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Offerings During the COVID-19 Pandemic



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UPDATE: These FAQs have been updated to reflect recently released guidance from the SBA on affiliation rules.

Small businesses looking for an economic lifeline as a result of losses due to the COVID-19 pandemic have several loan programs they may be able to tap for help, thanks to the stimulus package signed into law last Friday, March 27, 2020. The two trillion dollar bill offers \$349 billion in specific relief for small businesses – including loan forgiveness. This historic bill adds to the already-existing Small Business Administration (SBA) disaster loan program available at low interest rates.

Navigating the various eligibility requirements, let alone deciding what might be most beneficial to your business, may be tricky. For example, while businesses may be able to take advantage of more than one loan program, doing so may affect the amount of loan forgiveness available. Additionally, businesses must prepare to provide a myriad of information to lenders. The FAQs below will give you an overview of the loan programs and can help you evaluate your options as you form a strategy.

If you have any questions or want to discuss these matters further, please don't hesitate to contact the Gould & Ratner attorney with whom you work regularly, or any of the lawyers in our [Coronavirus/COVID19 Resources Team](#).

Payment Protection Program

What is the Paycheck Protection Program (PPP)?

The CARES Act permits small businesses to apply for a loan from SBA approved private lenders. The hallmark of the PPP is loan forgiveness for up to eight weeks between February 15, 2020 and June 30, 2020, for specific operational expenses.

Who is eligible to apply for a PPP loan?

Generally, all businesses with 500 or less employees – including nonprofits, veterans' organizations, tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors – are eligible for the PPP loan. If your business has more than 500 employees, you may nonetheless be eligible for a PPP loan if you meet the SBA's size standards. Further, the CARES Act made the PPP loan available to businesses which are assigned a North American Industry Classification System code beginning with 72 (Accommodation and Food Services), so long as such business do not have more than 500 employees per physical location. In determining your total number of employees, you should also [review the affiliation rules](#) to determine whether the employees of any affiliates should be counted toward your total number of employees.

What is the PPP loan intended to cover?

The PPP loan can be used for payroll expenses (excluding the payroll expenses that were covered by the employment tax credit made available under the FFCRA), including salaries and leave costs, as well as rent/mortgage payments, utilities, insurance premiums, and debt obligations.

How much can I borrow with a PPP loan?

The maximum loan amount with a PPP loan is ten million dollars, but the amount for each business is set by a formula based on the business's payroll expenses, including commissions and payments to certain independent contractors. Namely, the loan amount will be limited to 2.5 times your average monthly payroll expenses over the past year, subject to a cap of \$100,000 of annual salary per employee. If you haven't been in business for that long, your maximum loan amount will be 2.5 times your average monthly payroll costs between January 1, 2020 and February 29, 2020.

What if my business doesn't have any employees or payroll costs?

If your business doesn't have employees (or qualified independent contractors), you are not eligible for the PPP. However, you may be able to take advantage of the EIDL or other sources of funding.

What are the terms of the PPP loan?

Loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees. The interest rate on the PPP loans cannot exceed four percent. SBA announced on April 2, 2020 that the interest rate on a PPP loan will be one percent, and the maturity dates on these loans is two years.

How does the loan forgiveness work?

The PPP loan will be fully forgiven (up to the full principal amount of the loan and any accrued interest) if the funds are used for payroll costs, interest on mortgages, rent, and utilities. Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels, and will be reduced if full-time headcount declines, or if salaries and wages decrease.

How do I make sure I qualify for loan forgiveness under the PPP?

You must apply for forgiveness through your lender, it is not automatic. In addition, you should make sure to keep accurate records and detailed accounting to show you spent the PPP loan on eligible expenses. You should be prepared to provide the following:

- Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings;
- Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities and
- Certification from a representative of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program's guidelines for use.

How do I apply?

You can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program.

You should consult with your local lender as to whether it is participating in the program. The application form for the PPP loan is available [here](#). In addition to the application form, applicants will be asked to submit payroll documentation sufficient to demonstrate the qualifying payroll amount. Such documentation can include payroll processor records, payroll tax filings, income and expenses for sole proprietorships, Form 1099-MISC, or bank records. The program is only open through June, 30, 2020, and you are encouraged to apply as soon as possible given that there is a funding cap and lenders need time to process your application.

Economy Injury Disaster Loan Program

What is the Economic Injury Disaster Loan (EIDL) Program?

The EIDL Program is the other primary SBA loan program available for small businesses during the COVID-19 pandemic, which offers capital loans up to two million dollars for qualifying businesses for ongoing costs associated with operations, payroll, and debt. The disaster loan has no cost to apply, and no obligation to accept if approved.

Did the CARES Act change the EIDL Program?

Unlike the PPP, the EIDL Program was available to small businesses prior to the passage of the CARES Act. However, the CARES Act has made EIDLs available nationwide by providing that a nationally declared emergency is a trigger for the EIDL Program. In addition, it expanded the meaning of “eligible entity” during the covered period (Jan. 31, 2020, through Dec. 31, 2020), making this loan program available to many small businesses that would otherwise be ineligible.

Does this mean I can apply to the PPP and the EIDL?

Yes, if you apply for an EIDL and the grant, you can still apply for a PPP loan. However, if you do this, note that the amount forgiven under a PPP loan will be decreased by the \$10,000 EIDL grant, should you request and receive a grant. In addition, if you apply to both, you cannot use the loan funds for the same purpose, (i.e., you cannot use both your PPP loan and EIDL to pay for February payroll expenses). The SBA recently issued guidance that in determining your PPP loan amount, you should “add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any ‘advance’ under an EIDL COVID-19 loan (because it does not have to be repaid).”

Who is eligible to apply for an EIDL?

During the covered period (January 31, 2020 through December 31, 2020), business concerns having not more than 500 employees, sole proprietorships (with or without employees), and independent contractors are eligible for an EIDL. In addition, your business may qualify if it meets the SBA’s size standards. Note that the exception for the accommodation and food services industry available to PPP loan applicants does not apply to EIDLs. In determining your total number of employees, you should also [review the affiliation rules](#) to determine whether the employees of any affiliates should be counted toward your total number of employees.

What can the proceeds from an EIDL be used for?

These loans are meant to “offer an affordable way for individuals and businesses to recover from a declared disaster.” Accordingly, the loans can be used for ongoing payroll and other business expenses, such as accounts payable and supply chain disruption expenses. The loans should not be used for business expansions or as a substitute for lost profits or sales.

What are the terms of an EIDL?

Small businesses can seek to borrow up to two million dollars, with the goal of keeping their business solvent. The loans are offered at a 3.75 percent interest rate, with terms up to 30 years. Payments on the loans can be deferred for 12 months from the date of the loan close. There are, however, no prepayment penalties. In addition, borrowers can return to their applications and amend to increase or decrease the amount requested before funding. Borrowers are required to provide projections showing why such amounts are necessary to keep the business afloat.

Loans up to \$25,000 are unsecured. Loans exceeding this amount require collateral, including a personal guaranty or a mortgage on a personal home or investment property. For loans made before Dec. 31, 2020, due to COVID-19, the CARES Act is waiving personal guarantees on loans below \$200,000. The CARES Act also waived the requirement that an applicant must not be able to obtain credit elsewhere, as well as the requirement that an applicant have been in business for the one year period prior to the disaster.

How do EIDL grants work?

Applicants for EIDLs are now also eligible for emergency grants under the CARES Act – you may receive an advance of up to \$10,000 within three days of receipt of your applications. This grant may be used for any purpose that an EIDL could be used.

How do I get an EIDL grant?

You can request a grant when you apply for an EIDL. Given that you will receive it before your application is decided, you will be required to certify under penalty of perjury that you are an entity eligible for an EIDL.

If I receive the EIDL grant and then do not receive the EIDL, will I have to repay the \$10,000?

EIDL grants are not subject to repayment, even if your loan request is denied. However, if you receive this grant and either transfer into or get approved for a PPP loan, the advanced amount will be reduced from the loan forgiveness amount of your PPP loan.

When should I apply for an EIDL?

You should apply for an EIDL as soon as possible, especially if you would like to take advantage of the EIDL grant, as there is finite funding available for the grants.

How do I apply for an EIDL?

You are encouraged to [apply online](#), though applications can be completed by mail as well. Be patient – given the volume of applications, the SBA website has experienced some technical issues. Should you require assistance, you can call district offices at (800) 659-2955 or send an [email](#). Once your application is completed, the SBA's goal is to reach a decision within two to three weeks, with disbursement of funds one week thereafter.

Other Considerations

Can I still participate in one of the SBA loan programs and use the Families First Coronavirus Response Act (FFCRA) or CARES Act tax benefits?

Borrowers under the PPP are still eligible for payroll tax credits for sick leave and expanded FMLA under FFCRA. However, the costs of paid leave that employers are required to provide under the FFCRA are ineligible for forgiveness under the PPP. The CARES Act also provides for an employee retention tax credit. The employee retention credit is a credit against a business's employment taxes and is limited to \$5,000 per employee and is available only for businesses whose business and gross receipts are significantly reduced by COVID-19. However, this credit is not available if you are taking an SBA loan.

Are there any other ideas I should consider for my small business?

Yes, speak to your bank to see what, if any, other options you may have. Many banks may be willing to consider deferment of interest payments or offer short-term bridge loans to existing clients. The SBA also offers an Express Disaster Bridge Loan, which permits small businesses that currently have a business relationship with an SBA Express Lender to access up to \$25,000 with less paperwork. Separate from the CARES Act, the Federal Reserve on March 23, 2020, announced that it expects to establish a Main Street Business Lending Program soon "to support lending to eligible small-and-medium sized businesses, complementing efforts by the SBA."

Are there any other states, counties or cities offering similar opportunities?

Yes, many states, counties, and cities are offering assistance to small businesses. For example, if you are small business in Chicago, you may also be eligible for assistance through the Chicago Small Business Resiliency Fund. In addition, the Illinois Department of Commerce & Economic Opportunity has announced the Hospitality Emergency Grant Program, the Illinois Small Business Emergency Loan Fund, and the Downstate Small Business Stabilization Program.