

Federal Stimulus Package Makes Loans Available to Small Businesses to Help Keep People Employed

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The nation's small businesses are poised to receive some relief in the form of low-interest and, in some cases, forgivable loans as part of the federal government's stimulus program in response to the COVID-19 pandemic. The U.S. Small Business Administration ("SBA") will make the loans available to businesses that employ fewer than 500 people (generally) through the new Paycheck Protection Program and the existing Economic Injury Disaster Loan ("EIDL") program.

Paycheck Protection Program ("PPP") loans are meant to encourage small businesses to keep their workers employed through the crisis. EIDL loans are meant to help small businesses recover from economic losses sustained because of the pandemic. The PPP and an expansion of the existing EIDL program are part of the Coronavirus Aid, Recovery, and Economic Security Act ("CARES Act") that was approved by Congress and signed by the President this week.

Under each program, the SBA reviews each loan application on a case-by-case basis and considers the specific circumstances of each applicant. Below is a high-level summary of each program.

Paycheck Protection Program

Under the Paycheck Protection Program, businesses may apply for federally guaranteed loans that may be eligible for forgiveness ("PPP Loans").

Size of Program

Congress has appropriated \$349 billion to fund PPP Loans.

The lesser of:

- \$10,000,000
- 2.5 times the average monthly "payroll costs"

Maximum PPP Loan Amount

The definition of "payroll costs" includes, among other items:

- salary, wage, commission, or other similar compensation
- payments of cash tips
- payments for vacation, parental family, medical, or sick leave

"Payroll Costs"

- healthcare benefits (including insurance premiums)
- retirement benefits
- payroll taxes

The definition of “payroll costs” excludes, among other items:

- compensation of an individual employee to the extent in excess of \$100,000 per year
- compensation paid to employees with primary residence outside the U.S.

Maximum Interest Rate

4% per annum

PPP Loans may be eligible for forgiveness to the extent the loan proceeds are used for payments of:

- “payroll costs” (except for the exclusions described above, including compensation of an individual employee to the extent in excess of \$100,000 per year)
- mortgage interest
- rent payments
- utility payments

Loan Forgiveness

Workforce Reductions and Salary/Wage Reductions: The amount of the PPP Loans subject to forgiveness shall be reduced if, between February 15, 2020, and June 30, 2020, the company (i) reduces the number of full-time equivalent employees, or (ii) reduces the wages/salary of certain employees below a certain threshold.

Cure: If the company reduces its workforce or reduces salary/wages during the period between February 15, 2020, and 30 days after enactment of the CARES Act, but subsequently rehires employees or eliminates salary/wage reductions by June 30, 2020, the limitations described above may not apply and the PPP Loans may again be eligible for forgiveness.

Limitations on Loan Forgiveness

Term	Up to 10 years for any portion of a PPP Loan that is not forgiven
Personal Guarantee	No personal guarantees required
Collateral	Unsecured
Payment Deferments:	Payments of principal, interest and fees are automatically deferred for six to 12 months.
Period of Loan Availability	February 15, 2020, to June 30, 2020
Permitted Use of Proceeds	<p>Uses permitted for ordinary SBA 7(a) loans are permitted uses for PPP Loans, but the loan is forgivable only if proceeds are used to pay for items listed above.</p> <p>SBA 7(a) loans may be used for financing working capital, refinancing existing debt, and/or for financing the purchase of furniture, fixtures, machinery, equipment, land/buildings, or a business. Note that for certain uses, additional conditions may apply.</p> <p>To qualify, an applicant must:</p> <ul style="list-style-type: none"> • either (i) qualify as a “small business concern” under existing SBA rules and regulations, or (ii) be a business concern or nonprofit organization with fewer than 500 employees (generally), which number includes employees of all affiliates • have been in operation on February 15, 2020 • either (i) have employees to whom it has paid wages and on behalf of whom it has paid payroll taxes or (ii) have paid independent contractors • certify that the loan is necessary to support ongoing operations and that it will use funds for a permitted loan use <p>Note that the SBA considers an applicant’s affiliates in counting the number of employees and uses a broad definition of “affiliates.” Find guidance to the SBA’s affiliation rules here.</p>
Primary Eligibility Requirements	A business with more than 500 employees may qualify for a PPP Loan if such business is a “small business concern.” In

making this determination, the SBA considers the applicant's industry, revenue, and number of employees. Find the SBA's "Size Standards Table" [here](#).

If an applicant's NAICS Code begins with "72" (hospitality/foodservice businesses):

- Special Size Rule: Applicants that do not otherwise qualify as "small business concerns" will qualify if they have no more than 500 employees at any one location.
- Affiliation Rules Waived: The SBA's affiliation rules described above are waived.

Special Exemptions for Hospitality / Foodservice Businesses

Fee Waivers & Reimbursement

SBA will not collect certain fees, will reimburse the processing fees of SBA-approved lenders up to a certain amount, and will not assess prepayment penalties.

Eligibility for EIDL Loans?

At the time of this writing, the SBA has not provided firm guidance on whether applicants can apply for both a PPP Loan and an EIDL Loan and use those loan proceeds for COVID-19 relief, though it is clear that applicants may use a PPP Loan to refinance a prior EIDL Loan.

Application Forms

Application forms for PPP Loans are not yet available. The SBA will modify/streamline existing SBA 7(a) application forms.

Lenders

Existing SBA-approved lenders will make and administer the loans. Under the CARES Act, the SBA may give additional lenders authority to make PPP Loans. The SBA has a tool to help companies find SBA-approved lenders found [here](#). The federal government will fully guarantee all PPP Loans. The SBA will classify PPP Loans as SBA 7(a) Loans.

Citation

See Title I of CARES Act, §§ 1101–1114

Economic Injury Disaster Loan (EIDL) Program

Please see [SBA.gov/disaster](https://www.sba.gov/disaster) and a prior [Q&B Client Alert](#) for an overview of the existing EIDL program administered by the SBA. Applicants are encouraged to apply online at [SBA.gov/disaster](https://www.sba.gov/disaster). **Click the yellow banner on the top of the page to start the loan process.** Businesses can use EIDL loans to address damages caused by a "disaster," which includes COVID-19 in all 50 states. The COVID-19 pandemic has prompted special modifications and provisions to the SBA's EIDL program, either in connection with the recently enacted CARES Act legislation or pursuant to

actions already taken directly by the SBA under its existing authority or discretion. The changes are generally designed to expand access to EIDLs and to reduce the time it will take to obtain EIDL funding.

EIDLs are made directly by the SBA in an amount not to exceed \$2 million. Certain key updates to the program are summarized below:

- Ordinarily, to qualify for an EIDL, the applicant must establish that it is a small business concern, private nonprofit organization, or small agricultural cooperative. The CARES Act has expanded its eligibility criteria to also include any business with less than 500 employees.
- The SBA may advance up to \$10,000 of the proceeds of an EIDL to an applicant on an expedited basis, within three days after the SBA receives an application. If the SBA ultimately rejects the application, the applicant may retain this initial \$10,000 advance without needing to repay it.
- According to SBA officials, payments of principal and interest under all new and existing EIDLs will automatically be entitled to deferment through the remainder of 2020.
- Ordinarily, to qualify for an EIDL, an applicant must show that it is unable to obtain credit elsewhere. This requirement is waived.
- The requirement that an applicant be in business for one year prior to date it applies for an EIDL also is waived, so long as the business was in operation by January 31, 2020.
- Personal guarantees will not be required for loans of less than \$200,000.
- The SBA will not require prior year tax returns to be included in the application. The CARES Act authorizes the SBA to approve EIDLs based solely on an applicant's credit score or "alternative appropriate methods" for determining the applicant's ability to pay.
- The SBA is foregoing some of its ordinary requirements to speed up the application process. For example, according to SBA officials, for loans of \$500,000 or less, the SBA will rely on the applicant to certify that it is a small business concern.
- Under the CARES Act, Congress has appropriated \$10 billion of additional funding for EIDLs.

What remains to be seen is how fast the SBA responds to what is sure to be an overwhelming number of requests to obtain loans under these programs. As with all aspects of COVID-19, this is a fluid and rapidly changing environment and SBA loan applicants should closely monitor developments.