

COVID-19 BUSINESS AND EMPLOYEE CONTINUITY AND RECOVERY FUND (The Recovery Fund)



Frequently Asked Questions What is the Recovery Fund?

The COVID-19 Business and Employee Continuity and Recovery Fund (Recovery Fund) is a proposed federal direct assistance grant program to provide liquidity to businesses that have been significantly impacted by the COVID-19 pandemic. The purpose of the Recovery Fund is to enable employers (and their employees) of all sizes, across all industries, to financially survive losses caused by the COVID-19 crisis, as well as provide liquidity to enable employers to re-enter the market as rapidly as possible when it is safe to do so. Specifically, the Recovery Fund creates a streamlined mechanism to make money available to businesses for the purpose of: helping businesses re-open and supporting their efforts to retain and rehire employees; with a priority placed on businesses that serve low and moderate income communities and women-owned and minority-owned businesses impacted by COVID-19.

Is this a Federal backstop for business interruption insurance?

The original approach for the Recovery Fund was to address the need for liquidity that would be provided through a business interruption insurance claim. However, this Fund would be available to any impaired business, regardless of whether they had business interruption insurance or not and is patterned after a streamlined version of an existing federal compensation fund. It is important to note that this proposal is silent on private business interruption insurance claims and does not preclude a business from filing claims with their insurance carrier.

Why is this structure necessary and is it complementary to the CARES Act?

The Recovery Fund is designed to be complementary to the Paycheck Protection Program (PPP) and Main Street Lending Facility in order to provide additional assistance in conjunction with those programs. While the PPP loans authorized by the CARES Act are forgivable in certain circumstances, they are a one-time only option and may not provide sufficient liquidity for other necessary expenses required for business continuity that could be addressed by the Recovery Fund. Importantly, payments through the Recovery Fund would be grants, not loans, to stabilize the balance sheets of eligible businesses and not add additional debt obligations to these already impacted businesses. The fund would take into account any collateral assistance or compensation to businesses, such as loan forgiveness, regarding the same losses. However, loans would not typically be considered as collateral assistance or compensation. Additionally, Recovery Fund payments could be used to pay debt service on Economic Injury Disaster Loans (EIDL). Claw back provisions on Recovery Fund grants may be triggered for non-payment on one of these previously incurred loans.

Is this corporate welfare?

Government mandated closures and other public safety measures have created an unprecedented level of disruption in business and non-profit activity. In order for these businesses to reopen, there needs to be additional cash flow to help pay for initial payroll obligations, rent, utilities and products. The Fund is designed to be adaptable to the current marketplace needs and issue financial assistance quickly with applications and payments administered through the capacity of various private sector financial intermediaries.

Who would have access to this fund?

Eligible applicants include businesses, nonprofit organizations, veterans' organizations and tribal businesses. Importantly, businesses that serve rural and underserved markets and women and minority owned businesses would have priority. Payments would be provided to eligible and certifiable applicants that meet simple

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application requirements and agree to the terms of the program. Businesses that received assistance under the CARES Act Section 4003 special allocations for airlines and related groups, cargo airlines and certain businesses related to national security would not be eligible.

What does the fund cover?

This assistance from the Recovery Fund must be used for essential operating expenses, employing American workers and rapidly rehiring those laid off during this unprecedented period of strain on the U.S. economy. The Recovery Fund would provide federal payments based on a formula that takes into consideration payroll, employee benefits, ongoing core operating expenses, lost income of sick employees and some lost revenue (*but not lost profits*) up to a certain dollar amount.

Are disbursements under the Fund subject to Federal income tax?

The proposed legislation is silent on the tax treatment of compensation provided by the program, but consideration could be given to treating compensation as tax-exempt, in a manner similar to the treatment of other disaster relief assistance.

What are the anti-abuse measures included in this program and how are taxpayers protected under this proposal?

The Special Administrator will be subject to oversight of the Secretary of the Treasury, the Special Inspector General for Pandemic Recovery, as established under the CARES Act, and a Congressionally appointed Oversight Board. The Special Inspector General and Oversight Board will have their own audit function to oversee the fund and will have access, for purposes of audit, to the records and other pertinent documents of the Special Administrator, as well as to the records of third-party service providers and applicants. Applicants would be subject to the False Claims Act of submitting false information. Claw back provisions may be instituted if an applicant does not adhere to the requirements of the Fund. All fund applications, whether online

or in paper form, would be signed under oath, subjecting the applicant to liability for making false statements

What does the administration of this Fund look like?

Given the extent and duration of business disruption from COVID-19, a public/private approach is necessary to operate expeditiously and provide the necessary oversight for a quick recovery. The President will appoint a Special Administrator to oversee the Fund. Congress will appoint an Oversight Board with independent audit authority to consult with the Special Administrator. Because the fund is limited to the time period established for the declared pandemic, the Special Administrator will have set timelines to make payments quickly.

As envisioned:

- Fund applicants would complete an online form submitted to the Special Administrator for expedited consideration or fund applicants could submit a paper form through one of the contracted financial intermediaries
- Once the information is verified, sector-specific funding formulas could be used to make interim disbursements, based on pre-determined criteria
- Interim payments would be direct deposited into the owner's bank account within 15 days (or less) of the submission
- The system would thoroughly review the submission and adjust the additional payments as appropriate
- A final audit of the use of the funds may be required
- The Special Administrator would have the flexibility to promulgate appropriate regulations for administering the Fund.

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If a business receives funds from the Recovery Fund, will it impact the business's ability to file for bankruptcy?

The objective of this program is to provide sufficient resources to provide business continuity. Realistically, there will be some business failures, even with support from this program. Nothing in the Recovery Fund proposal would prohibit a recipient under this program from filing for bankruptcy protection in the event of a potential business failure.

What is the role of third-party financial service providers?

Having learned from the high volume of impacted businesses applying for the PPP, we expect that some of the duties of the Special Administrator will need to be discharged through third-party service providers. Those duties would include automated calculations, expedited review, verification and payments, and audit functions, based on rules established by the Special Administrator. A variety of third-party servicing agents that are approved by the Special Administrator could process and make payments, including but not limited to technology companies, banks, credit card companies, insurance companies, insurance agents and brokers, on-line payment processors, and payroll processors. Decision-making regarding payment amounts would largely be automated, based on back-end validation of IRS data and payment tables established by the Special Administrator and Oversight Board.

How large is the Fund and how would it be paid for?

Given the unprecedented size, scope and duration of the crisis, the Recovery Fund would be funded through advance authorizations and the creation of an obligation of the federal government.

How long would this program last?

The Fund would not cover any losses that occur after the termination of the national emergency declared by the President. The Fund would continue in existence until all valid applications for reimbursement for losses incurred up to the termination date are paid.

How would this program be different from the TRIA model for a federal backstop?

The Recovery Fund is a response to the immediate crisis, to help businesses reopen and rehire employees. Potential TRIA-like legislation would only provide prospective relief for a future crisis. The Recovery Fund is a temporary program to help absorb the costs related to the current COVID-19 pandemic. While there is a need to develop a prospective long-term solution to mitigate future pandemic risks to employers, this is a separate proposal.