

TECHNICAL CORRECTIONS AND ENHANCEMENTS TO THE CARES ACT

U.S. TRAVEL
ASSOCIATION®



TITLE I: ENHANCE AND EXTEND SUPPORT FOR EMPLOYEES OF SMALL BUSINESSES

Paycheck Protection Program (PPP)

While public health measures require the travel industry's customers to stay at home and businesses to close, the PPP is intended to provide short-term bridge funding to help small businesses cover basic payroll costs and expenses. However, amendments and technical corrections to the PPP are needed to expand eligibility to severely impacted small businesses and to provide adequate economic relief for the unique and unprecedented challenges of this pandemic.

- **Extend PPP and Increase Appropriations:**

- **Extend PPP to cover the worst months of the economic slowdown:** The PPP is expected to run out of funding within the next several weeks and the covered period for the program ends on June 30, 2020. It's clear that extended public health restrictions and a slow return to normal work, public gathering and travel patterns will result in small businesses having limited customers and revenue far beyond June 30.
- **Appropriate an additional \$600 billion for PPP.** This will ensure the program is sufficiently funded through December 2020.
- **Extend PPP through December 2020.** This will ensure the PPP provides support through the worst of the economic slowdown.
- **Allow small businesses to receive up to three PPP loans.** Permit small businesses that have already received a PPP loan to apply for up to two additional PPP loans if the business interest can prove that proceeds from previous loans have been expended. Ensure the eligibility for multiple loans applies to businesses concerns with multiple locations and waives franchise rules, as provided under the CARES Act.

- **Expand Eligibility:**

- **501(c)(6) nonprofits:** Destination Marketing Organizations (DMO), which are often classified as 501(c)(6) organizations, provide critical economic development support for local travel markets through tourism management and convention and meeting sales. Nonprofit DMO's are typically funded through a combination of local hotel room taxes and private sector contributions. But the economic shutdown and steep decline in hotel occupancy have wiped out their funding, forcing them to lay off thousands of workers and threatening to slow the economic recovery.
- **Clarify that 501(c)(6) nonprofits are eligible to participate in PPP.** Amend Section 7(a)(36)(A)(vii) of Title 15 U.S.C. to include 501(c)(6) in the definition of an eligible nonprofit under the Paycheck Protection Program.
- **Small businesses with multiple locations:** Under the CARES Act, certain business concerns with more than 500 employees spread over multiple locations are

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prohibited from receiving a PPP loan, with the exception of business concerns in the lodging and restaurant industries. This limited exemption should be expanded to cover other severely impacted industries, including retail, entertainment, and other service industries, such as salons and health clubs.

- **Expand multiple location waivers to entertainment and retail.** Amend Sec.1102(a)(D)(iv) of the CARES Act to allow businesses in severely impacted industries, including arts, gyms, amusement parks, theme parks, family fun centers, and entertainment (NAICS 71), retail trades (NAICS 44-45), janitorial services (NAICS 56), and beauty salons (NAICS 81) with multiple physical locations, but less than 500 employees per location, to receive PPP loans.
- **Political Subdivisions:** Destination Marketing Organizations (DMOs) classified as political subdivisions of a State or local government are ineligible to receive PPP loans. Similar to 501(c)(6) DMOs, these critical economic engines receive both tax-derived funding and private sector contributions, which are severely constrained as a result of the economic shutdown.
 - **Expand PPP eligibility to include political subdivisions of a State or municipal government.**
- **Clarify eligibility for the franchising sector:** In the CARES Act, Congress intended to maximize franchise eligibility in the PPP by waiving the affiliation rules, but agency guidance for the sector has been lacking and franchise owners, brands, and operators are being denied eligibility in the program. Clarifying Congressional intent and maximizing eligibility will ensure the workforce can stay connected to their employers. Pre-COVID, there were over 733,000 franchise units, supporting nearly 8 million jobs.
 - Franchisors or franchisees that meet the definition of a business format franchise under part 436 of title 16, Code of Federal Regulations should be eligible for a PPP loan, so long as any single location has less than 500 employees per location.
 - All franchisors with franchise systems registered in the SBA's Franchise Directory should be eligible for PPP loans.
 - All "business concerns" that are registered in the SBA's Franchise Directory should be eligible for a covered loan without regard to the number of employees, even if the single franchisee entity employs more than 500 people.
 - Given the fact that franchise systems registered in the SBA's Franchise Directory are determined to not violate the SBA's customary affiliation rules, as they are applied between a franchisor and franchisee, clause (36)(D)(iv)(II)'s waiver language should be interpreted to ensure that "business concerns" operating as a franchise are eligible for covered loans regardless of the number of affiliated entities it has. This should be true even if traditional SBA lending rules would disqualify the business concern.
 - Clause (36)(D)(iii)'s use of business concern should be interpreted to not limit any single entity that employs their employees throughout multiple locations to a \$10 million loan cap for all employees at all locations.
 - Due to clause (36)(D)(i)'s clear language, the term "any business concern" should be interpreted to mean that each franchise establishment that has less than 500 employees, but are not currently on the SBA's Franchise Directory as an approved "small business concern," is eligible for a PPP loan.
 - Clause (36)(D)(iv)(II)'s affiliation-waiver provision should be interpreted to allow for franchise systems that have previously been denied access to the SBA's Franchise Directory (due to affiliations with franchisors) to immediately apply and gain listing on the SBA's Franchise Directory for the duration of the COVID-19 crisis.

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- **Ensure Loan Amounts and Loan Forgiveness Match Small Business Needs:**

- **PPP loans should reasonably cover BOTH payroll and nonpayroll expenses:** The current calculation for maximum PPP loans is just 2.5x the average monthly payroll for 2019 and is inadequate to help small businesses cover both payroll AND expenses during the covered period.
 - **Calculate maximum loans at 8x the average monthly cost of all expenses.** Revise how the loan amount is calculated to include the average payroll, mortgage interest, qualified rent, and utilities for 2019, up to a maximum of \$10 million. This revised calculation will provide small businesses with more flexibility to cover both basic employee costs and necessary expenses, while businesses are limited or closed in the interest of public health.
 - 8x represents the number of months between the exhaustion of funds in the current PPP through December 2020. Travel was the first industry to fall at the beginning of this crisis as events were cancelled, and it will be the last to recover. The uncertainty of the virus and its possible resurgence even after it is contained will discourage travel. Additionally, lost jobs for individuals and families, and lost revenues for businesses will deter a return to normal travel patterns. Moreover, travel-dependent businesses rely on a peak season from April-September to carry their businesses through the entire year. Without travelers during those months, businesses will not survive through December.
 - **Allow eligible expenses to include initial franchise fees and royalties** paid by a franchise owner to a franchisor as defined by part 436 of title 16, Code of Federal Regulations.
- **Protect employee management contract workers under PPP:** Under the CARES Act, small businesses that have workers supplied through contracts with employee management companies, where the management company is the employer of record, cannot include the costs of those contracts in calculating maximum loan amounts or in loan forgiveness for employee retention. This leaves workers of employee management firms unprotected under the PPP, since those firms often serve many different businesses and exceed the 500-employee limit when viewed on a consolidated basis.
 - **Include employee management contracts in maximum loan calculations.**
 - **Ensure labor-related expenses incurred through employee management contracts are eligible for loan forgiveness.**
- **Allow flexible loan forgiveness for small businesses with few or no customers.** Necessary public health measures have caused small businesses to lose most of their customers or close entirely. In addition to payroll, these businesses must also pay rent, mortgages, utilities and other basic costs during the shutdown and beyond. Unfortunately, the PPP forces small businesses to rehire workers to normal levels, even without customers, and discourages them from using loan proceeds to cover basic expenses. For example, PPP calculates loan forgiveness based on rehiring to normal business levels and requires that 75% of loan proceeds be used on payroll costs in order to be forgiven. This makes the PPP impractical for helping businesses stay afloat while they are closed or have very few customers in the interest of public health.
 - **Require the SBA to allow small businesses that are closed or have very few customers compared to 2019 to use loan proceeds on payroll, rent, utilities, debt obligations, regardless of the percentage.**
 - **Require the SBA to allow full loan forgiveness on any amount used to cover eligible payroll and nonpayroll expenses.**
 - **Provide flexibility on the timing of the PPP so funding coincides with needs of the businesses.** Allow companies to maximize loan forgiveness for payroll when reopening is scheduled.

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Economic Injury Disaster Loans

Since Economic Injury Disaster Loans (EIDLs) constitute the primary form of assistance for the many small businesses and organizations struggling to survive, it's important to get it right and ensure the economic problems created by the virus are not allowed to wipe out huge swaths of the economy. It's critical that the next phase of relief:

- **Increase EIDL funding to \$50 billion:** This will help small businesses access EIDL loans throughout the full length of the outbreak.
- **Enable businesses to access a second EIDL:** Allow eligible entities to take out a second loan if they are still unable to meet their ordinary expenses and they exhaust funds from the first loan.
- **Increase the second EIDL cap to \$10 million:** Increase the loan cap to \$10 million for second loans, with an emergency cash advance of \$500,000, using the same process provided under Section 1110(e) of the CARES Act.
- **Waive all personal guarantees and collateral requirements:** These requirements are not feasible during a protracted and severe economic shutdown.
- **Waive affiliation rules for EIDLs to mirror affiliation waivers for PPP loans**

TITLE II, SUBTITLE C: ENHANCE TAX RELIEF FOR BUSINESSES OF ALL SIZES

Employee Retention Tax Credit

Employers are desperate to keep their workers, but with no revenue coming in due to mandated shutdowns and other social distancing measures, it's critical that the Employee Retention Credit be enhanced to help employers keep workers on the payroll, especially those not eligible for any other form of relief in the CARES Act—including Destination Marketing Organizations that function as independent governmental entities, but have experienced severe funding shortages due to travel-related tax revenue losses. To prevent further job loss, the next phase of relief must—

- **Increase the max wages taken into account for the credit,** under Section 2301(b)(1) of the CARES Act, to \$20,000 per quarter.
- **Allow taxpayers to claim the credit against payroll tax deposits** rather than payroll tax liability, to ensure cash-strapped employers can keep their employees on the payroll for as long as possible, particularly when used with the deferral of payroll taxes.
- **Allow governmental entities to claim the credit** if they experience more than a 40 percent drop in quarterly receipts due to COVID-19, compared to last year.

Deferral of Payroll Taxes

Since economic activity is entirely frozen and inaccessible to many travel businesses, many of them who use the Paycheck Protection Program to cover employee compensation will not have enough cash on hand to pay the federal payroll taxes connect to that compensation. Therefore, it's important that they can also defer payroll taxes for any compensation provided through the Paycheck Protection Program, without undermining the main benefit of the program, namely loan forgiveness. Therefore, we request the deferral of payroll taxes be modified to—

- **Allow taxpayers that receive loan forgiveness under the Paycheck Protection Program to defer payroll taxes owed this year to the next two years, as provided under Section 2302 of the CARES Act.**

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TITLE IV: ENHANCE AND EXTEND SUPPORT FOR EMPLOYEES OF LARGER BUSINESSES

Exchange Stabilization Fund

The Exchange Stabilization Fund (ESF) is intended to help larger businesses retain employees and remain solvent during the protracted economic shutdown. Unfortunately, the ESF only provides severely distressed businesses with additional debt at a time when their finances are already stressed, which prevents borrowers from rehiring and powering the economic recovery. To enhance the ESF, the CARES Act should be amended to:

- **Provide loan forgiveness that mirrors PPP loan forgiveness.** Enable mid- to large size businesses to obtain up to 3 months of loan forgiveness for employee retention and basic expenses.
- **Authorize the Treasury Department to make direct loans to severely impacted travel-dependent businesses:** Clarify that Treasury Department may serve as the facility for direct lending to severely impacted businesses, similar to the direct loans that the Treasury Department is authorized to make to airlines and aviation businesses. Currently, the CARES Act only allows the Federal Reserve to make direct loans on a widely available basis with strict credit and financial solvency requirements, which is prohibitive toward the most severely impacted businesses, since many don't meet the financial conditions required to access the loans.
- **Clarify that all 501(c) nonprofits are eligible to receive lending through the ESF.** Under the current CARES Act, 501(c) nonprofit may be eligible to receive lending, but are not specifically stated as an eligible category. Further, under the Mid-Sized Business Lending Program, only nonprofits with between 500 to 10,000 employees are considered eligible.
- **Establish specific programs for State and local governments, and political subdivisions.** Direct the Treasury Department and Federal Reserve to establish a municipal bond facility to help States, local governments, and other political subdivisions or instruments of government with bonding authority (such as destination marketing organizations, State tourism offices or airports) raise funding to cover employee retention, operating expenses and economic recovery efforts, by buying revenue-backed bonds through a quick and streamlined process.

DIVISION B: EXTEND EMERGENCY SUPPLEMENTAL APPROPRIATIONS

Airport Grants

Due to the continued decline in air passengers, airport revenue continues to fall and the Airport and Airway Trust Fund is being rapidly depleted. Congress will need to provide tens of billions in additional appropriations to ensure continued airport operations, maintain critical employees, and support airport businesses.

Provide Travel Businesses with liquidity through bulk federal purchases of future travel allowances:

The Federal government is one of the largest single purchasers of travel goods and services. To support travel businesses that have been severely impacted, establish a vehicle through the Department of Treasury, with support from the General Services Administration, to purchase bulk Federal contracts for lodging, airfare, conferences, car rentals, and other travel-related services and products over the next 10 years. The cash advances from bulk federal contracts would ensure travel businesses have enough receivables to pay their employees and to borrow against. Advances could be based on current per diems to save the government money over the long run.