

Small Business Administration Loans Under the CARES Act

Posted April 3, 2020

Updated May 13, 2020

The Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020. Title I ("Keeping American Workers Paid & Employed Act") addresses two types of loans available to small businesses, both of which greatly expand SBA loan eligibility. On April 2, 2020, the SBA issued an Interim Final Rule, effective immediately (though comments will be considered for a period of 30 days and revisions may be made as a result thereof) in connection with the Paycheck Protection Program described below. The SBA has provided additional guidance to address borrower and lender questions through its Frequently Asked Questions ("FAQs"), which are updated periodically. Borrowers and lenders may rely on the guidance provided in the FAQs. The FAQs can be accessed at <https://www.sba.gov/document/support--faq-lenders-borrowers>

A brief summary of each of the two types of loans is provided below.

Paycheck Protection Program under Section 7(a) of the Small Business Act- to help employers maintain payroll to prevent job loss & small business failure; 100% federally guaranteed; \$349 billion available for loans; for more information go to <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-7>

- **Eligibility:** in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern with not more than 500 employees, including sole proprietors, non-profits, and eligible self-employed individuals; eligible companies must have been in operation on February 15, 2020 and have had employees for whom it paid salaries & payroll taxes or paid independent contractors as of such date; the borrower must certify in good faith that the loan request is necessary, taking into account their business activity and their ability to access other sources of liquidity; any borrower that received a loan for less than \$2 million will be deemed to have made the required certification in good faith; SBA will review all loans made in excess of \$2 million (see "forgiveness" below)
- **Application:** **small businesses and sole proprietorships may apply beginning Friday, April 3; independent contractors and self-employed individuals may apply beginning Friday, April 10;** apply directly with SBA-approved lender by June 30, 2020 (funding is capped, so applications should be submitted as soon as possible); the Department of Treasury has authorized FDIC-insured banks and credit unions, certain Farm Credit System institutions, and certain other depository or non-depository financing providers to provide loans in addition to already approved SBA lenders; applicants are advised to contact all lending institutions with whom they do business to gauge such institution's readiness to provide application and process the loan; applicant may apply with only one bank, however; all lender & borrower fees are waived
- **Coverage Period:** February 15, 2020 to June 30, 2020
- **Loan Amount:** Maximum amount of loan is the lesser of \$10 million or 2.5 times the average monthly payroll costs based upon the prior year's payroll
- **Interest Rate:** 1% fixed
- **Permitted Uses for Loan:**
 - a. Payroll Costs (including costs related to healthcare benefits and premiums, payments for vacations and sick, family and medical leave (to the extent a credit is not allowed under the Families First Coronavirus Response Act), salaries (salaries of over \$100,000/year are capped at \$100,000), wages, commissions, tips and similar compensations, state and local taxes on compensation (NOT available for federal employment taxes imposed or withheld from 2/15/2020-6/30/2020, including FICA, Railroad Retirement Act taxes and income taxes required to be withheld from employees));
 - b. interest payments on mortgage obligations;
 - c. rent (lease must have been in force as of February 15, 2020);
 - d. utilities for which service began prior to February 15, 2020
- **Forgiveness:** amounts spent during the 8-week period beginning with the origination date on rent, payroll costs, mortgage interest & utilities may be forgiven; **75% of the qualified spending must consist of Payroll Costs (no**

more than 25% of amount forgiven may be for non-payroll costs); amount forgiven may be reduced if the borrower reduces the number of full-time employees or salaries and wages during such 8 week period; amount forgiven reduced in proportion to reduction in number of employees & reduction in total salary or wages of employee in excess of 25% (excluding employees with salaries greater than \$100,000); reduction penalty does not apply to the extent the borrower restores their workforce count and salaries/wages by June 30, 2020; must apply to lender for forgiveness and include documents verifying the number of full-time equivalent employees and pay rates, along with payments on eligible mortgage, lease and utility obligations; lender must make decision on loan forgiveness within 60 days; amount forgiven may not exceed the principal of the loan; amount forgiven is not included in gross income; SBA will review all loans in excess of \$2 million following submission of the borrower's loan forgiveness application; if SBA determines that the borrower lacked an adequate basis for the required certification, SBA will seek repayment of the outstanding loan balance and will inform the lender that the borrower is not eligible for loan forgiveness; if the borrower repays the loan, SBA will not pursue administrative enforcement; SBA will be issuing further guidance on loan forgiveness

- Term: to the extent not forgiven, 2 years
- Deferral: 6 month deferment on payment of principal & interest (interest still accrues during that period)
- Guarantees/Collateral: no personal guarantee or collateral required

Economic Injury Disaster Loan Program under Section 7(b) of the Small Business Act (“EIDL” Program)- existing program but expanded by CARES Act with \$10 billion of additional funding for emergency grants, expansion of entities eligible for such loans and waivers of certain requirements; for more information go to <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>

- Eligibility: in addition to already eligible small business concerns, private nonprofit organizations, and small agricultural cooperatives, sole proprietors, independent contractors, and any cooperative, ESOP or tribal small business with 500 or fewer employees; must have suffered “substantial economic injury” from COVID-19; usual EIDL requirement that borrower must demonstrate it is unable to obtain credit elsewhere is waived
- Application: through the SBA website at: <https://covid19relief.sba.gov/#/>
- Coverage Period: January 31, 2020 to December 31, 2020
- Loan Amount: based upon company's actual economic injury as determined by the SBA up to \$2 million
- Interest Rate: 75% fixed rate for small businesses; 2.75% for nonprofits
- Permitted Uses for Loan: payroll, to cover increased costs due to supply chain interruption, rent and mortgage payments, obligations that cannot be met due to revenue loss
- Term: up to 30 years
- Grants: any entity applying for such a loan may request an advance of up to \$10,000 to pay allowable working capital needs; the advance is to be paid by the SBA within 3 days of administrator's receipt of application, subject to verification that entity is eligible under program; is not required to be repaid, even if the application for the loan is denied (but amount of advance must be deducted from any loan forgiveness amounts under a Paycheck Protection Program Loan)
- Guarantees: no personal guarantees required for loans up to \$200,000; SBA must make determination that applicant has ability to repay the loan; can be based solely upon applicant's credit score (submission of tax returns not required)

Companies may obtain loans under both programs but cannot cover the same costs with both loans; may also apply for other SBA financial assistance as long as there is no duplication in the uses of funds

In addition to availability of the loans discussed above, the CARES Act allocates an additional \$17 billion to subsidize certain existing loans guaranteed by the Small Business Administration under Section 7(a) of the Small Business Act; the Administration will pay principal, interest and fees on such loans for a period of six months and is encouraging lenders to provide payment deferments and extend maturity dates.

For more information on how to apply for assistance, visit the U.S. Chamber of Commerce website at <https://www.uschamber.com/co/small-business-coronavirus>