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What Franchise and Hospitality Companies Should Know! **A Guide to CARES and Other Relief Programs**

*This Alert has been updated to reflect the U.S. Treasury Department's
April 13, 2020 Paycheck Protection Program Guidance*

*By: Deborah S. Coldwell, Robert A. Lauer, Maral M. Kilejian, Jamee Munster, Sally L. Dahlstrom, and
Daley Epstein*

The Coronavirus pandemic is impacting every business sector across the globe. Many new resources, however, including the new **Coronavirus Aid, Relief, and Economic Security (CARES) Act**, provide franchise and hospitality businesses with opportunities for relief. The following information is intended to aid franchise and hospitality companies in understanding options available to them during this time. This information should be viewed as a general guide, and companies are encouraged to seek fact-specific advice from counsel should they have additional questions.

CARES Act Relief Overview¹

The CARES Act, signed into law on March 27, 2020, provides more than \$2 trillion of aid to companies in the public and private sector. The franchise and hospitality industries should pay particular attention to loans and tax relief opportunities available under the Act.

Paycheck Protection Program*

\$349 billion of the CARES Act is earmarked for the **Paycheck Protection Program (PPP)** which seeks to provide zero-SBA fee, less-than-four-percent interest loans to small businesses that cover 2.5 times their average total payroll costs incurred during the one-year period prior to the date on which the loan is made. The maximum loan available under the PPP is \$10 million.

Is my franchise eligible?

This loan program will be available to many franchisors and should be available to nearly all franchisees. The following categories of organizations are eligible:

- Any business operating as a franchise that is assigned a franchise identifier code by the SBA. This can be confirmed at: www.sba.gov/sba-franchise-directory
 - Of note, franchise brands that have been denied listing on the Directory because of affiliation between franchisor and franchisee may request listing to receive PPP loans. SBA will not apply affiliation rules to a franchise brand requesting listing on the Directory to participate in the PPP, but SBA will confirm that the brand is otherwise eligible for listing on the Directory.

¹ [Coronavirus Relief Bills: Requirements and Opportunities for Franchise Businesses, IFA Coronavirus Updates, International Franchise Association.](#)

- Any small business concern, business concern, non-profit organization, sole proprietorship, independent contractor or self-employed individual that employs fewer than 500 employees per physical location.
- Any business that meets the SBA's size standards.
- Any business that is assigned a North American Industry Classification System (NAICS) code beginning with 72 that employs no more than 500 employees per physical location. This includes hotels and restaurants.
 - Of note, for hotels and restaurants, if each hotel and restaurant owned by a parent business is a separate legal business entity, each hotel or restaurant location that employs not more than 500 employees is permitted to apply for a separate PPP loan provided it uses its unique Employer Identification Number (EIN).
 - The \$10 million maximum loan amount limitation applies to each eligible business entity. Unsure whether your company is comprised of one or more "eligible business entities"? The Department of the Treasury provides helpful examples in its FAQs, found [here](#).

What is covered?

The loans may be used to cover payroll costs for both full-time and part-time employees (this includes salary, wages, commission or other compensation), or payment of tips, sick/medical/family/vacation leave, group health care benefits and insurance premiums, retirement benefits, state and local taxes assessed on employee compensation, or the sum of payments of any compensation. The loans may also be used toward mortgage interest (but not principal), rent, and utilities.

What is not covered?

Payroll costs are capped at \$100,000 on an annualized basis for each employee. No more than 25% of the forgiven amount may be for non-payroll costs. The loans do not cover payment of mortgage principal and they may not be used for family or sick leave for which a credit is allowed under the Families First Coronavirus Response Act

How do I apply?

Starting **April 3, 2020**, you were able to apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. You should consult with your local lender as to whether it is participating. Visit www.sba.gov for a list of SBA lenders. You have until **June 30, 2020** to apply, but the U.S. Treasury Department (Treasury) is encouraging businesses to apply as quickly as possible as there is a funding cap and applications take time to process.

A link to the PPP application form is found [here](#). You will need to provide payroll documentation along with the application.

Loan Forgiveness

Borrowers can apply for loan forgiveness equal to the costs incurred and payments made during the 8- week period immediately following the loan origination date on the following (in each case, to the extent that such obligations were in place before February 15, 2020):

1. Payroll costs (excluding compensation over \$100,000);
2. Interest on mortgages; and
3. Payments of rent and utilities.

Further forgiveness for additional wages paid to tipped workers may be available. The amount eligible to be forgiven would be reduced in the event of employee layoffs or pay cuts.

Economic Emergency Injury Disaster Loans *

A provision of the CARES Act expanded eligibility for access to SBA **Economic Injury Disaster Loans (EIDLs)**, a type of loan initially designed for disaster relief. In accordance with the Act, the SBA will waive any personal guarantee on advances and loans below \$200,000 on loans made in response to COVID-19 before **December 31, 2020**.

The maximum loan available is \$2 million. Unlike PPP loans which may be made by any of the 1000+ banks authorized to make those loans, EIDLs are made by the SBA directly, so there may be a delay. Franchise companies that need cash quickly may find a PPP loan more suitable for their business needs.

Is my franchise eligible?

Businesses, sole proprietorships, independent contractors, non-profits, cooperatives or ESOPs with fewer than 500 employees are eligible to apply.

What is covered?

EIDLs may be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

How do I apply?

Information on how to apply may be found [here](#).

Treasury Fund Loan

Through another provision of the CARES Act, the Treasury is now offering businesses access to a \$454 billion "Exchange Stabilization Fund" to provide loans, loan guarantees, and other investments.

Is my franchise eligible?

Your business may be eligible for a Treasury fund loan if it was created or is organized in the United States and has significant operations in and a majority of its employees based in the United States and is not otherwise receiving adequate relief under other provisions of the bill. Eligible companies must meet several additional criteria, and loans through the Federal Reserve generally prevent the borrower from repurchasing stock and dividend payments while the loan is outstanding, plus an additional year.

How do I apply?

Information regarding the application process is forthcoming.

Employee Retention Credit*

The CARES Act provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is provided for wages paid or incurred from **March 13, 2020 through December 31, 2020**.

Is my franchise eligible?

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) whose gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

What is covered?

The credit is based on qualified wages paid to the employee. 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. The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee.

How do I apply?

Application are submitted through the IRS. Additional information is forthcoming.

**Note: a business may only be eligible to receive relief from one federal relief program but can apply for all available programs. Franchisors and franchisees are encouraged to examine the programs to determine which matches their business's needs.*

State and Local Economic Relief for Small Businesses

States and municipalities are adding programs by the day. Check your governor's website for up-to-date information about relief available in your area. The National Governors Association offers a list of [governors' websites](#). Some examples of state relief and other resources include:

California

- [City of Los Angeles Small Business Emergency Microloan Program](#). Emergency microloans of \$5,000 to \$20,000. Repayment terms of six months to one year carry an interest rate of 0% and five-year loans have interest rates of 3% to 5%.

Colorado

- [Denver Small Business Emergency Relief](#). Cash grants of up to \$7,500.

Florida

- [Florida Small Business Emergency Bridge Loan Program](#). Businesses with 2-50 employees. Loans up to \$50,000 - \$100,000. Loans are interest-free for one year; after that, the interest rate rises to 12%.

Michigan

- [Michigan Small Business Relief Program](#). Companies with under 50 employees. Grants up to \$10,000 to help cover working capital. Loans available in amounts from \$50,000 to \$200,000 at interest rates of 0.25%

New York

- [New York City Employee Retention Grant Program](#). Businesses with 1-4 employees. Grants up to \$27,000 that covers 40% of payroll costs over the course of two months. Business must show losses of 25% of revenue due to the coronavirus.

Lender and Corporate Small Business Assistance Programs

Deferment and forbearance may be available to business loan customers having trouble making payments. A list of banks offering relief may be found [here](#). You can also search the American Bankers Association's ongoing [A-Z list](#) of coronavirus response programs. Lastly, franchise and hospitality companies are encouraged to evaluate opportunities provided by the following corporate small business assistance programs:

- [Amazon Neighborhood Small Business Relief Fund](#). \$5 million fund. 50 employees or less or less than \$7 million in annual revenue. Grants available for businesses in Bellevue, Wash. and the South Lake Union and Regrade neighborhoods of Seattle.
- [Facebook Small Business Grants Program](#). \$100 million in cash grants and Facebook advertising credits.

[Additional Haynes and Boone guidance on the Paycheck Protection Program can be found here.](#)

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Haynes and Boone has a COVID-19 [task force](#) in place and continues to monitor the global impact of COVID-19 on various industries, including franchise and hospitality businesses. For questions on the CARES Act or other relief programs, please contact Deborah S. Coldwell at deborah.coldwell@haynesboone.com or any member of the Haynes and Boone, LLP [Franchise Practice Group](#).