

# Small Business Loans for COVID-19 Economic Disaster Relief

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SBA Disaster Relief vs. Paycheck Protection Program Loans — As of March 30, 2020

This information describes two types of relief loans available through the U.S. Small Business Administration (SBA) that could be available to small businesses specifically suffering from economic distress due to the COVID-19 pandemic. These types of loans are:

- Small business loans under the new Paycheck Protection Program (PPP), which includes a valuable loan forgiveness component; and
- U.S. Small Business Administration Economic Injury Disaster Loans (EIDL)

Below is a description of the EIDL program and the PPP. Additional guidance is anticipated on the PPP to be issued by the SBA in the coming days and we will update this overview after the guidance is available. Companies might consider other programs contemplated by the Keeping American Workers Paid and Employed Act (the “Act”) to be established by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury (the Secretary).[\[1\]](#)

## Paycheck Protection Program Loan

### What Is the Paycheck Protection Program (PPP)?

The Act, a \$349 billion emergency relief package, provides funding to help prevent workers from losing jobs and small businesses from going under due to economic losses associated with the COVID-19 pandemic.

The Paycheck Protection Program, which is included in the Act, provides for SBA **loans in amounts equal to the lesser of 2.5 times the average monthly payroll costs incurred during the 1-year period before the loan is made (12-week period for seasonal employers) and \$10 million.**

The loans will be 100% federally guaranteed loans to small businesses who maintain their payroll during the specified period.

Repayment ability will not be an eligibility standard for this loan. Eligibility will be based on whether a business was operational on February 15, 2020.



Importantly, this program would allow for **loan forgiveness** of certain portions of the loan if certain standards are met.

### Who Is Eligible?

Under the Paycheck Protection Program, the following groups are eligible for loans, so long as they were in operation on February 15, 2020:

- A “small business concern,” which is considered by the SBA to be an independently owned and operated for-profit entity, which is not dominant in its field of operation, meets the SBA size standards and meets other SBA criteria. To see if your business qualifies under the SBA size standards, [see this table](#).
- Other business concerns with a number of employees (which, for purposes of the Act, includes individuals employed on a full-time, part-time, or other basis) that does not exceed the greater of 500 employees, or if applicable, the size standard in number of employees established by the SBA. To see if your business qualifies under the SBA size standards, [see this table](#).
- Self-employed individuals and “gig economy” individuals.
- Certain nonprofits, including 501(c)(3) organizations and 501(c)(19) veteran organizations, and tribal business concerns with under 500 employees.

Under SBA rules, in many circumstances an applicant’s number of employees is deemed to include the number of employees of its affiliates — which are entities controlled by any entity or person deemed to control the applicant.

- SBA regulation 13 C.F.R. 121.301(f) specifies that for determining affiliation based on equity ownership, a concern is an affiliate of an individual, concern, or entity (a) that owns or has the power to control more than 50% of the concern’s voting equity or (b) that is a minority shareholder that has the ability, under the concern’s charter, by-laws, or shareholder’s agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
- See the National Venture Capital Association’s guidance on affiliation in the context of SBA loans [here](#). It is currently unclear whether certain venture backed and private equity backed companies will be eligible due to the applicability of the affiliation and control rules when the SBA is determining the size of an applicant. We expect the SBA will provide guidance in the coming days, which may include a possible expansion of exceptions to the control criteria.<sup>[2]</sup>
- During the Loan Application Period, the Act expressly waives provisions applicable to affiliates under 13 C.F.R. 121.103 for the following business concerns: (i) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned an NAICS code beginning with 72 (Accommodation and Food Services); (ii) any business concern operating as a franchise that is assigned a franchise identifier code by the SBA; and (iii) any business concern that receives financial assistance from a Small Business Investment Company (SBIC) licensed by the SBA (the SBIC Exception). Subject to further rulemaking and guidance from the SBA, the SBIC Exception appears to make eligible for PPP loans businesses

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backed by venture funds and private equity funds if those businesses currently have in place loan agreements with SBICs.

- You can see guidance from the SBA on affiliation matters [here](#).

## What Are the Terms of the Loan?

**Loan application period:** February 15, 2020 through June 30, 2020

**Loan amount:** The maximum loan amount is **\$10 million** but the size of the loan would be equal to the lesser of:

- **2.5x of an employer's average monthly payroll costs** incurred during the 1-year period *before* the date on which the loan is made (a separate provision was made for applicants that were not in business during the period beginning February 15, 2019 through June 30, 2019 and for seasonal employees); and
- **\$10 million**

## Eligible payroll costs ("Eligible Payroll Costs") for the calculation include:

- Salary, wages, commissions and similar compensation;
- Payment of cash tips or equivalent;
- Payment required for the provisions of group health care benefits, including insurance premiums;
- Allowance for dismissal or separation;
- Payment of any retirement benefit;
- Covered leave (vacation, parental, family, medical or sick leave) subject to certain exceptions if certain tax credits are taken pursuant to Sections 7001 and 7003 of the Families First Coronavirus Response Act; and
- Payment of state or local tax assessed on the compensation of employees.

## The costs that are excluded from the calculation of Eligible Payroll Costs are the following:

- Compensation of employees whose principal place of residence is outside of the United States;
- Taxes withheld or paid by the borrower for income tax or FICA;
- Paid sick leave or paid family medical leave if certain tax credits are taken pursuant to Sections 7001 and 7003 of the Families First Coronavirus Response Act; and
- The compensation of individual employees or self-employed individuals in excess of \$100,000 (calculated on a pro rata basis).[\[3\]](#)

**Allowable uses for the loan:** A borrower may only use the loan proceeds to cover Eligible Payroll Costs, costs related to group healthcare benefits during periods of paid sick, medical, or family leave, group



healthcare insurance premiums, employee salaries, commissions or similar compensation interests payments on mortgage obligations, rent, utilities and interest on any other debt obligations that were incurred before February 15, 2020.

**Loan forgiveness opportunity and incentive to rehire recently terminated employees:** The portion of the loan used for Eligible Payroll Costs, interest on mortgage obligations, rent, and utilities (excludes interest on other debt obligations) during the 8-week period after origination of the loan may be eligible to be forgiven. The amount forgiven will be reduced proportionally by a reduction in the number of full-time equivalent employees compared to the period between February 15, 2019 and ending on June 30, 2019 (or the average monthly number of full-time equivalent employees for the period January 1, 2020 to February 29, 2020 – which the applicant should elect if it had fewer employees during such period) and reduced by the reduction in pay of any employee beyond 25% of their compensation during the most recent full quarter in which the employee was employed before the covered period. To encourage employers to rehire laid off workers due to the COVID-19 crisis, a borrower will not lose the opportunity to have the loan forgiven based on employees whose employment is terminated or whose salaries and wages are decreased by more than 25% during the period between February 15, 2020 and April 26, 2020 if the employer has eliminated the reduction in the workforce and the greater than 25% reduction in salaries and wages by June 30, 2020. In addition, the portion of the loan that is forgiven will not be taxable income to the borrower.[\[4\]](#)

**Loan terms:** Payments may be deferred for at least six months but for no longer than one year. Fees and collateral requirements are waived. Any loan amounts not forgiven at the end of the year will be carried forward with a maximum 10 year term, interest rate not to exceed four percent (4%) and 100% guaranteed by the federal government.

**Required borrower certifications:** A borrower must certify to the following when applying for the loan:

- The loan is necessary to support ongoing operations of the business;
- Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; and
- There is no SBA loan or application for the same purpose and duplicative amounts applied for or received under a PPP loan.[\[5\]](#)

**Other loan details:**

- The SBA requirement for guarantees from significant equityholders of the applicant are waived;
- Collateral requirements are waived;
- There is no requirement that the applicant demonstrate that it is unable to obtain credit elsewhere; and
- Administration fees and prepayment penalties are waived.

### **What Is the Process for Applying?**

Details about how and where to apply and what documentation will be required are not yet available. The Act expands the lender pool for this loan, so we would advise that you reach out to your current lenders to confirm whether they have been authorized to provide these loans. Specifically, if you have an existing SBA loan or a loan from an SBIC, such lender should be a helpful resource.

### **What Is the Timeline for Receiving Relief?**

The timeline for loan disbursements is not yet clear, but the bill states that loans would become available **immediately** through existing SBA-certified lenders, including banks, credit unions, and other financial institutions. The new law mandates that the SBA streamline the process for adding additional lenders to the program as well.

### **SBA Economic Injury Disaster Loans**

#### **What Are SBA Economic Injury Disaster Loans (EIDL)?**

EIDL are low-interest federal disaster loans that provide working capital to small businesses to assist them through a disaster recovery period. EIDL assistance is available to small businesses and private non-profit organizations that have suffered “substantial economic injury” as a result of a declared disaster. The maximum EIDL loan amount is **\$2 million**, although the actual amount of the loan will vary based on the amount of economic injury.

In the case of businesses affected by the COVID-19 pandemic, SBA has stated that it will work directly with state governors to provide loans to small businesses that have been **severely impacted** by the coronavirus, indicating that evidence of temporary loss of revenue due to the crisis must be demonstrated.

EIDL assistance is only available to applicants and their owners who cannot provide for their own recovery from non-government sources. SBA also considers potential contributions that are available from the business and/or its owner(s) or affiliates in limiting loan amounts.

#### **Who Is Eligible?**

Small businesses that meet SBA’s small business size requirements and other eligibility requirements and that have sustained economic injury and are located in a disaster-declared county or contiguous county are eligible for this type of loan (for more information on SBA size requirements, [see this table](#)).<sup>[6]</sup>

While EIDL eligibility is based on geographic location, small business owners in **all U.S. states and territories** are currently eligible to apply for EIDL due to COVID-19 (for a list of current declared disasters, [see here](#).)

Restrictions on eligibility:

- Only uninsured or otherwise uncompensated disaster losses are eligible.
- Applicants with prior SBA loans that have not complied with loan terms are ineligible.



- Certain other specified restrictions apply.

For more information on eligibility, special considerations, and restrictions, [see here](#).

### **What Are the Terms of the Loan?**

**Loan amount:** The maximum loan amount for an EIDL is **\$2 million**. The actual amount of each loan is limited to the economic injury determined by program standards.

**Credit requirements:** Applicants must have a credit history that is deemed acceptable to SBA, a demonstrated ability to repay all loans, and collateral for loans over \$5,000. The applicant does not need to demonstrate that it was unable to obtain credit elsewhere.

**Interest rates:** Interest rates depend on whether an applicant has credit available elsewhere. Interest rates are fixed for the term of the loan, determined by formulas set by law, and may vary with market conditions. Current rates vary from approximately 3% to 7%.

**Loan terms:** The maximum term is 30 years, but businesses with credit available elsewhere are restricted to a maximum 3-year term. SBA sets the installment payment amount and corresponding maturity based upon each borrower's ability to repay.

**Personal guarantee:** These SBA loans require a personal guarantee for loans over \$200,000. Each loan must be guaranteed by at least one individual or entity; if no one individual or entity owns 20% or more of the equity of a business, at least one of the owners must provide a full unconditional guaranty. Individuals who own 20% or more of the equity of the business must provide an unlimited full guaranty.

- Notably, although the SBA requires only one personal guarantee, SBA lenders are free to require unlimited or limited personal guarantees from individuals who own less than 20% of the equity of the business.
- Note that many fund investors are prohibited under their fund documentation from providing guarantees of portfolio company obligations.

### **What Is the Process for Applying?**

There are three ways to apply for an EIDL:

- Online at <https://disasterloan.sba.gov/ela>
- In-person at a disaster center
- By mail

A business must first register on the SBA Disaster Loan website by providing some personal information and the business address.

After registering, an authorized employee of a borrower can complete the application. Note that the SBA website is slow and antiquated and expect the process to take several hours.

The following documentation must be submitted with your application:

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- **Business Loan Application** ([SBA Form 5](#)). This form requires basic information on the business including business address, IRS EIN, a point of contact's information, and similar basic information for any owners who own more than 20% of the company.
- **EIDL Info Form** (P-019), a simple form asking for the last twelve months' revenue and any lost income due to COVID-19. By completing this form, a business is certifying that it qualifies as a small business based on its NAICS code ([see this table](#) to determine a business's NAICS code).
- **Schedule of Liabilities**, a simplified form that requires summarized information on major liabilities on a company balance sheet. These can be grouped together into major categories such as Accounts Payable, Notes Payable, and Other Liabilities. Only certain fields are required.
- **IRS Form 4506-T** (Consent of Release of Historical Tax Information) for all owners. These will be generated by the SBA system upon completing the above information. Download, complete, and re-upload the executed versions of these forms.
- The SBA may approve an applicant based solely on the credit score of the applicant and shall not require an applicant submit a tax return or a tax return transcript for the approval or the SBA may use alternative appropriate methods to determine an applicant's ability to repay.
- **Personal Financial Statement** ([SBA Form 413](#)) if the company is a sole proprietorship.

Additional information may be requested to process the application, including:

- Complete copies, including all schedules, of the most recent **Federal income tax returns for each principal** owning 20% or more of the applicant business, each general partner or managing member, and each affiliate when any owner has more than a 50% ownership in the affiliate business. Affiliates include, but are not limited to, business parents, subsidiaries, and/or other businesses with common ownership or management.
- If the most recent Federal income tax return has not been filed, a **year-end profit and loss statement** and balance sheet for that tax year.
- A current year-to-date **profit and loss statement**.
- **Additional Filing Requirements** (SBA Form 1368) providing monthly sales figures.

## What Is the Timeline for Receiving Relief?

SBA has stated that its goal is to make a decision on an application **within four weeks**, but the real time frame for review during this unprecedented situation is unknown.

SBA takes the following steps before releasing a decision:

- Conducts a credit review before conducting an inspection to verify losses
- Determines eligibility after reviewing insurance or other recoveries
- Requests and compiles all necessary information needed to reach a loan determination

Once a business is approved for a loan, SBA will:

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- Prepare and send Loan Closing Documents for signature
- Provide an initial disbursement of \$25,000 within five days
- Provide a case manager to help the business meet all loan conditions and schedule subsequent disbursements
- Make adjustments to the loan after closing due to any changing circumstances

## How Do I Sign Up?

Virtually at <https://disasterloan.sba.gov/>.

For more information, contact the attorneys listed at the bottom of this page.

## Endnotes

**1** In addition to loans for companies in certain industries (airline related and businesses critical to national security) (the Specific Industries) particularly hard hit by the COVID-19 pandemic, the Act authorizes the Secretary to make loans, loan guarantees, or other loan investments not to exceed \$454 billion *plus* unused amounts applicable to investment in Specific Industries in certain eligible businesses, subject to conditions, including compensation limitations and a prohibition on both equity repurchases (except to the extent required under an existing contractual obligation in effect as of the date of enactment of the Act) and dividends and distributions, until the date that is 12 months after direct loans made under such programs are no longer outstanding. Specifically, the Act states that the Secretary shall endeavor to implement a program or facility that provides financing to banks and other lenders that make direct loans to eligible businesses, including businesses with between 500 and 10,000 employees, and that any such loans will be subject to an annualized interest rate that is not greater than 2% per annum and no principal or interest payments will be due for the first six months after any such loan is made (or such longer period as the Secretary may determine). Receipt of such loans will be subject to additional conditions and certifications by the applicable companies, and may be subject to collateral and other additional covenants and restrictions. It is anticipated that the Secretary will issue regulations and guidance with respect to such additional programs.

**2** On March 27, 2020, the National Venture Capital Association wrote to the U.S. Department of Treasury and the SBA seeking additional guidance on the affiliation rules on behalf of venture-backed and similarly situated businesses. [Please see a copy of the NVCA letter here.](#) Further guidance from the SBA regarding affiliation standards is expected shortly.

**3** It is unclear whether the \$100,000 cap applies to compensation and benefits applicable to such individual or only to salary, wages, commissions and similar compensation. If the latter, it is possible that applicants can include amounts above \$100,000 that relate to other specified categories such as group healthcare benefits.

**4** Borrowers seeking loan forgiveness must submit to the lender servicing the covered loan an application, which must include (1) documentation verifying the number of full-time equivalent employees on a payroll and pay rates for specified periods, including (A) payroll tax filings reported to

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the IRS, and (B) state income, payroll and unemployment insurance filings; (2) documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments; (3) a certification by an authorized representative that (A) the documentation presented is true and correct; and (B) the amount for which forgiveness is requested was used to retain employees, make interest payments on covered mortgage obligations, make payments on a covered rent obligation, or make covered utility payments; and (4) any other documentation the SBA determines necessary.

**5** Please note that a borrower who has an EIDL loan made during the period beginning January 31, 2020 and ending on the date on which a PPP loan is made available may have the option of refinancing the EIDL loan into the PPP loan. This limitation does not apply to other SBA loans, as long as the borrower is not receiving duplicative funds for the same uses from another SBA program.