of operating expenses including: payroll, suppliers, rent, fixed debt payments and other business critical cash operating costs.

Based on fixed costs incurred as indicated in Financial Statement.

#### ELIGIBILITY:

- Principal business office or location must be physically located in Prince George's County.
- Business meets U.S. Small Business Administration definition of small business.
- New business ventures are not eligible.
- Beginning May 15, 2020, sole proprietor and 1099 applications will also be accepted.
- Applicant's personal credit history is a factor.

See <https://covid19relieffund.princegeorgescountymd.gov/>

## ADDITIONAL REQUIREMENTS:

- Business must retain jobs (certified to County) with a goal of hiring County residents for future vacancies
- Borrower must maintain operations in the County for the term of the loan
- Commit to best effort to have 35% County based business participation in any future construction work
- Provide evidence that application has been submitted to SBA and Maryland
- Financial Documentation:
  - 2018 Business Tax Return
  - 2019 Income Statement or Business Tax Return
  - Payroll/Employee Roster & Signed Employment Certification
  - 2020 Year to Date Income Statement
  - Evidence of Business Disruption
- Evidence that application has been submitted to SBA or State of Maryland
- Personal Financial Statement for each owner with 20% or more ownership interest
- Articles of Incorporation/Organization/Formation

Also:

IRS Tax transcripts will need to be provided, business liability insurance, a plan for how you will use the money

See <https://covid19relieffund.princegeorgescountymd.gov/>

**Sole proprietors, 1099 employee and independent contractors** must substantiate that they are indeed a business by providing, e.g., copies or trade registration documents, EIN number, Maryland Certificate of Good Standing

## Montgomery County

- has created an emergency grant program to provide \$20 million in funding for those impacted by the pandemic.
  - The [Public Health Emergency Grant Program](#) will provide grant funding up to \$75,000 to small businesses and nonprofits. The county will also provide microgrants up to \$2,500 to cover costs associated with purchasing teleworking equipment. [Read more](#).
  - The county also launched a program to [reimburse businesses and non-profit organizations](#) for expenses incurred implementing a telework policy.

## Types of Evidence of Business Disruption

- ✓ Government restrictions imposed on operations.
- ✓ Notices from tenants closing operations / not paying rent due to income loss.
- ✓ Closure of physical facilities or operations.
- ✓ Reduced sales, suspended operations.
- ✓ Increased cost related to COVID-19 prevention, e.g., decontamination and purchase of PPE.
- ✓ Disrupted supply network leading to shortage of critical inventory or materials.
- ✓ Type of operations as it relates to the extent to which employees can perform remotely, and your attempts to facilitate such or otherwise mitigate losses.
- ✓ Attempts to secure or defer other sources of funding.
- ✓ Reduction in staff and decrease in payroll.
- ✓ Amended or cancelled contracts.
- ✓ Refunds, discounts and credits to customers for cancellations.
- ✓ Costs of facilitating remote working.
- ✓ Indications of technical inability.
- ✓ Reasons your business did not resume operations once restrictions lifted.
- ✓ ... and too soon to tell: damage from and/or business location in proximity to looting.

Also, Remember to Update Financial Statement with Revenue INCREASES:

- Payment deferrals for utilities and other obligations, e.g., car insurance discounts being automatically given by insurers.
- Success in securing other financing.
- Unexpected financial boom in business during shut down (e.g., Chipotle's revenues have increased due to capitalizing on increase in post-pandemic on-line orders)

# Unemployment Insurance Benefits

## Impact on Employers

Unemployment insurance paid pursuant to COVID-19 Response Emergency Amendment Act will not be charged to experience rating of employer accounts.

DC DOES <https://does.dc.gov/service/unemployment-compensation-process>

Maryland DLLR [www.dllr.state.md.us/employment/uicovidfaqs.shtml](http://www.dllr.state.md.us/employment/uicovidfaqs.shtml)

## Pandemic Unemployment Assistance

States can provide Pandemic Unemployment Assistance (PUA) to individuals who are self-employed, seeking part-time employment, or who otherwise would not qualify for regular unemployment compensation. To qualify, you must not be eligible for regular unemployment benefits and be unemployed, partially unemployed, or unable or unavailable to work because of health or economic consequences of the pandemic. To determine eligibility, agency will review documentation including tax returns, paycheck stubs, bank receipts, ledgers, and contracts to determine eligibility.

**Note:** continue to fill out the claims on UI every week, but declare the PPP payroll payments you are paying yourself every week. So you will remain enrolled in UI, but not receive any benefits for the 8 weeks you are paying yourself from PPP.

See [www.dol.gov/coronavirus/unemployment-insurance#fact-sheets](http://www.dol.gov/coronavirus/unemployment-insurance#fact-sheets)



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