



# CREATIVE GENIUS LAW

As Quick + As Dirty As Possible |  
A Guide to Understanding the  
CARES Act, for Creators.

**+why you should not leave  
money on the table.**

Updated: April 3, 2020

Dear Creators,

What a time, right? We hope that you've been taking care of yourself in any way that you see fit -- whether that's relaxing and taking a breather, filtering out some of the news, dancing at a virtual party, facetimeing with friends and family, focusing your all on a new project or simply just being. Our team has been fairly quiet + in deep reflection. We've extended ourselves grace in dealing with a time that is anything but ordinary. We encourage you to do the same. If any time calls for showing grace to yourself, it is now.

In the midst of our quiet reflection, we wanted to figure out the best way to support you as well. While we've all been anxiously awaiting the release of the Federal Government's relief plan for businesses, we knew that it would be way too much for any of you to sort through a 600+ page bill given everything we're already trying to overcome. That said, we did it for you. This is our "as simple as we could make it" summary of the [CARES ACT](#).

**Feel free to share it with other creators + business owners and even the people on your team who may need this information as well. Whoever you feel would benefit from it.**

**I ask that no matter what, these next few days you carve out time to submit the applications that apply to you. A lot of times, small businesses are left out of the mix + this time, nearly \$2 trillion in aid has been set aside to make sure you're good.**

**Promise me, that you'll do this.**

Don't hesitate to reach out to us if there's anything that we can do for you. We'll be rolling out some additional resources on our Instagram page @creativegeniuslaw over the coming weeks as well.

Yours truly,



Patrice + CGL Team

This guide covers [Title I](#) which is relevant for business owners + freelancers. [Title II](#) is for employees who may have experienced a reduction in income due to being furloughed or laid off.

**The key ways that you may get relief from the bill include:**

- A payroll protection loan
- An emergency relief grant (with advance payment)
- A tax credit
- Deferred payment for social security tax payments (paid as a part of your payroll taxes for employees)

And because some of you are building your dreams, on the side of working elsewhere, we included the section concerning unemployment benefits.

**Title I - Keeping American Workers Paid and Employed Act**

*§ 1102. Paycheck protection program*

**First things first, applications for this section will be available on Friday, April 3rd. Scroll to the last page and you'll find a link to a sample application. Review it now so you're prepared to swiftly move on Friday.**

There are approximately 1,800 lenders that will be providing these loans on behalf of SBA. Some banks like [U.S. Bank](#), already have preliminary interest forms posted, but you should check in with your preferred lender.

**WHO THIS SECTION IS FOR:**

**Small business owners + Freelancers (including employers, independent contractors + sole proprietors) with teams and/or rent to cover. You must have less than 500 employees. If you do have more, then SBA must determine that your business size is standard for the industry in which the entity operates. If you are in a hospitality business (i.e. accommodations, food service, bars), the 500-employee limit is applied for each location.**

These aren't your standard SBA loans, keep reading.

**Maximum Loan Amounts**

If eligible, you'll be able to borrow a maximum of 2.5 times your average monthly payroll (up to a max of \$10,000,000). Your loan amount will be based on the average *eligible* costs over the one-year period preceding the loan.

Don't worry, if you weren't in business for the full year preceding the loan, the bill covers you too. Keep reading.

### **What is Considered a "Payroll Cost"?**

Now many of you may be thinking, "I don't have employees, only independent contractors." **We, along with many others, initially believed that contractors were covered in the definition of payroll costs, but the U.S. Chamber of Commerce hosted a town hall on April 3rd and clarified that business owners cannot include independent contractors in "payroll costs" but independent contractors can apply on their own for the loan.**

Payroll costs **include**:

- Salary, wage, commission, or similar compensation (full + part-time folks)
- Tips
- Vacation
- Family leave
- Sick pay
- Allowances for dismissal or separation
- Contributions to maintain group health care
- Payment of retirement benefits
- State and local tax payments.

Payroll costs **that are not covered** are compensation over an annual salary of \$100,000 (calculated on a prorated basis), compensation for employees whose principal place of business is outside of the United States, taxes withheld or paid by you for income tax or FICA, and paid sick leave or paid family medical leave under the Families First Coronavirus Response Act. Hint: This may be a good section to check in on with your accountant to make sure you're painfully clear on what's not covered.

### **If I Am the Owner of my Company, but Not an Employee (meaning your company does not pay payroll taxes on your behalf but you instead pay self-employment taxes), can I Seek the Loan for my Own Pay?**

We believe so. We've checked with a few colleagues on their interpretation and our general consensus is, probably. The bill specifically states that. "During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan".

However, this is a question that we strongly encourage you to pose to your lender.

### **What Can Loan Proceeds Be Used to Cover?**

In addition to the payroll costs listed above, loan proceeds can be used to cover interest on mortgage, office rent, office utilities and interest on debt incurred prior to the covered period.

## **What Period Does the Loan Cover?**

Loans are available for expenses during the “covered period” between February 15 and June 30, 2020.

## **And, What Else?**

It’s key to know that the bill requires lenders to treat every borrower as having been impacted by the COVID-19. The reality is that none of us know what to expect of the months to come so being proactive is key.

### **The loans will have the following terms:**

- Minimal documentation required to start - this, primarily is to make sure that loans can be processed as quickly as possible. Instead of extensive documentation, you’ll be certifying that the information you submit on your application is truthful.
- Personal guarantees are waived - this is HUGE. Commercial loans almost always require a personal guarantee.
- No more than a 4% interest rate.
- A maximum maturity period of 10-years (to the extent your loan is not forgiven under Section 1104 - don’t miss this section, it’s the best part of the entire bill!). Loan repayments can be deferred for 6 to 12 months, upon your request.
- The portion of the loans used for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments will be forgiven. In order to qualify for forgiveness, you will need to submit documentation as requested by the lender. [We provide some guidance for you in this guide.](#)
- No recourse against individual owners, directors or officers of the borrower unless the loan is used for a purpose not permitted by the requirements.

## *§ 1103. Entrepreneurial development*

### **WHO THIS SECTION IS FOR:**

**Small business owners + Freelancers who may be in need of education and training in the following areas.**

- Accessing and applying for resources provided by SBA and other federal resources  
Relating to access to capital
- The hazards and prevention of the transmission of COVID-19 and other communicable diseases;
- The potential effects of COVID-19 on the supply chains, distribution, and sale of products of small businesses and the mitigation of those effects, and
- Other risk management practices.

This section provides grants for education, training, and advising to Small Business Development Centers and Women's Business Centers. In other words, you can expect expanded training opportunities.

Be sure to check with your local [Small Business Development Centers](#) and [Women's Business Centers](#) for updates on when programming in your area will be available.

## *§ 1106. Loan Forgiveness*

### **WHO THIS SECTION IS FOR:**

**Small business owners + Freelancers who use the payroll protection loan for payroll costs (calculated under Section 1102), mortgage interest, rent, and utilities (who can also provide proof that you did so).**

### **How Much of the Payroll Protection Loan can be Forgiven?**

An eligible borrower, as defined in Section 1102, is eligible for forgiveness on the payroll protection loan in an amount equal to what you paid in the 8-week period following receipt of the loan for payroll costs, mortgage interest, rent, and utilities. As a reminder, even though you weren't required to submit extensive documentation to secure your loan, the circumstances change at this stage. Minimally, you should have the following documentation on hand:

- 2019 IRS Quarterly 940, 941, or 044 payroll tax reports
- Last 12 months of payroll documentation
- 2019 1099s for independent contractors
- Documentation of PO, vacation pay, and FMLA pay
- Documentation of health insurance premiums paid for group plans
- Documentation of retirement plan funding

**Short version -- if you plan to take advantage of the loan forgiveness, keep your documentation in order.**

### **How Long Will a Decision Take.**

It's supposed to take 60 days max.

### **How Will the Amount be Calculated?**

The bill provides two methods for calculating your forgiveness amount and leaves it up to you to select the method.

We encourage you to work with your accountant or financial professional to determine what makes sense for your business.

If someone leaves your company or you slash wages during the covered loan period, the forgiveness amount will be impacted based on when the reduction occurred and how much.

If you plan to make any staffing changes during the covered period, please consult with your accountant or financial professional beforehand so that they can advise you on how this will impact your forgiveness amount.

### **Will the Forgiveness Amount Be Taxed to You?**

No. The forgiveness amount will not be taxed to you.

## *§ 1108. Minority Business Development Agency*

### **WHO THIS SECTION IS FOR:**

**Minority small business owners + Freelancers who may be in need of counseling, education, and training concerning federal resources + your response to COVID-19. Similar to our guidance provided concerning §1103, stay tuned to new programming in your area.**

The section appropriates \$10 million for the Minority Business Development Agency to provide counseling, training, and education on federal resources and business response to COVID-19 for small businesses through the Minority Business Centers and Minority Chambers of Commerce.

## *§ 1110. Emergency EIDL Grants*

### **WHO THIS SECTION IS FOR:**

**Small business owners + Freelancers who need expedited funding. As in, within 3 days.**

EIDLs are working capital loans to help small businesses and most private, non-profit organizations of all sizes to meet financial obligations that cannot be met as a direct result of the disaster. This section expands the eligibility of the SBA's Economic Injury Disaster Loans (EIDLs), allowing businesses suffering economic harm due to COVID-19. It gives the SBA more flexibility to process and disperse smaller loans.

### **What Is It?**

This section allows businesses to apply for an expedited EIDL in the amount of \$10,000, available within three days, through an Emergency Grant in order to maintain payroll, provide paid sick leave, and to service other debt obligations. Any advances that you receive will be reduced by the loan forgiveness amount for a loan of payroll costs. Even better, if you don't qualify for a loan for some reason, then you don't have to pay this back.

[The application is available now.](#)

**In order to apply for Emergency Economic Injury Disaster Loan, you must submit the following documentation:**

- Business Loan Application (SBA Form 5) completed and signed by business applicant
- IRS Form 4506-T completed and signed by:
  - the applicant business,
  - each principal owning 20% or more of the applicant business,
  - each general partner or managing member and,
  - any owner who has more than a 50% ownership in an affiliate business. NOTE: affiliates include business parent, subsidiaries, and/or businesses with common ownership or management.
- Complete copies, including all schedules, of the most recent Federal income tax returns for the applicant business (or an explanation of why this isn't available)
- Personal Financial Statement (SBA Form 413) by the applicant (if a sole proprietorship), or each principal owning 20% or more of the applicant business and each general partner or managing member (if not a sole proprietorship)
- Schedule of Liabilities listing all fixed debts (SBA Form 2202 may be used)

### *§ 1113. Bankruptcy*

**WHO THIS SECTION IS FOR:**

**Small business owners + Freelancers who are undergoing bankruptcies (or who might need to do so). The bill permitted temporary amendments to the bankruptcy code. We are not bankruptcy professionals, so the most we can tell you here is to make sure that your bankruptcy attorney refers to this section in the guide to see how it may impact your proceeding and payment plans.**

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### **Title II - Assistance for American Workers, Families, and Businesses**

**WHO THIS SECTION IS FOR:**

**If you were laid off, furloughed, or have a reduction in pay, this applies to you.**

**Subtitle A - Unemployment Insurance Provisions**

### *§ 2102. Pandemic Unemployment Assistance*

This section creates a temporary pandemic unemployment system program for those terminated or unable to work for a COVID-19 related reason, and who are not eligible for regular compensation or extended benefits, including those individuals who have exhausted all rights to regular unemployment or extended benefits under State or Federal law. This



section is in effect from January 27, 2020 until December 31, 2020. You may receive unemployment compensation under this section for a **maximum** of 39 weeks.

### **Who Is Eligible?**

In addition to traditional employees, you may also be covered if you are self-employed (includes gig and independent contractors). You must certify one of the following:

- Able to work except that you are unemployed or partially unemployed, or
- Unable or unavailable to work because you were diagnosed with COVID-19 or is seeking a medical diagnosis, or a member of your household is diagnosed with COVID-19 or meets one of the following factors:
  - You are providing care to a family member of member in the individual's household who is diagnosed with COVID-19,
  - A child or another person in your household cannot attend childcare or another facility for care that is closed as a direct result of COVID-19,
  - You are unable to reach his or her place of employment due to a quarantine requirement,
  - You can your place of employment but has been instructed to self-quarantine,
  - You were scheduled to start employment but cannot reach your new place of employment or no longer has the new employment available due to COVID-19,
  - You have become the breadwinner or major support for the household due to COVID-19,
  - You have quit your job due to COVID-19
  - Your place of employment is closed due to COVID-19,
  - You are self-employed and cannot find work or you are unemployed.

### **What Is Your Benefit Amount?**

You will receive the weekly benefit amount authorized by the state in which you are employed, but extended by 13 weeks. You'll also receive an additional \$600 per week under Federal Pandemic Unemployment Compensation for up to four months.

Great news for employers-- we've read from multiple sources that charges will be waived for you.

**NOTE:** This section does not apply to you if you are able to work from home and your pay has not been impacted. It also does not apply if you are receiving paid sick leave or any other type of paid leave benefits.

## **Subtitle C - Business Provisions**

*§ 2301. Employee retention credit for employers subject to closure due to COVID-19.*

## **WHO THIS SECTION IS FOR:**

**Small business owners who employ others. This section covers your employees (who you actually pay payroll taxes for) and not contractors. Also, if you are an employee of your S Corp, this applies to your company as well.**

If you're an eligible employer (see below) you will receive a refundable payroll tax credit equal to 50% of up to \$10,000 in wages per employee (including healthcare benefits and payroll taxes).

What does this actually mean? If you continue to pay your employees, despite your business closure, you will receive this tax credit.

## **Who is Eligible?**

### **An "eligible employer" is an employer:**

- Whose operations are fully or partially suspended during a calendar quarter due to orders of a government authority limiting travel, commerce or group meetings due to COVID-19, or
- Whose gross receipts, during an eligible calendar quarter beginning with the first quarter 2020, are 50% of the gross receipts the employer earned for the same quarter in the prior calendar year.

This is another section to cover in detail with your accountant. There are limitations here, best explained by the tax pros.

## **What Period Is Covered?**

The tax credit applies to wages paid between March 12, 2020 and January 1, 2021, subject to any limitations provided in the bill.

## **Does the Size of Your Company Matter?**

Yes, if you have 100 or fewer employees, all employee wages qualify for the credit, regardless of whether they are furloughed or face reduced hours. However, it's important to note that if you receive a payment protection loan, you are not eligible for this credit. Additionally, wages that qualify for the required paid leave credit are not eligible for the credit. Most of our peeps fall into the "100 or less" category. If you have a larger workforce, refer to the bill for further detail applicable to you.

## **How Does This Tax Credit Play Out In Real Life?**

You may offset without penalty on a dollar for dollar and payroll by payroll basis against the "applicable employment taxes" the amount of the credit you are eligible to deduct. To the

extent that the above deduction exceeds your liability for “applicable withholding taxes”, you will be eligible for a tax refund for the excess amount.

There are few additional important provisions to note in this section.

- Wages to an employee for which an employer seeks the credit may not exceed the amount the employee would have earned during the 30 days before the eligibility period.
- Employers treated as a single-employer for benefit plan purposes are treated as a single employer for purposes of this credit.

## *§ 2302. Delay of payment of employer payroll taxes*

### **WHO THIS SECTION IS FOR:**

**Small business owners who employ others. This section covers your employees (who you actually pay payroll taxes for) and not contractors. Also, if you are an employee of your S Corp, this applies to your company as well.**

Under this section, employers and self-employed individuals may defer payment of the employer share of social security that you are otherwise responsible for paying. The employer or self-employed individual is required to pay the employment tax over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

What does that mean? You still have to pay into social security for your employees. Not now, but later. Calendar those deadlines.

### **Index of Useful Links**

The links provided below are direct links to the CARES Act. These sections are super specific, so we thought it would be beneficial for you to get this information directly from the horse’s mouth. Read: the Act itself. We’ve also included links to the Small Business Administration website + a sample Paycheck Protection Program Application Form. We encourage you to download the form now, as the application process opens at the end of the week. Literally hundreds of thousands of applications will be submitted. Don’t wait until applications are being accepted to start yours.

### **U.S. Small Business Administration**

[COVID-19 Small Business Guidance + Loan Resource](#)  
[Sample Paycheck Protection Program Application](#)

### **Coronavirus Aid, Relief, and Economic Security Act**

[§ 2303. Modifications for net operating losses](#)  
[§ 2304. Modification of limitation on losses for taxpayers other than corporations](#)  
[§ 2305. Modifications of credit for prior year minimum tax liability of corporations](#)

[§ 2306. Modifications on business interest](#)