



ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM



The CARES Act made several changes to the Economic Injury Disaster Loan (EIDL) Program:

- EIDL Loans are available to eligible small businesses in a declared disaster area to cover economic injury resulting from the disaster (e.g., loss of revenue).
- EIDL Loans are processed directly through the SBA, although the SBA may determine to enlist the assistance of lenders for the processing and making of loans.
- EIDL Loans are available in a maximum amount of \$2 million, carry an interest rate of 3.75 percent for small business (2.75 for nonprofits) and have a maximum term of 30 years.
- Loans over \$200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant; the CARES Act removed the requirement for personal guarantees on loans under \$200,000.
- Unlike PPP, proceeds from the loan can be used for any business expense.
- The CARES Act also removed standard EIDL Program requirements that the borrower not be able to secure credit elsewhere or that the borrower have been in business for at least one year, as long as it was in operation on January 31, 2020.
- Applicant may request an expedited disbursement of up to \$10,000. While these were initially intended to be paid within 3 days, actual disbursement time is expected to be *at least* 5 to 7 days. The proceeds must be used for authorized costs but is otherwise not repayable if the EIDL Loan is not approved. The actual amount of the advance may be less than \$10,000, and may be based on the number of employees.
- NOTE: An applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program described below) as long as the basis for the loans/costs being paid with each are different (no "double-dipping"). For example, a company could use the EIDL for working capital and use the PPP for payroll assistance. There are no prepayment penalties for the EIDL or the PPP.

Eligibility: qualified small businesses, small agricultural cooperatives, aquaculture businesses, private non-profit organizations (under 501c3, 501c4, or 501c5 only). If any principal of the company with a 50% or greater ownership interest is more than 60 days delinquent on child support payments, the application will be rejected.

On 4 April, SBA confirmed that all faith-based organizations are eligible “without restrictions based on their religious identity or activities, to the extent they meet the eligibility criteria outlined in the CARES Act that was passed by Congress, signed into law by President Trump, and implemented by the Paycheck Protection Act Interim Final Rule.” Many have interpreted this to mean that the church must still be organized under 501c3.

Information presented here is correct as of:

6 APRIL 2020

If this is more than 48 hours old, please refer back to ASBDC.org for updated information.

Applicants cannot be engaged in any illegal activity as defined by federal guidelines. Certain companies in the hemp, cannabis, or cannabidiol industry may not qualify.

SBA is accepting applications through a new online system: <https://covid19relief.sba.gov/>

SBA has stated that any business that submitted an online application on or before 29 March 2020 should submit their information again through the above portal. A private-sector company that is accustomed to handling a very high volume of loan applications manages this new back-end system for SBA.

The online application portal is the only way to access this emergency funding. If a company accepts the \$10,000 forgivable loan, and then accepts a loan under the Paycheck Protection Program (PPP), the amount of forgivable expenses will be reduced by \$10,000. (See PPP section below.) If you received an EIDL loan related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes. While SBA intended to have Disaster Loans deployed before PPP was available, to our knowledge, no EIDL's were issued prior to April 3.

PAYCHECK PROTECTION PROGRAM

The CARES Act allows for the creation of the Paycheck Protection Program. This program makes loans of up to \$10 million available to certain qualified small businesses. Portions of these loans are intended to be forgivable if the borrower maintains employees and otherwise complies with the CARES Act. Some participating lenders began accepting applications on 3 April; others will likely begin accepting applications soon. Applications are due by 30 June 2020. A list of participating banks can be found here: <https://www.sba.gov/paycheckprotection/find>

Note: Some lenders have indicated that they will only offer PPP loans to existing customers.

"In addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern" may qualify if:

- Does not have more than 500 employees or the maximum number of employees specified in the current SBA size standards, whichever is greater; or
- If the business has more than one location and has more than 500 employees, does not have more than 500 employees at any one location and the business' primary NAICS code starts with "72" (Accommodation and Food Service); or
- Is a franchisee holding a franchise listed on the SBA's registry of approved franchise agreements; or
- Has received financing from a Small Business Investment Corporation (SBIC).

[Click here to access a PDF of employment & revenue limits by NAICS code](#), or use the size tool here: <https://www.sba.gov/document/support--table-size-standards>

Sole proprietorships, independent contractors, and self-employed individuals may qualify under this program. According to SBA, participating lenders will begin accepting applications for these entities on 10 April 2020. Nonprofit organization and churches (organized under Section 501(c)(3) of the Internal Revenue Code), qualified veterans organizations (organized under 501(c)(19)), and certain Tribal business concerns are eligible.

SBA confirmed, on 4 April 2020, that religious organizations (and affiliated entities, such as daycares) are eligible.

The maximum amount of the loan is set by formula (average total monthly payroll during the one-year period before the loan date times 2.5, plus the amount of any other debt approved for refinancing - including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of \$10 million. Companies with seasonal employment can have a different formula: the average total monthly payments for payroll shall be for the 12-week period beginning February 15, 2019, OR March 1, 2019, and ending June 30, 2019; the time frame is at the discretion of the business owner. Companies with less than one year of payroll should use the average payroll for the months that they were in business. The PPP does not have allowances for companies that greatly increased or reduced employment prior to the disaster declaration.

- Independent contractors should not be included in payroll calculation.
- Employees that reside outside the United States should not be included in the payroll calculation.

The new loan will be able to cover payroll costs including costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensations; payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation); rent (including rent under a lease agreement); utilities (including phone and internet); and, interest on any other debt obligations that were incurred before February 15, 2020.

Other key provisions:

- **Interest rate: 1%.** Congress capped the interest rate of 4 percent per annum, and then Treasury indicated it would be capped at 0.5%. *SBA and Treasury issued guidance on 2 April that the actual rate would be 1%.* Maximum term is two years.
- [Loans are made by SBA-approved lenders](#) that have delegated authority to make the loans without approval from the SBA. Direct SBA Authorization is not required for each individual loan, which should help expedite the loan processing and closing process.
- Intent of the program is to cover payroll expenses for 8 weeks. SBA expects at least 75% of the forgiven amount must have been used for payroll costs (no more than 25% used for mortgage interest, rent, utilities)
- In reviewing the application, a lender has to evaluate whether the borrower was in business on February 15, 2020 and had employees and paid salaries and taxes or had independent contractors and filed 1099-MISC for them.
- The guarantee fees (which are typically 2 percent-3.75 percent of the loan amount, depending on the size of the loan) have been waived. These fees are typically paid by the borrower.
- Franchises listed in [SBA's Franchise Directory](#) are eligible to apply.

Loans are non-recourse to the borrower. In addition to waiving any guaranty that might otherwise be required by the Small Business Act, the CARES Act specifically provides each loan is nonrecourse to the shareholders, members and partners of the borrower. The lender is unable to pursue the borrower's other funds, possessions, or funding sources in case of default. Please note: If a business uses the proceeds of this loan on any non-forgivable expense, that money is still owed to the lender. A default on this loan would still be recorded, and would impact the borrowers credit score.

The borrower does NOT have to demonstrate it was unable to secure financing elsewhere before qualifying for SBA financing.

- No collateral requirement. No prepayment penalties.

- Payments are deferred for six to 12 months.

The applicant is required to certify:

- Current uncertain economic times make the loan request necessary to support ongoing operations; and
- Funds will be used to keep workers and make payroll, mortgage payments, lease payments and utility payments; and
- Applicant does not already have an application pending for other payroll assistance under the CARES Act.

NOTE: If your business cannot show economic injury, you should not pursue this loan. Applicants are required to certify that their business sustained economic injury because of the disaster; the Federal government may pursue individuals that make false statements or acquire these funds under false pretenses. For legal guidance, please contact your attorney.

NOTE: The SBA Economic Injury Disaster Loan (EIDL) is not part of the CARES Act. As noted above, an applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program) as long as the basis for the loans/costs being paid with each are different (no "double-dipping").

NOTE: A loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit made available under the CARES Act. This only applies to the Employee Retention Tax Credit in the CARES Act and does not apply to any credits available under the FFCRA (such as the paid sick leave tax credit) or other credits available under the CARES Act.

What should borrowers do now to prepare for the PPP application?

Several banks have advised borrowers to gather the following information: 2019 IRS Quarterly 940, 941 or 944 payroll tax reports, payroll reports for a twelve-month period (ending on your most recent payroll date), 1099's for independent contractors, documentation showing a total of all health insurance premiums paid by the company owners under a group health plan (employees + owners), documentation on retirement plan funding that was paid by the company owners (but not funding that came from employee paychecks). These are not required for the application form, but may be required to establish and substantiate the payroll data submitted to the lender.

LOAN FORGIVENESS PROVISIONS

Under the Paycheck Protection Program, loan forgiveness will equal the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):

- payroll costs (not to exceed \$100,000 of annualized compensation per employee); and
- payments of interest on any mortgage loan initiated prior to February 15, 2020; and
- payment of rent on any lease in force prior to February 15, 2020; and
- payment on any utility for which service began before February 15, 2020.

The amount forgiven is not considered taxable income to the borrower.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee's prior year compensation. A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020, as long as the employee is rehired by June 30, 2020.

NOTE: SBA is looking at the total number of jobs, and not the specific individual that was terminated or re-hired.

The amount forgiven will also be reduced by \$10,000 for businesses that accepted the \$10,000 forgivable loan that is available through the SBA Economic Injury Disaster Loan program.

Any amount outstanding after considering the amount forgiven will be repayable over a term not to exceed 10 years.

NOTE: The borrower must apply to the lender for loan forgiveness with supporting documentation. The lender will determine if the borrower is in compliance with the rules of the loan program.

For borrowers with existing 7(a) or microloan program loans, the SBA will pay principal, interest, and any associated loan fees for a six-month period starting on the loan's next payment due date. Payment on loans that are on deferment will begin with the first payment after the deferment period. Please note that this relief will not include loans made under the Paycheck Protection Program.

EMPLOYEE RETENTION TAX CREDIT

The Employee Retention Credit encourages small business owners to keep employees on their payroll by providing a fully refundable tax credit equal to up to 50 percent of qualified wages paid not exceeding \$10,000. FFCRA sick or family leave wages paid entitle an employer to a refundable tax credit dollar for dollar the amounts paid. The IRS guidance makes clear that the same wages cannot be counted for both credits.

IRS guidance indicates that businesses may not double-dip (or triple-dip) into the various forms of relief under FFCRA or CARES. Relief for the same purpose can only be obtained through one federal initiative.

Additional information can be found here:

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>

Notes for Financial Institutions / Lenders

SBA-certified lenders and non-SBA lenders will be authorized to make PPP loans. All lenders participating in the program (including banks, credit unions, and other financial institutions) will be moved to delegated authority, which allows them to process loans quickly without SBA approval.

The risk rating loans for loans issued under the Payroll Protection Program is 0 percent.

The SBA will pay lenders fees for processing loans under the Payroll Protection Program as follows:

- 5 percent of loan up to \$350,000
- 3 percent of loan from \$350,000 to \$2 million
- 1 percent of loans of \$2 million or more.

Fees to lenders are payable within five days of disbursement of the loan.

The Express Loan Program loan limit is raised to \$1 million from \$350,000 until December 31, 2020.

The SBA has up to 30 days following the enactment of the CARES Act to issue operating guidelines (SOP) and regulations for implementing certain provisions of the CARES Act. The Treasury Department is also required to issue regulations and guidance for certain provisions of the CARES Act. These future operating guidelines and regulations may impact loan approvals and disbursement.

DISCLAIMER:

The information presented above is current as of 6 April 2020.

Additional rules and guidance will affect the items summarized above.