

CARES Act – Small Business Provisions:

Paycheck Protection Program and Economic Injury Disaster Loans

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (H.R. 746, CARES) was signed into law to help individuals, families, and businesses address financial adversity during the COVID-19 crisis. This \$2.2 trillion so-called “Phase 3” package is unprecedented in its size and scope. It is likely that Congress will have technical corrections to this bill, as well as new stimulus policy measures that will comprise a “Phase 4” plan in the coming month.

Significantly, the CARES Act provides loan and grant options that were created to help small businesses. In particular, there is a new Paycheck Protection Program (PPP) and new Economic Injury Disaster Loan (EIDL) grants. On April 2, 2020, the Small Business Administration (SBA), the federal agency tasked with administering both PPP and EIDL, issued an [interim final rule](#) on the Paycheck Protection Program. Below we provide summary information on each program.

Paycheck Protection Program

This program provides for \$349 billion in new loans under the SBA 7(a) loan program under the SBA to be distributed through banks and credit unions via paycheck protection loans (PPLs) that are intended to keep workers employed and to cover certain business operating costs. The program begins on April 3, 2020, and is scheduled to end June 30, 2020 – or until funds run out. Applications will be accepted and funds will be distributed on a *first come, first served basis*.

Additional guidance and the application are available at: <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>.

WHO IS ELIGIBLE?

- Businesses, including 501(c)(3) nonprofits, veterans organizations, tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors, with 500 or fewer employees can apply.
- Businesses that are not eligible for PPP loans are identified in 13 CFR 120.110 and include life insurance companies.
 - Eligible businesses must have been in operation as of February 15, 2020 and either had employees for whom the business paid salaries and payroll taxes or paid independent contractors as reported on a Form 1099.
- Business must have its principal place of residence in the United States.
- Businesses in certain industries can have more than 500 employees if they meet applicable SBA employee-based size standards for those industries.

HOW AND WHEN CAN ELIGIBLE BUSINESSES APPLY FOR A LOAN?

- Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

HOW MUCH MONEY MIGHT ELIGIBLE BUSINESSES RECEIVE?

- Under the PPP, the maximum loan amount is the lesser of \$10 million or an amount that is calculated using a payroll-based formula specified in the Act, which is explained and illustrated with several examples on pages 8–10 of the SBA interim final rule, linked above.
- Generally, loans can be for up to two months of your average monthly payroll costs from the last year, plus an additional 25% of that amount. That amount is subject to a \$10 million cap. Payroll costs will be capped at \$100,000 annualized for each employee.

WHAT CAN THE LOAN COVER?

- Loans must be used for payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; mortgage interest payments (but not mortgage prepayments or principal payments); rent payments; utility payments; interest payments on any other debt obligations that were incurred before February 15, 2020; and/or refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.
- If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan *was not* used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan *was* used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.
- Eligible businesses have until June 30, 2020 to restore full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

OTHER FEATURES OF THE PAYCHECK PROTECTION LOAN

- 75% of loan must be used to cover payroll costs.
- The loan has a maturity of two (2) years and an interest rate of 1%.
- Loan payments can be deferred for six months; interest will continue to accrue during deferment.
- No collateral or personal guarantees are required. Loans are guaranteed 100%.
- Neither the government nor lenders will charge small businesses any fees.
- Business may only apply for one PPP loan.

LOAN FORGIVENESS

- Loan forgiveness may be up to the full principal amount of the loan and any accrued interest, provided that employee compensation levels are maintained and that the loans are used for the purposes listed above.
- Employers may delay part of FICA payments if they do not qualify for forgiveness.
- Not more than 25% of the forgiven amount may be attributable to non-payroll costs.
- The amount of loan forgiveness will be partially determined by the total amount of payroll costs, payments of interest on mortgage obligations incurred before February 15, 2020, rent payments on leases dated before February 15, 2020, and utility payments under service agreements dated before February 15, 2020, over the eight-week period following the date of the loan.

Economic Injury Disaster Loans & Grants

In addition to the PPP, the CARES Act also provides \$10 billion in new grants under the SBA's Economic Injury Disaster Loan (EIDL) program. An application process for the program can be found here:

<https://covid19relief.sba.gov/#/>

Highlights of the expanded EIDL program include:

- The coverage period is from January 31, 2020 through December 31, 2020.
- It expands covered entities for loans and grants to include, among others, small businesses under 500 employees, independent contractors and sole proprietors.
- The SBA program currently provides small businesses with working capital loans of up to \$2 million; however, the CARES Act adds a new emergency advance grant of up to \$10,000, which, if approved, the SBA must distribute within three (3) days. The grant will not be required to be repaid if the loan is subsequently denied.
- An emergency EIDL grant of up to \$10,000 would be subtracted from the amount forgiven under the Paycheck Protection Program.
- Grants must be used for paid sick leave, maintaining payroll, meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.
- The CARES Act relaxes the underwriting standards for loans.

SBA GUIDANCE REGARDING BUSINESSES THAT RECEIVED AN EIDL LOAN BETWEEN 01/31/20 and 04/03/20 AND RELATED ELIGIBILITY FOR PPP LOAN:

Refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020: If you received an SBA EIDL loan from January 31, 2020 through April 3, 2020, you can apply for a PPP loan. If your EIDL loan *was not* used for payroll costs, it does not affect your eligibility for a PPP loan. If your EIDL loan *was* used for payroll costs, your PPP loan must be used to refinance your EIDL loan. Proceeds from any advance up to \$10,000 on the EIDL loan will be deducted from the loan forgiveness amount on the PPP loan.

UPDATE

On May 22, 2020 the SBA issued two new interim final rules related to the Paycheck Protection Program included in the CARES Act: the first provides (to both borrowers and lenders) [additional guidance on how PPP loan forgiveness will be governed](#), and the second informs borrowers and lenders of the [SBA's process for reviewing PPP loan applications and loan forgiveness applications](#).