

Dentons Quick Guide to SBA Small Business Interruption Loans

1 Eligibility

Generally, companies that employ 500 employees or less are eligible for a Small Business Interruption Loan (SBIL) under the CARES Act and related laws and regulations. In addition, certain industry sectors may have a higher threshold of number of employees.¹ Self-employed individuals, independent contractors and sole proprietorships are also eligible.

2 Loan Amount

The maximum SBIL loan amount per borrower is the product of (a) 2.5 multiplied by (b) the applicant's average total monthly payroll costs incurred during the 12 months before the date of the loan, capped at \$10 million total. If the applicant was not in business in 2019, January and February 2020 is the reference time period for average total monthly payroll costs.

- Payroll costs include payments with respect to employees that is a salary, wage, commission or similar compensation; cash tips or equivalent, payment for vacation, parental, family, medical or sick leave; allowance for dismissal or separation; group health care benefits, including insurance premiums; payment of retirement benefits; and state or local tax assessments on employee compensation.
- Payments of any compensation to or income of a sole proprietor or independent contract that is a wage, commission, income, net earnings from self-employment, or similar compensation is also included in payroll costs.
- Note that (a) income in excess of \$100,000 per employee annually and (b) compensation for employees located outside the U.S. are excluded, as are taxes imposed or withheld under US federal tax law.

3 Use of Proceeds

SBIL proceeds can be used for (a) payroll, (b) group health care benefits, (c) employee salaries, commissions or similar compensations, (d) interest payments on mortgages or other debt obligations, (e) rent or (f) utilities.

4 Waivers and Deferrals

The CARES Act waives any requirement of a personal guarantee or collateral for SBILs. In addition, the requirement that an applicant be unable to obtain credit elsewhere is waived and the SBA will collect no fees from applicants. Any payments of interest and/or principal are deferred for at least 6 months and up to a year. SBILs will not have any prepayment penalties.

5 Loan Forgiveness

Once an SBIL is originated and funded, the borrower will be eligible for loan forgiveness on a tax-free basis if certain conditions are met.

- If, during the 8-week period after the SBIL is originated and funded, the borrower incurs expenses for payroll costs, mortgage interest, rent and utilities equal to or greater than the balance of the SBIL, then 100% of the SBIL will be forgiven tax-free.
- SBIL borrowers can lose loan forgiveness if they do not maintain the same average number of employees per month during the 8-week period after an SBIL is originated as they had previously maintained during either (a) the period from February 15 through June 30, 2019 or (b) the period from January through February 2020.
- SBIL borrowers may decide which prior period to use for the purposes of determining the average number of employees benchmark.

¹ See chart here: https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=13%3A1.0.1.1.17#se13.1.121_1201