

New Federal Small Business Loan Programs

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Many businesses are facing significant liquidity challenges due to the COVID-19 pandemic. The federal government is implementing two loan programs to help small and mid-sized businesses: the **Economic Injury Disaster Loans (“EIDL”) Program** and the **Paycheck Protection Loan Program**.

While similar in many respects, there are key differences in the programs. The Paycheck Protection Loan Program encourages business to keep employees on payroll as an alternative to workers accessing expanded unemployment benefits by allowing for loan forgiveness if businesses maintain workforce and compensation levels. The EIDL Program, conversely, is a more traditional loan program that requires repayment. Paycheck Protection Loans are available without personal guarantees from business owners or the pledge of additional collateral, which are required for most EIDLs (and other Small Business Administration (“SBA”) loans).

The programs also will be administered differently. The SBA is administering the EIDL program directly. Businesses are encouraged to apply online at www.sba.gov/disaster. As of March 31, 2020, SBA had significantly streamlined the application process. Paycheck Protection Loans will be available from SBA-authorized 7(a) lenders. The application process and other important regulations are still in process, but businesses should anticipate applying and working with SBA-authorized 7(a) lenders for Paycheck Protection Program Loans.

The table below provides a side-by-side comparison of the loan programs. Borrowers will want to understand key differences in determining what may be right for them. Additionally, there are some potential traps for the unwary in the programs. For instance, an employer’s affiliates may be attributed to an employer to determine whether the 500 employee limit has been exceeded under the Paycheck Protection Loan program. Should you have any questions, please contact a Moss & Barnett attorney. **SBA EIDL Program Paycheck Protection Program WHO QUALIFIES**

Small businesses, small agricultural cooperatives, small aquaculture businesses, and most private non-profit organizations.

Online tool available to see if a business is “small.”^[1]

Agricultural Enterprises (primary activity of the business (including its affiliates) as defined in Section 18(b)(1) of the Small Business Act) are not eligible and should examine USDA and state-specific programs.

Businesses that employ not more than 500 people.^[2]

Businesses in certain industries that employ more than 500 people also may qualify. Note that for hotels, restaurants, and other businesses with the North American Industry Classification System (NAICS) code 72, employment is measured on a per-location basis.

Individuals that operate as sole proprietorships or independent contractors and eligible self-employed persons may also participate.

Applicants will need to certify that no other application for a loan for the same purpose is pending and that the business will not receive any other loan for the same purposes through December 31, 2020. **WHERE TO APPLY** Apply directly with SBA at www.sba.gov/disaster.

The Paycheck Protections Loans will be originated by lenders already approved under the SBA 7(a) program.^[3]

MAXIMUM LOAN Up to \$2 million; maximum unsecured loan of \$25,000. Lesser of: (i) \$10 million or (ii) 2.5 times the average total monthly payments by the applicant for payroll costs during the one-year period before the loan is made.^[4] **USE OF PROCEEDS** Fixed debts, payroll, accounts payable, and other bills.

Payroll costs;^[5] continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensations; payments of interest on any mortgage obligation;^[6] rent; utilities; and interest on any other debt obligations that were incurred before February 15, 2020.

Applicants will need to certify that the loan is necessary, and will be used to retain workers and pay eligible expenses. **UNDERWRITING AND COLLATERAL**

Collateral required for loans over \$25,000.

SBA will take real estate as collateral when it is available. SBA has indicated that it will not decline a loan for lack of collateral, but it will require borrowers to pledge what is available.

No collateral required. **LOAN TERMS**

- Term of up to 30 years.
- No principal and interest payments are required for 12 months.
- Interest accrues during nonpayment period.
- No prepayment penalty.
- Interest Rate: 3.75% (Business); 2.75% (Non-Profit).
- Personal guarantees will be required for loans in excess of \$200,000 and loan may need to be secured.

- No loan forgiveness.
- Two Years.^[7]
- No principal and interest payments for the first six months.^[8]
- Interest accrues during nonpayment period.
- No prepayment penalty.
- Interest Rate: 0.50%.^[9]
- No personal guaranties of shareholders, members or partners.
- Forgiveness:
 - Amount actually paid for payroll costs, interest on mortgage obligations, rent and utilities in the 8-week period following loan disbursement.
 - The forgiveness amount is subject to reduction if there is a workforce reduction or a reduction in the salary or wages of an employee.
 - Must apply to lender for loan forgiveness and will receive a decision within 60 days.
 - Forgiven amount not included in gross income.

GOVERNMENT ISSUED FACT SHEETS The Economic Injury Disaster Loans Fact Sheet issued by SBA can be accessed [here](#). The Paycheck Protection Program Fact Sheet issued by SBA and the Department of Treasury can be accessed [here](#).

[1] SBA guide to size and affiliation rules is available [here](#).

[2] SBA affiliation rules generally apply in the calculation of the number of employees, though rules are not applied in certain circumstances, including for franchisees.

[3] Additional lenders may be added as the situation evolves.

[4] There are specific provisions addressing seasonal workers, new businesses, and costs included and excluded from calculation of payroll costs. EDIL loans could be refinanced into Paycheck Protection Act Loans.

[5] Excludes compensation in excess of \$100,000.00 and paid sick and family leave mandated under the Families First Coronavirus Response Act.

[6] Prepayment and principal are excluded.

[7] Legislation provided for up to ten years, but recent guidance indicates loan term will be two years.

[8] Legislation provided for up to 12 months' payment deferrals, but recent guidance indicates payments will be deferred for six months.

^[9] Legislation provided for up to 4.00%, but recent guidance indicates interest rate of 0.50%.

Should you have any questions, please contact an attorney at Moss & Barnett.

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