

117TH CONGRESS
1ST SESSION

S. 327

To direct the Administrator of the Small Business Administration to establish a border closure recovery loan program for small businesses located near the United States border, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 12, 2021

Mr. KELLY (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To direct the Administrator of the Small Business Administration to establish a border closure recovery loan program for small businesses located near the United States border, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Border Business
5 COVID–19 Rescue Act”.

6 **SEC. 2. BORDER CLOSURE RECOVERY LOAN.**

7 (a) DEFINITIONS.—In this section:

1 (1) ADMINISTRATOR.—The term “Adminis-
2 trator” means the Administrator of the Small Busi-
3 ness Administration.

4 (2) BORDER BUSINESS.—The term “border
5 business” means an entity eligible for a loan under
6 section 7(b)(2) of the Small Business Act (15 U.S.C.
7 636(b)(2)) that—

8 (A) has its principal office located in the
9 contiguous United States;

10 (B) has—

11 (i) estimated or actual annual average
12 gross receipts less than or equal to
13 \$1,000,000; and

14 (ii) fewer than 50 employees;

15 (C)(i) except as provided in clauses (ii),
16 (iii), and (iv), had gross receipts during the
17 first, second, third, or fourth quarter in 2020
18 that demonstrate a reduction from the gross re-
19 ceipts of the entity during the same quarter in
20 2019;

21 (ii) if the entity was not in business during
22 the first or second quarter of 2019, but was in
23 business during the third and fourth quarter of
24 2019, had gross receipts during the first, sec-
25 ond, third, or fourth quarter of 2020 that dem-

onstrate a reduction from the gross receipts of the entity during the third or fourth quarter of 2019;

(iii) if the entity was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, had gross receipts during the first, second, third, or fourth quarter of 2020 that demonstrate a reduction from the gross receipts of the entity during the fourth quarter of 2019; or

(iv) if the entity was not in business during 2019, but was in operation on February 15, 2020, had gross receipts during the second, third, or fourth quarter of 2020 that demonstrate a reduction from the gross receipts of the entity during the first quarter of 2020; and

(D) is located within 25 miles of the United States border.

(b) BORDER CLOSURE RECOVERY LOAN PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish a program under which the Administrator shall make loans to border businesses directly impacted by the COVID–19 pandemic.

1 (2) APPLICATION.—A border business desiring
 2 a loan under this subsection shall submit to the Ad-
 3 ministrator an application at such time, in such
 4 place, and containing such information as the Ad-
 5 ministrator determines necessary.

6 (3) TERMS.—

7 (A) AMOUNT; INTEREST RATE.—A loan
 8 made under this subsection shall—

9 (i) be in an amount of not more than
 10 \$500,000; and

11 (ii) have an interest rate of not more
 12 than 2 percent.

13 (B) PROHIBITED REQUIREMENTS.—With
 14 respect to a loan made under this subsection,
 15 the Administrator shall not establish—

16 (i) any rules related to a personal
 17 guarantee for loans of less than \$200,000;
 18 or

19 (ii) any requirement that an applicant
 20 exhaust other loan options before applying
 21 for a loan under this subsection.

22 (4) USE OF FUNDS.—A border business that re-
 23 ceives a loan under this subsection—

24 (A) shall use the loan proceeds for any al-
 25 lowable purpose for a loan made under section

1 7(b)(2) of the Small Business Act (15 U.S.C.
2 636(b)(2)), including—

3 (i) providing paid sick leave to em-
4 ployees unable to work due to the direct ef-
5 fect of COVID–19;

6 (ii) maintaining payroll to retain em-
7 ployees during business disruptions or sub-
8 stantial slowdowns;

9 (iii) meeting increased costs to obtain
10 materials unavailable from the original
11 source of the border business due to inter-
12 rupted supply chains;

13 (iv) making rent or regular mortgage
14 payments;

15 (v) repaying obligations that cannot
16 be met due to revenue losses;

17 (vi) to pay for logistical expenses asso-
18 ciated with border closures due to the
19 COVID–19 pandemic; and

20 (vii) to pay for improvements related
21 to complying with public health guidelines,
22 including personal protective equipment,
23 signage, temporary barriers, and space
24 heaters; and

25 (B) may not use the loan proceeds—

- 1 (i) to purchase real estate;
- 2 (ii) for payments of interest or prin-
- 3 cipal on any loan originated after February
- 4 15, 2020;
- 5 (iii) to invest or re-lend funds;
- 6 (iv) for the prepayment of any mort-
- 7 gage or other debt obligation;
- 8 (v) for any contribution or expendi-
- 9 ture to, or on behalf of, any political party,
- 10 party committee, or candidate for elective
- 11 office; or
- 12 (vi) for any other use as the Adminis-
- 13 trator may prohibit.

14 (c) APPROVAL AND ABILITY TO REPAY.—With re-

15 spect to a loan made under subsection (b), the Adminis-

16 trator may—

- 17 (1) approve an applicant—
- 18 (A) based solely on the credit score of the
- 19 applicant; or
- 20 (B) by using alternative appropriate meth-
- 21 ods to determine an applicant’s ability to repay;
- 22 and
- 23 (2) use information from the Department of the
- 24 Treasury to confirm that—

1 (A) an applicant is eligible to receive the
2 loan; or

3 (B) the information contained in an appli-
4 cation for the loan is accurate.

5 (d) REPAYMENT.—The Administrator shall establish
6 the repayment terms with respect to each loan made under
7 subsection (b), except that—

8 (1) repayment shall not begin before the date
9 that is 1 year after the date on which the loan is
10 made;

11 (2) the Administrator shall establish a process
12 by which a border business that continues to experi-
13 ence a reduction in gross receipts following receipt
14 of the loan can apply to delay the repayment of the
15 loan for a period of not more than 4 years; and

16 (3) the loan shall not accrue interest during the
17 period in which repayment of the loan is deferred.

18 (e) LOAN ADVANCE.—

19 (1) IN GENERAL.—A border business that ap-
20 plies for a loan under subsection (b) may request
21 that the Administrator provide an advance in the
22 amount requested by the applicant to the applicant
23 not later than 15 business days after the date on
24 which the Administrator receives the request.

1 (2) AMOUNT.—The amount of an advance pro-
2 vided under this subsection shall be not less than
3 \$10,000.

4 (3) VERIFICATION.—Before disbursing amounts
5 under this subsection, the Administrator shall, not
6 later than 15 business days after the date on which
7 the Administrator receives the request for an ad-
8 vance by an applicant under this subsection—

9 (A) perform the verification required under
10 subsection (c);

11 (B) if the Administrator verifies that the
12 applicant is eligible for an advance under sub-
13 section (c), provide to the applicant with a pay-
14 ment in the amount described in paragraph (2);
15 and

16 (C) with respect to an applicant that the
17 Administrator determines is not eligible for an
18 advance under this subsection, provide the ap-
19 plicant with a notification explaining the rea-
20 sons for reaching that determination.

21 (4) USE OF FUNDS.—An advance provided
22 under this subsection may be used for any purpose
23 described in subsection (b)(4).

24 (5) REPAYMENT.—An applicant shall not be re-
25 quired to repay any amounts of an advance provided

1 under this subsection, even if the applicant is subse-
2 quently denied a loan under subsection (b).

3 (f) OTHER BENEFITS.—Receipt of an advance under
4 subsection (e) or a loan under subsection (b) shall not be
5 construed as to prohibit receipt of any other Federal
6 grant, loan, or aid.

7 (g) TAXABILITY.—For purposes of the Internal Rev-
8 enue Code of 1986—

9 (1) any advance described in paragraph (e)
10 shall not be included in the gross income of the bor-
11 der business that receives the advance;

12 (2) no deduction shall be denied, no tax at-
13 tribute shall be reduced, and no basis increase shall
14 be denied, by reason of the exclusion from gross in-
15 come provided by paragraph (1); and

16 (3) in the case of a partnership or S corpora-
17 tion that receives an advance described in subsection
18 (e)—

19 (A) any amount excluded from income
20 under this subsection shall be treated as tax ex-
21 empt income for purposes of sections 705 and
22 1366 of the Internal Revenue Code of 1986,
23 and

24 (B) the Secretary of the Treasury (or the
25 Secretary's delegate) shall prescribe rules for

1 determining a partner's distributive share of
2 any amount described in subparagraph (A) for
3 purposes of section 705 of the Internal Revenue
4 Code of 1986.

5 (h) OUTREACH.—

6 (1) IN GENERAL.—In carrying out the loan pro-
7 gram under this section, the Administrator shall—

8 (A) establish an advertising and outreach
9 program in partnership with State and local
10 governments, community advocacy groups,
11 chambers of commerce, and other State and
12 local entities to help border businesses under-
13 stand the availability of the loan program and
14 to promote participation in the program by bor-
15 der businesses located in economically depressed
16 areas; and

17 (B) provide technical assistance to appli-
18 cants, including instructions on how to partici-
19 pate in the loan program, assistance in pre-
20 paring applications, and assistance in applying
21 for loan deferral.

22 (2) LANGUAGE ACCESS.—The Administrator
23 shall ensure that outreach and technical assistance
24 activities described in this subsection are made avail-
25 able by the Administration to border business con-

1 cerns in the commonly spoken languages, other than
2 English, in the States of the United States that bor-
3 der the international boundary with Canada or Mex-
4 ico, which shall include Spanish and French.

5 (i) AUTHORIZATION OF APPROPRIATIONS.—There is
6 authorized to be appropriated \$500,000,000, to remain
7 available until December 31, 2021, to carry out the re-
8 quirements of this Act.

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