

8 Ways Business Owners Can Take Advantage of the Federal Stimulus Package

By Mark J. Kohler, Attorney & CPA



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There is a strategy to maximizing all the benefits of Congress's recent \$2 trillion stimulus package in response to the COVID-19 pandemic. It's not just applying for the [Paycheck Protection Program](#) (PPP) or [tapping into your 401k](#). In fact, there are actually eight key pieces to the legislation that can assist business owners in one form or another. Also, realize that the definition of a "small-business owner" encompasses a lot of people, including you!

This means sole proprietors, LLC owners, S corp owner/shareholders, those with employees and those without. Remember, this includes the gig economy, which encompasses everyone from Uber drivers to those selling products on the web as a side hustle.

Here are the eight topics you should at least familiarize yourself with when putting together a strategic plan before meeting with your advisors:

1. Stimulus Checks
2. Economic Injury Disaster Loans (EIDL)
3. Paycheck Protection Program (PPP)
4. SBA Loan Forbearance
5. Increased Access to Retirement Accounts
6. Unemployment
7. Paid Sick Leave
8. Family Medical Leave (FMLA)

Most importantly, remember that this law allows you, the business owner, to take advantage of multiple strategies. Don't rely on misinformation found on the web telling you what you can and can't do. Study this and use it to guide you. Talk to your banker, CPA, attorney or business advisor. You are the captain of your ship!

Take Advantage of Multiple Strategies

Don't just hyper focus on the two loans (EIDL and PPP). A wise business owner with different types of operations could find that all eight strategies could help their business, themselves and their family. So, just because you think you are a smaller operation or don't have "employees" that the Paid Sick Leave provision, for example, wouldn't apply to you. Wrong.

Conversely, don't think you are too big of a business to consider how you could take advantage of several strategies all at once. Just because you haven't laid off employees or closed your doors doesn't mean you can't take advantage of the EIDL for a rental property you own, for example.

Also, as I've been presenting this lifesaving information to business owners in multiple webinars over the past week, I would refer to eight strategies and bundle the EIDL and PPP into the same benefit. However, I've come to realize they are two very different loans and can benefit business owners in different ways. (And yes, you can apply to both the EIDL and PPP. More on that below.) So, let's get to it....

Stimulus Checks: Do I Qualify and When Will I Get Mine?

This is first on my list because the majority of Americans, including you the small-business owner, will be getting one. The payments will be \$1,200 for individuals, \$2,400 for married couples, and for an extra \$500 for each child younger than 18. Unfortunately, that's when things get complicated.

Here's who won't get a stimulus check:

- Single individuals making more than \$99,000 (starts phasing out at \$75,000).
- Married couples making more than \$198,000 (starts phasing out at \$150,000).
- Children who are 18 years old or younger.
- College students between age 18 and 24 that are being claimed as dependents on their parent's tax return.
- Nonresident aliens.
- People who haven't filed 2018 and 2019 tax returns.

Treasury Secretary Steven Mnuchin said on March 30 that they will be deposited into Americans's bank accounts "within three weeks." However, some of you may ask, "How does the IRS know my bank account?"

If you gave the IRS your banking information when you filed your 2018 or 2019 tax return, that's where they will deposit your check. That method should cover a lot of people. Last year, about 92 million people received refunds via direct deposit. That represents about 82 percent of people who received refunds and nearly 60 percent of all tax filers.

If the IRS doesn't have your banking information, they will mail your heck to the address on the tax return. If your address has changed and you have concerns your mail won't be forwarded, you can go here to [update your address with the IRS](#). In 2008, when the government distributed similar stimulus money, deposits were made over a three-week period, while paper checks were sent through the mail over 10-week timeframe. According to the legislation, the IRS has until the end of 2020 to transfer the payments.

Now, if you haven't filed a tax return for 2019 yet, it's OK. The IRS will rely on your 2018 forms to get your contact information and look at your adjusted gross income to see if you qualify. However, if you haven't filed for either 2018 or 2019, file at least a simple return immediately. This will qualify you to receive the stimulus.

If you are on Social Security and haven't filed a tax return for a few years (because you weren't required to), the Treasury Department said late Wednesday that you will not be required to file a "simple tax return" to receive a stimulus check. The government already knows who you are and will send you the check.

With all of that said, here's the buzzkill: This isn't "free money." It's essentially an advance on your tax refund for 2020. Otherwise stated, it's an advance tax credit you'll see on your tax return when you file next spring.

The Takeaway: Make sure your address is up to date with the IRS, you have filed a 2018 or 2019 return, and if you haven't been claiming your children over age 18 on your return previously, have them file a simple return immediately for 2019.

Economic Injury Disaster Loans (EIDLs)

Some of you may want to run straight to the PPP, in which loans can be forgiven. Don't! You can also obtain the EIDL loan and use it for a different purpose. I am talking about this loan before describing the PPP for several reasons. First, you can apply online immediately without having to talk with a banker, and second, you can receive up to \$10,000 much more quickly and also get this amount forgiven. Here are the details....

These types of loans have been around a long time and used in the past by those whose businesses were harmed by a natural disaster. Since President Trump essentially designated the entire country as a disaster area, these loans fall under the CARES Act and are now available to all business owners. They were also enhanced with an immediate relief check of \$10,000 (for those that make too much to get the stimulus check, this is your chance to cash in and get some help for your business).

The SBA has historically offered many favorable terms in their EIDLs:

- Loans are up to \$2M.
- The term is 30 years.
- Interest Rates are 3.75 percent for small business and (2.75 percent for nonprofits).
- The first month's payments are deferred a full year from the date of the promissory note.

Now under the CARES Act, the EIDLs expanded provisions also include the following:

- EIDLs can be approved by the SBA based solely on an applicant's credit score (not repayment ability and no tax return is required). The government specified that a prior bankruptcy does not disqualify you.
- EIDLs smaller than \$200,000 can be approved without a personal guarantee, no real estate as collateral, and will take a general security interest in business property.
- It expands access to sole proprietors or independent contractors and all nonprofits, including 501(c)(6)s.

The \$10,000 emergency cash grants are most interesting piece of the legislation. Borrowers can receive \$10,000 in an emergency grant cash advance that can be forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue loss.

Moreover, applicants can get the emergency cash even if they don't qualify for additional funds. Because lending decisions are based on self-certification and the applicant's credit score, the review process is meant to proceed quickly. CARES also waives the requirement that you be unable to obtain credit elsewhere. That means you can apply even if you already have a credit line.

You can start immediately and apply for these loans directly through the SBA at www.SBA.gov/disaster. There is no need to make an appointment with a banker to start the loan process.

Also, as I stated above, you can actually apply for both the EIDL and PPP loans. Don't listen to someone who says you can't. The reason why there is confusion is that there is one particular restriction: The disclosure comes on the PPP application. It asks if you have received EIDL funds. Guidance in the Act says you have to disclose if you applied, but bankers aren't currently asking, and the current app doesn't ask this either (which will probably be updated). For now, I suggest you follow the written word and whatever is on the app. You have to sign and certify the information is correct on the app, and lying would be bank fraud. Don't lie! From a strategic point of view, apply for the PPP first, *then* the EIDL if you're concerned or the app is updated.

If you apply for both and the bank flags as such, it's not the end of the world. The PPP amount would simply be reduced by the \$10,000 emergency funds, but you can still obtain the long-term EIDL funds that aren't forgiven.

The other restriction is that if you want to receive "debt forgiveness" for the \$10,000 EIDL money, or any funds you receive under the PPP, the monies can't be used or counted for both loans. For example, if you use the PPP for payroll expenses during the appropriate time and receive debt forgiveness, you can't use the same payroll expenses to obtain forgiveness of the \$10,000. However, you could use the EIDL money for other things like rent and get the \$10,000 forgiveness with a different expense, or use the money for payroll *after* the PPP time period.

Finally, let's be honest — this is not a loan for you to start a new business. You have to have been in business by January 31, 2020 to qualify. This is to build or save your business after the damages from the coronavirus, which you will have to explain in order to get this loan. Most importantly, this is a loan that you will have to pay back. If your business was already on life-support before COVID-19, maybe it's time to reconsider your future plans rather than go into more debt.

The Takeaway: File immediately for the EIDL \$10,000 [emergency funds](#) and continue providing/uploading information to even get a bigger loan if necessary. You can always pull out of the process if you decide later you don't need the money. Plan to use these funds for things other than the PPP (if you are applying there as well), but in the meantime get rolling so you don't miss out on the loan if you need it.

Paycheck Protection Program (PPP)

This loan is simply historic. It's an amazing opportunity for a small-business owner to get a loan to help cover payroll costs (and a few other costs as well), with the potential of having it completely forgiven and never requiring a dime be paid back.

In order to qualify, a business must have fewer than 500 employees, show that it was in business on or before February 15, 2020 and can certify that the business has been economically affected by the coronavirus, or even that economic uncertainty makes the loan necessary.

The loan is up to \$10 million, but the amount each business gets is based on its payroll costs. The amount you qualify for is based on 2.5 times your average monthly payroll costs. Your monthly average payroll is calculated based on your prior 12 months of payroll. Take the average monthly payroll number and multiply it by 2.5. For example, if your monthly average payroll was \$20,000, then you would qualify for a \$50,000 PPP loan.

The true beauty of this loan is that if you use the money for payroll, rent, mortgage obligations, utilities and other fixed-debt obligations in the first eight weeks after the loan funds, the debt is completely forgiven! However, if the number of full-time employees is reduced over this time period or if your payroll costs are reduced 25 percent or more, then the amount of the loan eligible for forgiveness will be reduced.

Whatever funds you don't get forgiven convert to a two-year loan that is nearly interest-free. The bill allowed for a maximum rate of 4 percent, but the guidance issued by the U.S. Treasury is stating that the maximum rate would be 0.5 percent.

To obtain this incredible PPP loan, a business owner must apply through an SBA loan officer at a bank. A sample of the [loan application](#) has been released by the SBA, but you'll be getting a loan package from your banker that you'll be going through with the bank. The bank that grants the loan will determine the loan-forgiveness amount based on the criteria above. The business will request forgiveness of the loan with evidence to the bank, and the bank will have 60 days to approve or deny the forgiveness.

As I stated above, but it's worth saying again, you can actually apply for both the EIDL and PPP loans. Don't listen to someone who says you can't. The reason why there is confusion is due to one important disclosure and one particular restriction. The disclosure comes on the PPP application. It asks if you have received EIDL funds. Guidance in the Act says you have to disclose if you applied, but bankers aren't currently asking, and the current app doesn't ask this either (which will probably be updated). For now, I suggest you follow the written word and whatever is on the app. You have to sign and certify the information is correct on the app, and lying would be bank fraud. Don't lie! From a strategic point of view, apply for the PPP first, *then* the EIDL if you're concerned or the app is updated.

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The other restriction is that if you want to receive debt forgiveness for the \$10,000 EIDL money or any funds you receive under the PPP, the monies can't be used or counted for both loans. For example, if you use the PPP for payroll expenses during the appropriate time and receive debt forgiveness, you can't use the same payroll expenses to obtain forgiveness of the \$10,000. However, you could use the EIDL money for other things like rent and get the \$10,000 forgiveness with a different expense or use the money for payroll *after* the PPP time period.

The Takeaway: Determine if the PPP works for your business, and do so by calculating the numbers on your payroll for the past 12 months. If it looks like the program could work for you, immediately contact an SBA-qualified loan officer at a bank and get the application process started. Get in line as soon as you can if you are seeking this loan.

SBA Loan Forbearance

Some of you may already have one or more SBA loans in your business that you used for equipment, expansion or even real estate, including your own building. If this happens to be a SBA 7(a), 504 or Micro loan, the CARES Act requires the Government to automatically make the payments for you over the next six-month period beginning April 1, 2020.

I use the word forbearance because it's a unique program and not simply a payment holiday. The government will literally cover payments, including principal and interest, for the next six months. At the end of that time, your mortgage balance will be reduced, your credit will not be affected, you don't have to claim the payments made on your behalf as income, and you are back to your regular payment cycle.

In fact, in my own particular situation (I have an SBA 504 loan), my lender sent me an email that I didn't even have to apply for the benefit. It was automatic!

The Takeaway: Now, I'm not suggesting you wait and hope your bank does this for you. If you haven't heard from your loan serving agent or bank, and you have the proper SBA loan that qualifies, reach out to everyone involved and make sure this happens.

Increased Access to Retirement Accounts

This is a great strategy in the short run to access cash while you wait for other benefits, but not a good strategy in the long run. Tapping into your retirement accounts, or some might say "raiding" your future savings and retirement, is a very dangerous proposition.

If you asked me whether it was a good idea for you, you'd better sell me on one of two points: 1. You are going to use the money in the short run and pay it back through your EIDL or PPP loans, or 2. Your business is so amazing that this loan is a no-brainer. If not, I would think twice or three times before you touch that sacred money.

Now, assuming you need to use your retirement money, the new CARES Act gave some wonderful benefits and perks on how to access it:

- **Increased loan provisions for 401k.** First, the new law increases the [dollar amount you can loan yourself](#) from your own 401(k) from \$50,000 to \$100,000. Historically, it's been 50 percent of your account value, or \$50,000, whichever is less. There are no taxes or penalties owed when you take the loan, and so long as you pay the loan back, it's a tax- and penalty-free opportunity to access your own retirement savings early. You have five years to pay back the 401(k) loan, and it must be paid back in substantially level payments, at least quarterly, within five years. A lump-sum payment at the end of the loan is not acceptable. The interest rate for 401(k) loans is currently 5.25 percent. By law, the interest rate to be charged is a "commercially reasonable" rate. This has been interpreted by the industry and the IRS/DOL to be prime plus 2 percent (prime is currently 3.25 percent).
- **Penalty-free distributions from any retirement account.** Next, the new law also creates a penalty-free early distribution rule whereby taxpayers under age 59-and-a-half can take a penalty-free account distribution from their retirement account of up to \$100,000. This includes IRAs, Roth IRAs, SEP IRAs, SIMPLE IRAs, 401(k)s,

pension plans, 457 plans and 403(b) plans. The 10 percent early withdrawal penalty is waived, but you are taxed on traditional funds distributed. However, the special distribution provision allows you to pay back the retirement account over a three-year period. You can make multiple payments back to the account or one lump-sum payment to the account by the end of the three-year window. This is an excellent option, as it allows those who can get back on their feet financially to return the funds to their retirement account. And if you do, you'll avoid any taxes on the distribution. The penalty-free distribution option is available on qualifying distributions made from January 1, 2020 to December 31, 2020.

The Takeaway: Review all of your account balances in your retirement accounts and decide if you really need the cash and if it's worth it to access these accounts. If so, get in touch with your account custodian, broker or administrator as quickly as you can to get the process started.

Unemployment Benefits for the Self-Employed

Keep in mind, this isn't just about unemployment for your rank-and-file employees. Have you employed your spouse or children in the past? Are they still working for you in this COVID-19 lockdown? Should you claim unemployment rather than pursue the PPP loan? There are a lot of options you may haven't thought about.

Also, what was so shocking about this new legislation was that for the first time in history, the government was providing federal unemployment benefits for the self-employed, something unheard of in the past. Also, the new law expands unemployment benefits, with an additional federal benefit on top of the normal state benefits.

Under the new law, state unemployment benefits have been expanded by an additional 13 weeks, for a total of 39 weeks. Regular state unemployment eligibility is typically 26 weeks. Benefits can range from \$200-\$550 a week, depending on the State.

Next, the federal government is giving out \$600 a week, in addition to the state benefit. But in order to get the federal benefit, you first must be approved for state unemployment.

As a strategic example, a business owner may terminate a family member that's been legitimately on the payroll so they can claim unemployment, apply for the PPP loan for their own payroll (which is forgiven), apply for the EIDL for the immediate \$10,000 (which can also be forgiven), and then before they terminate the family member, give them paid sick leave for two weeks (see below). This is the power of a coordinated strategy.

So, if you are going to pursue unemployment benefits, I wanted to set forth some basic steps. Please know that these can vary depending on your situation and the state you live in, but they are certainly a great place to start:

1. If you have rank-and-file employees you had to furlough or terminate, it's up to them to claim unemployment, which they probably will.
2. Did you have any family members on your payroll (W-2), not 1099 subs, over the past year?
 - o If yes, we want to determine if it's best to keep them on payroll or let them claim unemployment.
 - o If we decide to claim unemployment, we'll go to Step 4.
3. Are you as the business owner completely stepping away from the business and have no other sources of earned income? Meaning the business is not making a profit, or you are completely shutting it down?
 - o If yes, then move onto Step 4.
4. Research your state requirements for qualifying for employment. This means determining the base period for which an employee must have worked, how much they received and what the benefits would be. Decide if it's worth applying.
5. Get your application in for state unemployment. This is required.
6. In order to get the federal "kicker" of \$600 a week, you first must be approved for state unemployment and receive that benefit as stated above.

Individuals who haven't been laid off or can't work due to a variety of reasons related to the coronavirus would also be eligible for unemployment checks. These reasons would include a case where they were diagnosed with coronavirus, were awaiting a diagnosis or had a family member diagnosed with the disease. Individuals who were scheduled to start a job

and could not because their future workplaces had been shut down due to the coronavirus would also be eligible. Finally, individuals whose head of household died directly due to coronavirus would be eligible.

The Takeaway: Start with Steps 1 and 2 above and see if unemployment benefits could work for your small business and family circle.

Emergency Paid Sick Leave (EPSL)

When President Trump signed the Families First Coronavirus Response Act, the new law now required certain employers to provide EPSL in certain circumstances. It takes effect on April 2, 2020 and will expire on December 31, 2020.

This is an unheard-of law that's never been on the books before. Essentially, qualifying employees (see the six reasons below) can receive paid leave for up to two weeks in advance (while not working), and the federal government will pay for it.

Only employers with fewer than 500 employees, including public agencies, are required to provide the EPSL benefit. The law also allows for subsequent Department of Labor regulations to exempt small businesses with fewer than 50 employees if applying these provisions would jeopardize the viability of the business.

Keep in mind, the EPSL doesn't cost employers anything! Once benefits are paid, employers simply apply for a full 100 percent reimbursement and receive a dollar-for-dollar tax credit against any payroll taxes paid with their quarterly payroll reports.

If employees qualify under 1 of these six reasons (see below), they can receive benefits in the following amounts:

1. Two weeks (80 hours) of pay, immediately (not after they come back) paid at their regular rate of pay, for reasons 1-3 below (employee is sick with COVID-19). This is at a maximum of \$511 a day and \$5,110 in total.
2. Two weeks (80 hours) of pay, immediately (again, not after they come back to work) paid at 2/3 their regular rate of pay, for reasons 4-6 below (caregiver reasons). This is at a maximum of \$200 a day and \$2,000 in total.

In order to qualify, employees must show the inability to work or telework due to any of the following:

1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
2. The employee has been advised by a healthcare provider to self-quarantine because of COVID-19.
3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
4. The employee is caring for an individual (not limited to a family member) subject to a quarantine or isolation order or advised to quarantine or isolation.
5. The employee is caring for a son or daughter whose school or place of care is closed or childcare provider is unavailable, due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar conditions as specified by the Secretary of Health and Human Services, in consultation with the Secretary of the Treasury and the Secretary of Labor (a catch-all!).

Incredibly, the sick-leave provision applies to all employees, regardless of length of service.

The Takeaway: If you have a spouse or family member on the payroll, and they qualify under one of the above six reasons, they could receive two weeks pay, and all it costs you is the employment taxes. That's close to \$5,000 of free money. Just remember to be honest and keep good records if you make the claim.

Family Medical Leave (FMLA)

The new CARES Act also dramatically expands the FMLA. This portion of the law was passed to give employees compensation and the necessary time to take care of a family member effected by the virus. It also takes effect on April 2, 2020 and will expire on December 31, 2020.

Essentially, if an employee qualifies, it allows the employee up to 12 weeks of paid leave, and the employer is reimbursed up to certain limits and amounts.

Again, not all companies will participate, as this law only applies to employers with fewer than 500 employees, including public agencies. However, employers of an employee who is a healthcare provider or an emergency responder can elect to exclude the employee from this FMLA provision. The law also allows for subsequent Department of Labor regulations to exempt small businesses with fewer than 50 employees if applying these provisions would jeopardize the viability of the business.

This is limited to an employee who cannot work or telework due to the need to care for the employee's minor son or daughter if the minor child's school or place of childcare has been closed, or the childcare provider is unavailable due to a "public health emergency" with respect to COVID-19 declared by a federal, state or local authority. Basically, it is "caregiver leave."

Unlike Emergency Paid Sick Leave, under the FMLA provision, only full- and part-time employees who have been on the employer's payroll for 30 days are eligible.

The first 10 days (two weeks) are unpaid, but an employee can substitute accrued paid leave, including the new EPSL. The remaining leave (a maximum of 10 weeks, as the total available is still 12 weeks) is paid at 2/3 of the employee's regular rate, for the number of hours the employee would be otherwise scheduled to work. This pay is capped at \$200 a day and \$10,000 total.

Finally, under the expanded FMLA provision, the employee must be restored to the same or equivalent position. However, there is an exception for employers with fewer than 25 employees, if the employee's position no longer exists due to operational changes related to the public-health emergency, such as a reduction in force or restructuring because of a downturn in business. Essentially, an employer cannot retaliate against an employee for exercising his or her rights under these new laws. You will also have to post a notice detailing these laws, and the Department of Labor is in the process of drafting that Notice.

The Takeaway: If you have had a spouse or family member on the payroll for at least 30 days, and they qualify for paid FMLA, this could be another perfect fit for your business while you as the business owner continue to get paid under the PPP.

In summary, please realize that changes are happening daily as we all navigate rough waters, and we are doing our best to keep our clients, and even non-clients, up-to-date by publishing more videos, podcasts and articles. We pray your family will be blessed with health safety and success. Hang on!



Mark J. Kohler is a CPA, Attorney, co-host of the Radio Show, [Refresh Your Wealth](#), and author of the new book, [The and Legal Playbook — Game-Changing Solutions for Your Small-Business Questions: 2nd Edition](#), and [The Business Owner's Guide to Financial Freedom — What Wall Street Isn't Telling You](#). He is also a partner at the law firm [Kyler Kohler Ostermiller & Sorensen, LLP](#) and the accounting firm [K&E CPAs, LLP](#).