

Small Business Loans Available Through Congressional Stimulus Bills.

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Introduction

- The Coronavirus Preparedness and Response Supplemental Appropriations Act to provide a first wave of relief to those affected by COVID-19.
 - \$20 million for an Economic Injury Disaster Loan (EIDL) program = provide immediate financial assistance to small businesses that were economically impacted by COVID-19.
- Coronavirus Aid, Relief, and Economic Security Act (CARES) = \$2 trillion.
 - \$10 billion is available for the EIDL program. \$350 billion is available for Paycheck Protection Loans (PPL).
- Two programs differ in significant ways.
 - the PPL program is an extension of SBA's 7(a) loan program and these loans are offered through existing SBA-certified lenders
 - EIDL is processed directly through the SBA.
- Differing acceptable uses, terms, eligibility requirements, and forgiveness opportunities.

Eligibility – EIDL

- State disaster or emergency declaration (AZ Qualified)
- “Substantial economic injury” as a result of COVID-19.
- 500 employees or less.
- OR Small business concerns that meet the applicable size standard for the industry as provided by the SBA (NAICS code).
- Private nonprofit organizations.
- Small agricultural cooperatives.
- Individual sole proprietors independent contractors.
- A cooperative with not more than 500 employees.
- An employee stock ownership plan (ESOP) with not more than 500 employees.
- Tribal small business concerns with not more than 500 employees.

Eligibility – PPL

- Small business and other concerns = less than 500 employees
- Business concerns = applicable size standard (NAICS/SBA)
- Sole proprietors, independent contractors, and other self-employed individuals.
- Business concerns in the accommodation (hotel) and food services industries (NAICS 72).
 - Affiliation waiver = waives traditional affiliation requirements for:
 - 1) Accommodation and food services industries;
 - 2) businesses operating under SBA franchise identifier;
 - 3) business receiving assistance from Small Business Investment Act.
 - No more than 500 employees at each physical location.
- Debarred or suspended by Federal Agency or delinquent on any other Federal Loan.

How Much Can You Receive (EIDL)?

- The maximum amount is \$2 million.
- Subject to a waiver if the applicant's business concern is a "major source of employment."
- Actual loan amount is limited to the economic injury as determined by the SBA.
- Businesses that require additional money may do so within two years of approval for the original loan.
- Emergency Grant – Businesses can also request an advance of not more than \$10,000, which the SBA should provide within three days of receiving the loan application.
- This \$10,000 does not have to be repaid, even if a loan is subsequently denied.

How Much Can You Receive (PPL)?

- Size of the loan is tied to a business's average total monthly payments for payroll costs incurred during the one-year period before the date of the loan.
- The maximum loan amount = 2.5 times the business concern's average monthly payroll cost expenses or \$10 million, whichever is less.
- For seasonal employers, the size of the loan = business's average total monthly payroll for the 12-week period beginning Feb. 15, 2019 and ending June 30, 2019.
 - If the concern was not in business then payroll = monthly payments from Jan. 1, 2020 to Feb. 29, 2020.

Terms/Restrictions on Use – EIDL

- EIDL loans have up to a 30-year term and amortization (determined by individual loan officers).
- The interest rate on EIDL loans is 3.75% fixed for small businesses.
- EIDLs do not require any personal guarantees for loans up to \$200,000.
- Loans above \$200,000 requires personal guarantees from owners of more than 20% of the business.
- SBA rules regarding collateral are unchanged (for now).
 - EIDL over \$25,000 due require collateral
 - SBA will not decline a loan for lack of collateral (but, may ask borrowers to pledge what is available).

Terms/Restrictions on Use – EIDL cont.

- EIDLs can only cover certain costs:
 - Working capital “necessary” to carry the business until resumption of normal operations
 - Expenditures “necessary” to alleviate specific economic injury
 - Providing sick leave to employees unable to work due specifically to COVID-19.
 - Maintaining payroll to retain employees.
 - Meeting increased costs to obtain materials due to interrupted supply chains
 - Making mortgage or rent payments
 - Pay other obligations that cannot be met due to revenue loss

Terms/Restrictions on Use - PPL

- Interest rates cannot exceed 4%.
 - New guidance indicates that all loans will have an interest rate of .5%
- Maximum term of 10 years.
 - New guidance suggests 2 year loan maturity.
- First payment is deferred for six months.
- No collateral required.
- No personal guarantees required.
- No required showing that credit is unavailable elsewhere.
- No borrower or lender fees payable to SBA.
- 100% guaranteed by federal government.

Terms/Restrictions on Use-PPL (Cont.)

- Only use PPL loans to cover:
 - Payroll costs.
 - Employee salaries, commissions, or similar compensations
 - Mortgage payments
 - Rent
 - Utilities
 - Continuation of group healthcare benefits during periods of paid, sick, medical, or family leave, and related to insurance premiums
 - Interest on any other debt obligation incurred before February 15, 2020
- Must certify that the PPL loan will only be used to cover the above costs and that the loan is necessary to support ongoing operations.
- Must also certify that you are not using the loan program to pay for the same purpose as another loan program under the ACT (EIDL).

Loan Forgiveness

- EIDL program does not allow for loan forgiveness.
- PPL allows loans to be forgiven up to the amount spent by the business during an **eight-week period** after loan's origination date.
 - Dependent upon the portion of the loan spent on covered costs minus an amount determined by employee and wage reduction.
- Covered costs eligible for forgiveness include:
 - Payroll costs (up to \$100k salary per individual).
 - Interest payment on any mortgage incurred prior to Feb. 15, 2020.
 - Payment of rent on any lease in force prior to Feb. 15, 2020.
 - Payment on any utility for which services began prior to Feb. 15, 2020.
- NOTE: Sample application indicates that not more than 25% of the forgiven amount may be for non-payroll costs.

Loan Forgiveness (cont.)

- PPL loan amount is forgivable if the sum of payroll costs, mortgage interest payment, rent, and utilities **incurred or paid** during an 8-week period beginning on the loan origination date.
- If the recipient of the loan laid off employees or reduced wages/salaries of its workforce in the period between February 15, 2020 and June 30, 2020, **the amount of forgiveness is reduced proportionally** by:
 - (i) any reduction in employees retained compared to historical levels (same time period in previous year), and
 - (ii) the decrease in pay of any employee beyond 25% of their historical compensation.
- If those reductions were made between February 15, 2020 and April 26, 2020, they would **not be counted** if the business rehires the number of personnel or returns the adjusted salary, as applicable, by June 30, 2020.
 - Does not need to be the same people.

Can You Use Both Programs?

- YES, with some restrictions.
- Cannot apply funds from both programs to the same “purpose” i.e. payroll.
- Can apply for EIDL and then roll it/refinance into PPP once accepted.
- PPP loan maximum amount would then be reduced by any EIDL amount taken out.

Applications (EDL)

- Applicants apply directly through the SBA website: <https://covid19relief.sba.gov/#/>.
- All forms are currently up and running, SBA is accepting and processing applications.
- Typical timeline for approval is between 2-3 weeks.
- No indications of priority but may be amended with further guidance.

Applications (PPL)

- Apply through approved-third party lenders (Banks).
 - CARE Act anticipates SBA issued a sample form with guidance indicating that lenders will begin processing loans as soon as April 3, 2020 & that they might be available same day.
- Priority – no official guidance but clause indicates guidance should direct lenders to prioritize underserved markets + minority and veteran owned businesses.
- Lenders must also consider:
 - In operation as of February, 2020
 - Salaried employees or paid independent contractors as reported on their 1099.
- Sample loan form is available at <https://www.sba.gov/document/sba-form--paycheck-protection-program-ppp-sample-application-form>

COVID-19 Crisis - Government Money for *Small* Businesses

Paycheck Protection Program (PPP)

Small Businesses can receive no-fee, unsecured “small business interruption loans”

- \$350 billion available in aggregate
 - Obtained through existing banks and lenders enrolled in the SBA 7(a) loan program
 - Maximum loan amount: 250% of average monthly payroll costs, up to \$10 million (offset by amount of existing EIDLs)
 - Intended to cover 8 weeks of payroll expenses and debt payments (between February 15 and June 30, 2020)
 - Eligible for forgiveness (including interest; no “cancellation of indebtedness” income) as long as payroll expenses are not reduced by >25% (either by headcount reductions or pay cuts)
- Loan payments deferred 6-12 months (principal, interest and fees)
 - Maximum term: 10 years
 - Maximum interest rate: 4% (no prepayment penalties)
 - Allows for \$10,000 in advances within 3 days of application
 - Tax credits available
 - SBA standard fees waived
 - Borrower personal guarantee and collateral requirements waived

Requirements:

- Includes businesses, nonprofits, veteran’s organizations, religious organizations, tribal businesses, sole proprietors, independent contractors, gig economy workers and self-employed individuals
- Employee Headcount Cap: Greater of (1) ≤500 employees (each employee counts regardless of whether employed on a full-time, part-time, or other basis) or (2) SBA industry-based size limitation (sometimes >500 depending on the industry)
 - ≤500 employees *per location* if in Accommodation and Food Services industry (assigned NAICS Code beginning with 72)
- Meet SBA’s industry-based size standard for business’ NAICS code
 - Based on number of employees, or if >500 employees, annual receipts

Permitted Uses/Restrictions:

- Can be used for a broad category of expenses, including payroll costs, group health benefits, salary, payments of interest on mortgage, rent, utilities and interest on any other debt.
- PPP loans forgiven only if used for payroll costs, payments of interest on covered mortgages, rent and utility payments (in each

Watch out for the Affiliate Rule: In determining receipts or number of employees, businesses generally must aggregate employees of affiliates (subsidiaries and if private equity and venture-owned, other portfolio companies).

Exceptions to Employee Headcount Cap:

- Independently owned franchises approved by the SBA
- NAICS code 72 “Accommodation and Food Services”
- Businesses receiving financial assistance from a Small Business Investment Company

case in place as of Feb. 15, 2020).

- Restrictions on use of loan proceeds for individuals with compensation >\$100,000 (including no loan forgiveness for excess compensation).

Economic Injury Disaster Loans (EIDLs)

Small Businesses can receive no-fee, unsecured “disaster loans”

- Provided by SBA
- \$7 billion available in aggregate
- Maximum loan amount: \$2 million
- Maximum term: 30 years
- Maximum interest rate: 3.75% (2.75% for nonprofits)
- Loan payments deferred up to 4 years (principal, interest and fees)
- Can be refinanced into PPP loans

Requirements:

- Suffered substantial economic damage as a result of COVID-19 during 2020
- Includes:
 - businesses with ≤500 employees
 - agricultural cooperatives
 - private nonprofit organizations
- Meet SBA’s industry-based size standard in declared disaster areas (at this point includes most states)

Note:

- There is **no specific program for mid-sized businesses (500 to 10,000 employees)**, but the CARES Act require the Treasury Department to implement a program that provides financing to lenders for making in-turn to eligible businesses.
- The Small Business Administration (SBA) is expected to issue implementing guidelines for the PPP in the next few days.

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Best Practices

- Consider applying for both programs
- Get PPP application in as soon as available
 - Talk to your banker today
- Ensure you meet criteria and document internally as to “why” (legal opinion letter)
 - DOJ may bring False Claim Act and Fraud cases
- Ensure proper tracking of costs paid by loan(s) (parallel book?)
- Proper notifications to employees
 - Backtrack terminations or furloughs
- Take advantage of other government programs
- Be on the look out for government contract opportunities
 - Ensure proper registration in SAM.gov

Questions?

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