



H.R. 6800 - the Heroes Act
House Small Business Committee Democrats

On March 27, 2020, the Coronavirus, Aid, Relief, and Economic Security Act (CARES) was enacted into law, providing emergency assistance for small businesses and eligible nonprofits affected by the Coronavirus pandemic (COVID-19). The CARES Act established the Paycheck Protection Program (PPP), a new guaranteed loan program at the Small Business Administration (SBA) to help small businesses cover payroll and other expenses during the crisis, with 100 percent of the amount eligible for forgiveness if employers retain employees. The CARES Act also created a new \$10 billion grant program, leveraging SBA's Office of Disaster Assistance to provide small businesses with much needed capital in a timely manner. Congress intended that these programs would provide immediate financial support to secure the survival of the small business community.

While recognizing the implementation of these new programs is a tall order for a small agency like the SBA, critical problems have emerged with the rollout of the Paycheck Protection Program that threaten the survival of small businesses across the country. That is why House Democrats propose the Heroes Act, which would make immediate fixes to strengthen the PPP, ensuring small businesses in desperate need of funding are able to stay afloat. The Heroes Act also shores up funding for the depleted EIDL grant program, injecting much needed capital into our small businesses.

Strengthen the Paycheck Protection Program

The Heroes Act would make important fixes to the Paycheck Protection Program and provide much-needed clarity for Main Street small businesses. Specifically, the bill:

- Amends PPP funding by:
 - Establishing an additional set aside of funds specifically for small Community Development Financial Institutions (CDFIs), Minority Development Institutions (MDIs), SBA microlenders, and SBA Certified Development Companies (CDCs);
 - Creating a carve out of 25% of the funds to be used specifically for small businesses with 10 or fewer employees to guarantee they are fully able to access PPP assistance;
 - Creating a carve out of 25% of the funds solely for the use of all nonprofits, no matter their size or type;
 - Requires that at least half this amount go to small nonprofits under the 500-employee threshold;
 - Prohibits compensation of lobbyists from counting toward PPP loans; and

- Mandating that any returned amounts due to the cancellation of a covered loan shall be redistributed through loans to small businesses with 10 or fewer employees.
- Adds flexibility in the covered period for borrowers by extending the 8-week period to 24 weeks and extends the covered period from June 30 to December 31;
- Creates a safe harbor for borrowers who cannot rehire in the prescribed timeframe and clarifies the hold harmless provision for lenders;
- Harmonizes the use of proceeds with forgiveness;
- Adds expenses related to equipping workers with personal protective equipment (PPE) and other equipment or supplies determined by the employer to be necessary to protect the health and safety of employees to the definitions of allowable uses of loan proceeds and forgiveness;
- Establishes a minimum maturity on PPP loans of 5 years to enable borrowers to amortize loans over a longer period of time, which lowers monthly payments;
- Clarifies that PPP loans cannot be calculated on a compound basis, saving borrowers money over the long-term;
- Bifurcates the SBA's traditional lending authority in the 7(a) program from that of the PPP authority to certify the 7(a) lending program continues operation after PPP appropriations run out;
- Requires mandatory regular reporting by the SBA on a number of specific demographic, industry, size, and geographic data points for PPP loans and EIDL loans and grants;
- Mandates forgiveness data collection and reporting;
- Clarifies the definition of a tribal business concern to prevent them from being held to inapplicable HUBZone requirements and the eligibility of housing cooperatives;
- Alleviates burdens to borrowers deemed ineligible due to prior criminal history;
- Makes a technical clarification to ensure hospitals in bankruptcy still qualify for PPP loans due to the essential nature of their operations and clarifies that cooperative housing corporations are eligible;
- Clarifies the interaction between the Employee Retention Tax Credit and the PPP loans to ensure borrowers can take advantage of both types of assistance;
- Eliminates the 75/25 rule on use of loan proceeds;
- Clarifies that the conflict of interest standards set forth in the CARES Act apply to PPP funds;
- Establishes technical assistance grants for small community financial institutions and small depository institutions and credits with assets of less than \$10 billion;
- Mandates the SBA use of previously allocated funds for purposes of translations services for all materials, applications, and websites related to COVID-19; and
- Ensures the principal and interest loan assistance is not treated as taxable income to small business borrowers.

Expand Economic Injury Disaster Program

The Heroes Act provides more assistance through the Economic Injury Disaster Program by:

- Appropriating an additional \$10 billion for Emergency EIDL Grants to remain available until expended.

Support SBA's Core Programs

Recognizing the need to move into the next phase of economic recovery, the Heroes Act implements a number of proven strategies within the many lending programs at SBA that were utilized after the Great Recession. The bill temporarily tailors SBA's programs to the needs of small businesses as the nation looks toward a long-term recovery, in addition to strengthening the cybersecurity posture of the SBA itself. The bill specifically:

- Reduces the cost of capital by waiving fees associated with the SBA 7(a) and 504 loan programs for borrowers and lenders, including the Community Advantage and Export loan programs;
- Expands the pool of availability capital for small firms by increasing the annual lending limit of the 7(a) program from \$30 billion to \$75 billion;
- Incentivizes lenders to make loans by temporarily increasing the guarantee up to 90% on traditional 7(a) loans, and increasing the guarantee on Express loans to 90% on loans up to \$350,000 and 75% on loans greater than \$350,000;
- Enhances the 504 refinance program to reach more small businesses who need to refinance expensive fixed assets and lower their payments;
- Boosts the SBA microloan program with an additional \$72 million in loans, increases how much each lender can lend from \$6 million to \$10 million, and gives borrowers an extra two years to repay;
- Includes SCORE and Veteran Business Outreach Centers (VBOCs) as eligible SBA entrepreneurial development resource partners so they can access \$10 million each in previously appropriated sums for the purpose of assisting businesses during the pandemic; and
- Strengthens the cybersecurity of the Small Business Administration by directing SBA to issue reports that assess its cybersecurity infrastructure and reporting cyber-threats, breaches, and cyber-attacks.

What these Changes Mean for Small Businesses

Reach Underbanked Communities and Rural Areas That Were Left Behind

SBA's interim final rule states that the Paycheck Protection Program is a "first-come, first-serve" program, creating a sense of urgency amongst small businesses to apply before the funds run dry. With that said, lenders are not required to process the loans in that manner, and lenders have given preference to existing clients shutting out small businesses, particularly the underserved and small "mom and pop" stores that lack a cadre of attorneys, accountants, and advisors. To make sure farmers, women-, and minority- owned small businesses don't get left behind, the bill:

- Creates an additional set aside of money specifically for community development corporations (CDCs), Microloan Intermediaries, community development financial institutions (CDFIs), and Minority Development Institutions (MDIs) to focus on lending to underserved communities.

Prioritizes the Nation's Smallest Businesses, Independent Contractors, Sole Proprietors, and the Self-Employed

The CARES Act requires SBA and the Department of Treasury to issue an emergency rule within 15 days of enactment of the law. Instead, the SBA rolled out guidance in a piecemeal manner forcing lenders to rely on incomplete and ever-changing information. The guidance left out vital information about eligibility of businesses and nonprofits, failed to inform lenders on how to close loans and provide forgiveness, and made it easier for large businesses to take advantage of the program. To make sure truly small businesses receive the assistance they need, the bill:

- Creates a 25% set-aside of funds solely for small entities with 10 or fewer employees and once expended, they would still be able to access assistance in the general PPP fund; and
- Mandates that any cancelled loans be redistributed to small entities with 10 or fewer employees.

Recognizes the Contributions of America's Nonprofits and the Challenges they Face

The CARES Act made 501(c)(3) entities eligible for PPP loans, which left out many nonprofits on the frontlines of the pandemic. Anecdotal reports also indicate that eligible nonprofits are experiencing much difficulty accessing PPP assistance. In order to help nonprofits, the bill:

- Creates a 25% set-aside of funds solely for nonprofits;
- Expands the eligibility to allow all nonprofits to participate;
- Removes the size restrictions on nonprofits; and
- Prohibits any lobbyist compensation from counting as payroll costs for PPP loans and certain nonprofits from obtaining PPP loans if they engage or intend to engage in certain political, campaign, or electioneering activities.

Provide Flexibility to Paycheck Protection Loan Borrowers

Small businesses have 8 weeks to spend the PPP loan proceeds on payroll, mortgage interest, rent, and utilities. Under SBA rules, the 8-week period begins on the date the borrower received the disbursement of the loan, regardless of whether the business is permitted to reopen. Currently, small businesses must choose between paying employees not to work or forgoing the debt forgiveness altogether. The bill:

- Extends the Paycheck Protection Program to December 31, giving small businesses an extra two months to apply for working capital loans and more time to seek forgiveness for the loan proceeds;
- Gives borrowers a 24-week period, giving them flexibility to wait out shelter in place orders and still remain eligible for forgiveness;
- Removes the requirement that 75% of loan proceeds be used for payroll since many small businesses will be unable to return to pre-pandemic operational levels;
- Provides a safe harbor for borrowers who are unable to rehire for a number of reasons, including rehiring workers by the December 31 deadline or the inability to operate at full capacity for safety reasons; and
- Ensures that expenses related to protecting worker and consumer safety, such as personal protective equipment (PPE) and plastic barriers are allowable uses of loan proceeds and forgiveness.

Protect Small Business Borrowers on Loan Repayments

Small businesses are eligible for loan forgiveness. However, SBA and Treasury have failed to issue guidance on forgiveness, which has left many business owners worried they may not be granted forgiveness. The Heroes Act:

- Extends the loan terms from two years to five years to lower monthly payments and extend repayment;
- Clarifies that interest accrues on a simple interest, non-compounding basis to provide additional cost-savings for borrowers who must repay the loans; and
- Mandates data collection and reporting on forgiveness.

Allow Borrowers with Minor Criminal Records to Participate in PPP

According to the Sentencing Project, one in U.S. adults have been arrested by age 23. With that said, SBA has issued confusing and frequently changing eligibility guidance for people with criminal records. The Heroes Act makes it easier for borrowers with low-risk criminal histories to obtain PPP loans.

Eases the Burdens on Hospitals to Participate in PPP

Current guidelines prohibit otherwise-eligible entities undergoing bankruptcy proceedings from receiving a PPP loan. The bill creates a narrow exception for critical access hospitals that are undergoing Chapter 11 bankruptcy reorganizations. While these entities are few, they are vitally important to the communities they serve, both as frontline providers during this public health emergency and as anchor institutions that provide the paychecks and local economic stability that Congress intended this program to preserve. These institutions need temporary financial assistance to weather sharp revenue decreases while remaining operational to serve local communities.

Streamlines the Interaction between the Employee Retention Credit and PPP

In addition to PPP, the CARES Act allows a tax credit for wages paid to employees to encourage businesses to retain workers. This section coordinates the tax credit for businesses that do get their loan forgiven and for those that do not get their loan forgiven. First, it does not allow the tax credit to be taken for PPP loans that are forgiven. Doing so would allow businesses a double benefit. However, there will be some businesses that took a PPP loan and do not get it forgiven. The IRS issued guidance saying businesses cannot use the tax credit if they get a PPP loan. This section explicitly states that businesses that took out a PPP loan, and do not get their loan forgiven, can utilize the tax credit for wages paid to employees.

Increases the Education and Outreach for Small Businesses

The CARES Act appropriated funds for SBA's Small Business Development Centers (SBDCs) and Women's Business Centers (WBCs). This bill amends this section to clarify that SCORE and Veterans Business Outreach Centers (VBOCs) are also eligible to receive \$10 million each in financial assistance to ensure small businesses across the nation have all the resources available to them as they navigate the pandemic.

Strengthens the Cyber Posture of the Small Business Administration

Media reports indicated the Small Business Administration (SBA) permitted sensitive, personally identifiable information of thousands of Economic Injury Disaster Loan (EIDL) applicants to become exposed. In recognition of the task the SBA has taken on to assist in the federal response to COVID-19, the Heroes Act requires directs the SBA to issue reports that assess its cybersecurity infrastructure and report cyber-threats, breaches, and cyber-attacks.