

# SHOULD MY BUSINESS APPLY FOR AN ECONOMIC INJURY DISASTER LOAN (EIDL)?

*Hodgson Russ Banking & Finance Alert*  
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In addition to establishing the Paycheck Protection Program (“PPP”) and Main Street lending program, which we have covered in prior alerts here and here, the Coronavirus Aid, Relief, and Economic Security (“CARES Act”) expanded an already-existing program: the Small Business Administration’s Economic Injury Disaster Loan (“EIDL”) Program. EIDL Loans are authorized under Section 7(b) of the Small Business Act, and differ from PPP Loans in several important respects. The information below summarizes the EIDL Program as it has been expanded by the CARES Act.

Two important notes:

1. The CARES Act is difficult to summarize in brief. This alert is intended only to flag issues for those considering EIDL Loans, and should not replace advice specific to your business’s situation from a qualified legal or financial advisor.
2. EIDL guidance and interpretation is evolving at a rapid pace. Please contact one of our attorneys named at the end of this alert with any questions and to make sure you are up to date on this topic.

## **How does the program work?**

Through the EIDL Loan program, applicants can apply for working capital loans designed to support small businesses experiencing substantial economic injury arising out of the COVID-19 pandemic. Once an applicant applies for an EIDL Loan, it may also request an emergency EIDL Grant for up to \$10,000 per applicant, which will be considered an advance under the applicant’s EIDL Loan. The Small Business Administration intends to distribute these Grants within 3 days after the applicant files its application, but it is reasonable to expect longer wait times.

## **Who is eligible?**

Business concerns located in a declared disaster area that have suffered a “substantial economic injury” directly resulting from such declared disaster are eligible to apply for EIDL Loans. For COVID-19 purposes, each U.S. State and territory has been declared a disaster area. Between January 31, 2020 and December 31, 2020, the following businesses may be eligible for an EIDL Loan:

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- business concerns with fewer than 500 employees,
- small business concerns meeting a specific size standard as provided by the Small Business Administration,
- cooperatives with fewer than 500 employees,
- agricultural cooperatives,
- private nonprofit organizations\*,
- employee stock ownership plans with fewer than 500 employees,
- tribal small business concerns with no more than 500 employees, and
- individuals operating under sole proprietorships (with or without employees) or as independent contractors.

Unlike the PPP, which waives affiliation rules for certain businesses, all applicants for EIDL Loans are required to calculate business size on an affiliated basis.

*\*Note that, unlike the PPP, which restricts nonprofit eligibility to 501(c)(3) and 501(c)(19) organizations, nonprofits with a tax exemption under 501(c), (d), or (e) are eligible under the EIDL Loan program.*

### **Is there a net income limitation?**

No. While the pre-CARES Act program restricted eligibility to small business concerns, the CARES Act expanded eligibility for EIDL Loans made to address economic injury between January 31, 2020 and December 31, 2020, as noted above.

### **How much money can be borrowed?**

The maximum EIDL Loan amount is \$2,000,000. The ultimate loan amount is determined by the Small Business Administration on a case-by-case basis, and will be tied to the amount of economic injury actually suffered by the applicant. Applicants can request EIDL Grants up to \$10,000.

### **What can I use the loan proceeds for?**

Applicants may use the proceeds of EIDL Loans and EIDL Grants for the following purposes: paying debts; paying sick leave for employees unable to work as a direct result of COVID-19; payroll expenses; accounts payable; making rent or mortgage payments; and repaying obligations that cannot be met due to decreased revenues. Prohibited uses include refinancing indebtedness; making payments on loans owing to other federal agencies; paying obligations arising out of federal or state tax penalties, criminal, or civil fines; and paying dividends or other disbursements.

### **Can my loan be forgiven?**

No. Unlike under the PPP, EIDL Loans are not forgivable. However, applicants do not need to repay EIDL Grants if their application for an EIDL Loan is ultimately denied.

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### **Do I have to make payments right away?**

Likely, yes – at least within 1 year of the loan date. Payment terms are determined by the Small Business Administration on a case-by-case basis. Interest rates for nonprofit entities have been set at 2.75%, while interest rates for all other entities are 3.75%.

### **Do I need to provide collateral or a guaranty?**

Yes. Though the CARES Act does not address whether collateral is required for EIDL Loans, the pre-CARES Act program requires borrowers to provide collateral for loans greater than \$25,000. It is reasonable to assume that this collateral requirement still applies. EIDL Loans also require borrowers to provide a personal guaranty for loans greater than \$200,000. Therefore, applicants may have to provide both collateral and personal guaranties for EIDL Loans, which they are not required to provide under the PPP.

### **Can I have both a PPP Loan and an EIDL Loan?**

Yes. Applicants can have both PPP and EIDL Loans, but they cannot use them to cover the same expenses. PPP loans may be used to refinance EIDL Loans made between January 31, 2020 and the date on which PPP loans became available, effectively allowing the borrower to pay off a non-forgivable loan with a forgivable loan.

### **What do I do now?**

While the PPP requires potential borrowers to apply through a bank, EIDL Loan applications should be filed directly through the Small Business Administration website: <https://disasterloan.sba.gov/ela>. Though the Small Business Administration has stopped accepting applications for EIDL Loans, it is likely that once the program receives additional funding, applicants will again be able to apply.

Contact Chris Fattey (716.848.1757), Brianne Szopinski (716.848.1521) or Valerie Stevens (646.218.7614) with any questions you may have about this program.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications.html>.