

SBA LOANS UNDER THE CARES ACT (UPDATED APRIL 3, 2020)

This is an update to the article which we sent you on March 30, 2020 regarding the small business loan provisions of the CARES Act.

Since March 30th, the U.S. Treasury Department (“Treasury Department”) and the Small Business Administration (“SBA”) have issued rules and guidelines regarding the implementation of the small business loan provisions of the CARES Act, including but not limited to an interim final rule issued by the SBA on April 2, 2020.

These new rules and guidelines significantly modify the terms of the CARES Act regarding small business loans. This update explains how these new rules and guidelines impact the small business loan provisions of the CARES Act.

Under the CARES Act, small business loan assistance is provided to small business owners through the following two programs:

1. The Paycheck Protection Program (Section 1102 of the CARES Act), and
2. Economic Injury Disaster Loans and Emergency Grant (Section 1110 of the CARES Act).

LOAN APPLICATION START DATES

Pursuant to rules published by the Treasury Department, applications for Paycheck Protection Program (“PPP”) loans may be submitted by small businesses and sole proprietorships on April 3, 2020. Starting April 10, 2020, independent contractors and self-employed individuals may apply. Applications for Economic Injury Disaster Loans were allowed immediately after the enactment of the CARES Act.

OVERVIEW OF PAYCHECK PROTECTION PROGRAM

The PPP loan program is administered through the SBA. It is intended to allow businesses to continue operating while maintaining their current workforce during the period of uncertainty caused by the COVID-19 Pandemic. The program is expected to provide up to \$349 billion in loans to eligible entities.

Eligibility

Eligible Borrowers

- Any business, Section 501(c)(3) nonprofit organization, veterans organization or tribal business concern with not more than 500 employees (full time, part time, or other basis) or such higher number as the SBA may set for the industry.
- Sole proprietors, independent contractors, and self-employed persons are also eligible.
- Unlike other SBA loans, the applicant does not have to demonstrate it was unable to secure financing elsewhere before applying.



Eligibility Requirements

In evaluating the eligibility of an applicant, a lender shall consider the following:

1. Was the applicant in operation on February 15, 2020; and
2. Did the applicant have employees for whom the applicant paid salaries and payroll taxes or paid independent contractors.

On March 31, 2020, the Treasury Department published the PPP loan application form. The application asks about whether the applicant:

1. is or has been the subject of certain criminal matters;
2. is presently involved in any bankruptcy proceeding; or
3. has been declared ineligible from participating in PPP loans by any Federal department.

Accordingly, these factors may also be considered by a lender when determining whether an applicant qualifies for a loan.

Good Faith Certification

An applicant must also provide the lender with a good faith certification that:

- the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; and
- there is no pending application for a 7(a) loan for the same purpose and amounts and no proceeds have or will be received from such a loan.

Use of Loan Proceeds

PPP loan proceeds may be used for:

- “Payroll costs”
 - salary, wages, commissions or similar compensation (for purposes of loan forgiveness, this does not apply to wages in excess of \$100,000 for individual employee);
 - payment of cash tips or an equivalent;
 - payment for vacation, parental, family or sick leave (excluding leave wages for which credit is available under Families First Coronavirus Response Act);
 - allowances for dismissal or separation;
 - payments for group health care benefits, including insurance premiums;
 - payment of retirement benefits;
 - payment of state and local taxes assessed on employee compensation; and

- payments to sole proprietors or independent contractors that are compensation of not more than \$100,000 in one year; and
- Costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Mortgage interest payments;
- Rent payments;
- Utility payments; and
- Interest on any other debt obligation incurred prior to February 15, 2020.

The interim final rule published by the SBA on April 2, 2020, indicates that at least 75% of PPP loan proceeds shall be used for payroll costs.

Maximum Loan Amount

The CARES Act states that the maximum amount of a PPP loan is *the lesser* of 2.5 times the average amount of monthly payroll costs during the year prior to the loan, or \$10,000,000.

Loan Terms

- Rules and guidelines recently issued by the SBA and the Treasury Department provide:
 - PPP loans are available for up to a 2-year term;
 - PPP loans will accrue interest at the rate of 1.0%; and
 - While payments on the PPP loans may be deferred for six months to one year depending on the deferment process set by the SBA, interest will accrue during the deferral period.
- The loans are 100% guaranteed by the SBA.
- No collateral or personal guaranties are required of the borrower.
- The loans are without recourse against principals, except for use of loan proceeds for unauthorized purposes.
- Payments on the loans may be deferred for six months to one year depending on the deferment process set by the SBA. Interest will accrue during the deferral period according to the Treasury Department.
- There are no pre-payment penalties on payments made before year end.

Forgiveness

Forgiveness Period – 8 Weeks

Borrowers are eligible for loan forgiveness (not to exceed the loan principal amount) for qualifying expenses paid during an eight (8) week period after the loan origination date.



Payments Subject to Forgiveness

- Payroll costs (as defined above), excluding certain taxes (including Social Security and Medicare) imposed or withheld;
- Interest payment on mortgage debt incurred prior to February 15, 2020;
- Rent payments on any lease in force prior to February 15, 2020; and
- Utility payments on any utility for which service began prior to February 15, 2020.

The SBA and Treasury Department have stated that not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs.

Employee Retention Requirement

The eligible forgiveness amount will be reduced proportionally based upon the number of employees who are not retained or rehired from February 15, 2020 – June 30, 2020, based upon the formula set forth below.

The qualified forgiveness amount (before reductions) multiplied by one of the two following amounts as selected by the borrower:

1. The average number of full-time equivalent employees (FTEs) per month during the covered period under Section 1106 of the CARES Act (8 weeks after loan origination) divided by the average number of FTEs per month from February 15, 2019 – June 30, 2019;

OR

2. The average number of FTEs per month during the covered period under Section 1106 of the CARES Act (8 weeks after loan origination) divided by the average number of FTEs per month from January 1, 2020 – February 29, 2020.

Salary Reduction Test

The qualifying forgiveness amount will be reduced by the amount of any salary/wage reduction occurring during the eight (8) week period following the loan origination date that is greater than 25% of an employee's salary/wages during the most recent full quarter for which the employee was employed prior to February 15, 2020.

Rehires and Wage/Salary Re-stabilization

Employee or salary reductions that occur between February 15, 2020 – April 26, 2020 (30 days after enactment of the Act), will NOT be considered in reducing the qualifying forgiveness amount if:

1. Between February 15, 2020 – April 26, 2020, there is a reduction in FTEs or salary/wages as compared to February 15, 2020; AND
2. Not later than June 30, 2020, the reduction has been eliminated.



Excluded from Gross Income

Amounts forgiven will NOT be considered gross income for federal tax purposes.

Loan Forgiveness Application

- In order to obtain loan forgiveness, borrowers must submit an application for forgiveness to their lender that includes a certification and documentation demonstrating the relevant full-time equivalent employee figures, as well as their payroll costs, mortgage payments, rent payments and utilities payments. Forgiveness will not be given without sufficient documentation. Accordingly, borrowers are advised to maintain records which will support any request for forgiveness.
- Borrowers are also required to certify that the amount sought to be forgiven was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments.
- Lenders are required to render a decision on an application for loan forgiveness no later than 60 days after it is submitted.

Where to Apply

All current SBA 7(a) lenders are eligible lenders

OVERVIEW OF ECONOMIC INJURY DISASTER LOANS AND EMERGENCY GRANT

Section 1110 of the CARES Act amends prior requirements relating to Economic Injury Disaster Loans (“EIDL”) under Section 7(b) of the Small Business Act and also provides an option for an emergency grant.

Eligibility

- Businesses with not more than 500 employees including sole proprietorships, independent contractors, cooperatives and employee owned business and Tribal Small Businesses.
- During the “coverage period” between January 31, 2020 and December 31, 2020, private non-profit organizations and small agricultural cooperatives are also eligible.
- The applicant must have been in operation since January 31, 2020.
- EIDL loans are available now to small businesses in a declared disaster area (all 50 states and other territories). An applicant must show that it has sustained an economic injury due to the disaster.

Loan Terms

- EIDL loans are available in a maximum amount of \$2,000,000.
- The interest rate is 3.75% for small businesses. The interest rate for non-profits is 2.75%.
- SBA offers loans with long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower’s ability to repay.



- The CARES Act removes the requirement for guarantees on EIDL loans under \$200,000. However, loans over \$200,000 must be guaranteed by any owner having a 20% or greater interest in the borrower.
- The CARES Act also removed the previous requirement that the borrower must not have been able to secure credit elsewhere or that the borrower was in business for at least one year, as long as it was in operation on January 31, 2020.
- An applicant may receive an EIDL loan and loans under other programs such as PPP loans as long as the basis for the loans or costs being paid with each are different.

Emergency Grant

- An applicant for a loan under the EIDL program may request, under Section 1110 of the CARES Act, an expedited disbursement that is to be paid within three (3) days of the request. However, the advance may not exceed \$10,000 and must be used for authorized costs such as paid sick leave, payroll during business disruptions, rent or mortgage payments and repayment obligations that cannot be met due to revenue losses.
- Applicants must provide a self-certification showing that it is an “eligible entity” as defined under Section 1110 of the CARES Act.
- An Applicant is not required to repay any amount of an advance even if it is subsequently denied a loan under the EIDL program.

Loan and Grant Availability

- The covered period for EIDL loans is from January 31, 2020 to December 31, 2020.

Please note that the SBA and Treasury Department continue to develop these loan programs and provide additional guidance as to how they will be carried out. Section 1114 of the Cares Act provides that no later than 15 days after the enactment of the CARES Act, the SBA shall issue regulations relating to these loan programs. Accordingly, we expect to provide an update to this article by April 10, 2020. For future updates, a link to our firm’s website will be sent you which will lead you to the updated article.

The information in this article is current as of April 3, 2020.