



LEGAL UPDATES

COVID-19 Federal Loan Assistance Programs

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In response to the global COVID-19 pandemic, on March 27, 2020 Congress enacted and the President signed the Federal Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”). Among other things, the CARES Act:

1. Creates a new 7(a) SBA Business Loan Program called the “Paycheck Protection Program”, which authorizes the making of loans to eligible entities (a “**PPP Loan**”) through June 30, 2020, without any personal guarantee or collateral requirements, and with the PPP Loans being subject to forgiveness under certain circumstances.
2. Significantly expands, for a limited period ending December 31, 2020, the availability of Economic Injury Disaster Loans (an “**EID Loan**”) under the SBA’s 7(b) Disaster Assistance Program for COVID-19 related economic injury, and which provides for, among other things, small emergency advances for which no repayment is required.

PPP Loans

Until June 30, 2020, the Paycheck Protection Program allows the SBA to provide 100% federally-backed loans up to a maximum amount to eligible businesses to help pay operational costs like payroll, rent, health benefits, insurance premiums, utilities, and other costs. No personal guarantees or collateral are required. Subject to certain conditions, loan amounts are forgivable. The SBA is granted the right to make PPP Loans directly or PPP Loans may be made through third party lenders. Lenders currently authorized to make 7(a) loans are automatically approved to make PPP Loans.^[1]

Eligible Borrowers. In addition to SBA “small business concerns”, eligible businesses for the new program include any business concern, nonprofit organization, veterans’ organization, or Tribal business if:

- It employs not more than 500 employees (unless the applicable industry has a higher size standard under the SBA rules);
- It was in operation on February 15, 2020; and

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- It had W-2 employees or 1099-MISC independent contractors.

Special Eligibility Rules.

- Accommodation and Food Service Businesses. For accommodation and food services businesses[2] with more than one physical location, if it employs 500 or fewer employees **per location**, then the business is eligible to receive a PPP Loan.
- Affiliation Rules. Generally, entity "affiliates" are combined for purposes of determining the number of employees. For PPP Loans, SBA regulations on entity affiliations are waived for:
 - Accommodation and food services businesses with 500 or fewer employees;
 - Franchise businesses that are approved on the SBA's Franchise Directory; and
 - Any business that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act.

Loan Limits. There is an overall cap of \$10 million. Up to this cap, the maximum loan amount an applicant can receive for a PPP Loan is:

1. 2.5 times the average monthly payroll costs incurred in the one-year period before the date of the loan. Payroll costs include salary/wages/tips, sick/family leave/PTO, severance payments, group health benefits (including insurance premiums), retirement benefits, and state or local taxes assessed on employee compensation. However, for any employee who is paid more than \$100,000 salary, only the amount up to \$100,000 (prorated for the covered period) is calculated.

Plus

2. The balance of any EID Loan being refinanced with the PPP Loan.

Use of Loan Funds. Businesses may, in addition to uses already allowed under the SBA's 7(a) Business Loan Program, use the loans for: (1) payroll costs; (2) continuation of group health care benefits during periods of paid sick, medical, or family leave, or insurance premiums; (3) salaries or commissions or similar compensation; (4) interest on mortgage obligations; (5) rent; (6) utilities; and (7) interest on other outstanding debts.

General Loan Terms.

- Interest Rate: The interest rate is not to exceed 4%.
- Personal Guarantees: No personal guarantees.
- Collateral: No collateral.
- Payment Terms: If a balance remains after reduction based on the loan forgiveness, the PPP Loan shall have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.
- Payment Deferral: PPP Loan payments can be deferred from six months to one year.
- Borrower Requirements: There are few borrower requirements to obtain a PPP Loan. These requirements include a good-faith certification that:
 - The loan is needed to continue operations during the COVID-19 emergency;



- Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- The applicant does not have any other application pending under this program for the same purpose; and
- The applicant has not received duplicative amounts under this program.

Loan Forgiveness. A key aspect of the Paycheck Protection Program is that the PPP Loan is subject to forgiveness and forgiven amounts are not subject to federal income tax. Borrowers are eligible for loan forgiveness equal to the amount spent by the borrower during the 8-week period beginning on the date the loan is originated. The following costs are subject to forgiveness: (1) payroll costs (including additional wages paid to tipped employees); (2) interest on any mortgage obligation; (3) rent; and (4) utilities payment.

The amount subject to forgiveness will be *reduced* as follows:

- If the borrower terminated or furloughed employees or reduced compensation in the period between February 15, 2020 and June 30, 2020, the amount of forgiveness is reduced by (1) any reduction in employees retained compared to historical levels, and (2) any decrease in compensation of any employee beyond 25% of historical compensation.
- *However*, if any reduction of employees or decrease in compensation between February 15, 2020 and April 26, 2020 are corrected (e.g., through rehiring of employees) by June 30, 2020, the reduction or decrease will not reduce the amount subject to forgiveness.

EID Loans

An EID Loan is a low-interest, fixed-rate loan that can provide up to \$2 million in assistance for a borrower. EID Loan funds come directly from the federal government. Applicants do not go through a lender to apply, and instead, apply directly to [SBA's Disaster Assistance Program](#). Actual loan amounts are based on the amount of economic injury. The covered period for the new EID Loan rules is January 31, 2020 through December 31, 2020.

General Eligibility. An applicant must have been in operation on January 31, 2020. In addition to current eligible businesses, the following are eligible:

- A business with 500 or fewer employees;
- Cooperatives with 500 or fewer employees;
- ESOPs with 500 or fewer employees; and
- Tribal small business concerns, with not more than 500 employees;
- Any individual who operates as a sole proprietorship, with or without employees, or as an independent contractor.

General Loan Terms.

- Interest Rate: The interest rate is 3.75% for small businesses. The interest rate for non-profits is 2.75%.
- Payment Term: EID Loans provide long-term repayments, up to a maximum of 30 years. Payment terms are determined on a case-by-case basis.
- Payment Deferral: EID Loan payments can be deferred up to one year.
- Personal Guarantees: Required for loans of more than \$200,000.
- Collateral: Generally required for EID Loan, *if available*, although may not apply to EID Loans of \$200,000 or less.



- **Creditworthiness:** Lenders are authorized to approve applicants based solely on credit scores (no tax return submission required) or “alternative appropriate methods to determine an applicant’s ability to repay.”

Use of Funds. EID Loans may be used to pay (1) fixed debts; (2) payroll, (3) accounts payable and (4) other bills that can’t be paid because of the disaster’s impact. The loan may **not** be used for refinancing, expansion, growth of any kind, or infrastructure improvements.

Emergency Advance. Applicants may request an emergency advance from the SBA of up to \$10,000, which does not have to be repaid, **even if the loan application is later denied.** Advances are to be awarded within 3 days of an application.

For more information of the CARES Act as well PPP Loans and EID Loans, please contact [Andrew Hogenson](#) or your regular Lathrop GPM contact.

[1] The SBA has developed [Lender Match](#), a free online referral tool that connects small businesses with participating SBA-approved lenders within 48 hours.

[2] Those assigned to the “accommodation and food services” sector (Sector 72) under the North American Industry Classification System (NAICS).