

# A Loan To Your Tenant From The CARES Act Doesn't Mean It Can Pay Rent

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March was not a good month to be a small business.

The \$2.2 trillion Coronavirus Aid, Relief and Economic Security Act was signed into law last week, **throwing a lifeline** to many individuals and small businesses struggling as **the coronavirus** disrupts the economy.

Among the many provisions in the bill is the **Paycheck Protection Program**, administered by the **Small Business Administration**. The CARES Act authorized up to \$349B to fund federally guaranteed loans that will help small businesses pay essential expenses.

Landlords worried about collecting rent have **mentioned the stimulus bill** as a reason tenants may not need rent abatements. But while small businesses may receive a cash injection in the short term, that money may not be earmarked for rent.



The Paycheck Protection Program is primarily intended to cover payroll expenses. If it meets the PPP loan criteria, a small business may receive 250% of its average monthly payroll costs, or about 2.5 months worth of payroll, up until June 30.

The loan carries a maximum term of 10 years, with a maximum interest rate of 4%. There are no loan fees or prepayment fees, and the first loan repayment will be deferred for six months.

Though the main purpose of the program is to enable employers to keep their workforce, small businesses can also use the PPP loan to pay for other things.

Approved uses of the money include rent, utilities, interest on any mortgage obligations, healthcare benefits and insurance premiums, salaries, commissions or similar compensations, and interest on any other debt obligations.

The PPP is structured like a loan. But legal experts say that if the funds are used correctly, small businesses will be eligible for complete loan forgiveness. Even better, the money will be tax-exempt.

That is great news for tenants receiving PPP aid, but may not be good news for landlords. To qualify for loan forgiveness, the company must use 75% of the PPP loan for payroll.

Seiden & Schein partner Alvin Schein told *Bisnow* that the safest way to guarantee loan forgiveness is to avoid using the money for other purposes, and just allocate it all to payroll.

“The smart strategy would be, use the money for salaries and then the loan is forgiven,” Schein said. “There is a strong incentive to keep your staff and don't let anybody go until at least June 30.”



The incentive to use the money for payroll purposes is significant. A fast-tracked, federally guaranteed loan with no fees and an interest rate capped at 4% is not a bad deal, but free money is even better.

“Nobody's really looking at the CARES program as a loan. Everyone that I've spoken to is looking at it with an eye toward, how can we get it and spend it in the required way so that it converts to a grant,” Rosenberg & Estis attorney Deborah Riegel told *Bisnow*.

With loan forgiveness clearly on the table, there is hope that the program will provide enough support to help small businesses survive the next few months.

“I think even the Senate's concept is supposed to be to allow people to use it in a way that will ultimately result in it being a grant. I don't get the impression that anybody in government truly believes that there's a business that's not going to figure out how to convert this to a grant, properly and lawfully,” Riegel said.

Applications for PPP loans will open on Friday. Small businesses will be able to apply through **an established SBA 7(a) lender**. The **Treasury Department** is working on approving other financial institutions to participate in the program.



Though rent relief could benefit many tenants, Riegel warned that if a small business received the PPP loan and then subsequently received rent abatement or deferral from their landlord, it could backfire on loan forgiveness goals.

In certain situations, a tenant could find themselves with money returned or refused by the landlord, and not have a legitimate way to spend it — resulting in a scenario where they might have to pay the PPP loan back.

“If you take a tenant's rent payments out of that equation, they may not be able to spend enough of it to get the conversion to the grant,” Riegel said. “It would be an inadvertent consequence of somebody thinking they're doing the right thing for their tenants.”

Riegel said some of her clients are looking to help their tenants navigate the process of applying for the PPP loan. Aside from the long-term benefits of keeping tenants afloat, the prospect of continuing rent payments could help ease their own financial strain.

“It’s a way to stabilize their rent rolls for a short period of time, until they also can see how deep the problem is with their tenants,” Riegel said.



Schein noted that right now, lawmakers are more focused on helping commercial and residential tenants than landlords.

That could become exacerbated in the short term, if state officials decide to issue more rent moratoriums.

Both Riegel and Schein are based in New York state, where [Gov. Andrew Cuomo](#) issued a 90-day [moratorium](#) on evictions for both residential and commercial tenants on March 20. That moratorium will expire on June 20.

A new state bill [has also been proposed](#) to waive 90 days of rent for certain residential tenants and small businesses, as well as to grant forgiveness on commercial mortgages up to the dollar amount of lost rent over that 90-day period.

“What will be a major problem for landlords is if there is a state 90-day moratorium on rent. I think that could be very difficult for landlords, which means that all tenants, whether they can afford it or not, are going to get three free months,” Schein said.

With federal and state governments moving at such a fast pace, there are an increasing number of legislative kinks that will need to be worked out in the approaching weeks and months.

“The litigation questions that are coming at the end of this are going to be enormous,” Riegel said.

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