

Small Business Loan Relief From CARES Act

The following content is an excerpt from an Arnold & Porter advisory, which can be accessed [here](#).

EIDL AND EMERGENCY EIDL GRANTS

Economic Injury Disaster Loan (EIDL)

What is an EIDL?

Economic injury disaster loans (EIDL), like 7(a) loans, are a preexisting SBA program. An EIDL is a low-interest federal loan issued by the SBA to alleviate economic injury to small businesses or private nonprofit organizations experiencing injury.

What are the ordinary parameters for an EIDL?

An EIDL is a working capital loan of up to \$2 million that can be used to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the disaster not occurred. EIDLs are not meant for business expansion. Interest rates on EIDLs are 3.75% for small businesses and 2.75% for private nonprofit organizations. The maximum loan term is 30 years.

Generally, to be approved, a business must demonstrate:

- an acceptable credit history;
- an ability to repay the loan;
- location within a state or county that has received an economic injury disaster declaration;
- substantial economic injury as a result of the disaster;
- inability to obtain credit elsewhere;
- collateral for loans of more than \$25,000 (although the SBA often does not decline loans for such lack of collateral);
- a personal guarantee for loans of more than \$200,000; and
- documentation, including an SBA Loan Application, IRS Form 4506T, complete copies of recent federal income tax returns, schedule of liabilities, and personal financial statements for all owners.

What requirements for EIDLs does the CARES Act waive?

For any EIDL application resulting from COVID-19, the following requirements are waived:

- requests for personal guarantees on loans of not more than \$200,000, between January 31, 2020 and December 31, 2020;
- that the applicant have been in business for the 1-year period before the disaster; however, the CARES Act still requires the business have been in operation as of January 31, 2020;
- that the applicant be unable to obtain credit elsewhere;

- that the applicant provide the lender with tax returns; the lender may approve based solely on the applicant's credit score or other appropriate methods; and
- that the business must be located in a state or county that received an economic injury disaster declaration from the SBA.

Who is eligible for an EIDL?

Small businesses and small agricultural cooperatives that meet the applicable size standards for SBA and private nonprofit organizations are eligible for an EIDL. In addition, the CARES Act expands eligibility to include businesses with not more than 500 employees, sole proprietorships, independent contractors, cooperatives with not more than 500 employees, Employee Stock Ownership Plans with not more than 500 employees, and tribal small business concerns with not more than 500 employees.

Which nonprofits are eligible for EIDLs?

EIDLs are available to a much broader set of nonprofits than those eligible under the Paycheck Protection Program. For the EIDL program, eligible "private non-profit organizations" include any entity exempt under section 501(c), including the trade associations, advocacy organizations, unions, and social clubs that are excluded from the Payroll Protection Program. The EIDL program also includes certain organizations tax-exempt under 501(d) (apostolic organizations) or 501(e) (cooperative hospital service organizations).

What is the operative date for determining the size status of a business's eligibility for EIDL?

For concerns applying for disaster loan assistance, the size is determined as of January 31, 2020.

How does my business apply for an EIDL?

A small business can apply for an EIDL by applying directly to the SBA [online](#), by mail, in-person, or on the phone. The SBA will disburse the funds within 5 days of receiving the executed loan closing documents.

Can a business receive both a Paycheck Protection Program loan and an EIDL? What are the relevant considerations for deciding which type of loan is more appropriate?

Generally, a business can apply for loans under both the Paycheck Protection Program and the EIDL program but must use the EIDL for a purpose other than covering payroll costs.

To determine whether to apply for a Paycheck Protection Program loan or EIDL, businesses should consider the following:

- *Eligibility:* As described in detail in this Advisory, the eligibility requirements are somewhat different for each program.
- *Maximum Loan Amounts:* Paycheck Protection Program loans are capped at \$10 million, with an applicant's limit determined by a formula tied to payroll costs; EIDLs are capped at \$2 million.
- *Loan Forgiveness:* Paycheck Protection Program loans may be eligible for loan forgiveness; EIDLs have no such feature. However, EIDL applicants may receive an emergency grant of up to \$10,000 that does not have to be repaid.

- *Maximum Maturity:* Paycheck Protection Program loans can have maturities of up to 10 years, with no obligation to make payments under the loan for up to the first 12 months. EIDLs can have maturities up to 30 years. EIDL payments can also be deferred for up to a year; however, interest accrues during deferment periods.
- *Interest Rates:* Paycheck Protection Program loan interest rates are capped at 4%. The EIDL interest rates for COVID-19 are 3.75% for businesses and 2.75% for nonprofit organizations.

Emergency EIDL Grant

What if a business needs money immediately and cannot wait for the SBA to process its EIDL application?

Recognizing that the EIDL approval process can be as long as a month, the CARES Act provides that businesses whose applications are submitted between January 31 and December 31, 2020 can receive an advance of up to \$10,000 within 3 days after the SBA receives the application. These advances are available only for applications related to COVID-19. To be eligible for an emergency EIDL grant, an applicant must be eligible to receive an EIDL and have been in operation since January 31, 2020, when the COVID-19 public health crisis was announced. Businesses can use the advance for any allowable EIDL purpose under current law, including:

- Providing paid sick leave to employees unable to work due to COVID-19;
- Maintaining payroll;
- Meeting increased costs due to interrupted supply chains;
- Making rent or mortgage payments; and
- Repaying obligations that cannot be met due to revenue losses.

Does a business have to repay the \$10,000 advance?

No, the applicant will not be required to repay the \$10,000 advance, even if the SBA ultimately denies the application for an EIDL.

What if a business receives an EIDL or the \$10,000 advance and then is approved for a Paycheck Protection Program loan?

The outstanding amount of an EIDL made after January 31, 2020 and up to the date on which Paycheck Protection Program loans are made available may be refinanced into a Paycheck Protection Program loan. In addition, any emergency EIDL advance received by a borrower who subsequently receives a Paycheck Protection Program loan will be subtracted from the calculation of the loan forgiveness amount referred to above.