

# **CARE ACT FOR BORROWERS<sup>1</sup>**

## **Existing Small Business Administration (SBA) Loans**

### **I have an existing SBA business loan. Do I get any relief?**

Yes. Starting no later than 30 days after the date on which the first payment is due, the SBA will pay all principal, interest, and fees on existing SBA loans for 6 months pursuant to 7(a), Community Advantage, 504, and Microloan programs. If the loan is currently in deferment, then the SBA will begin making payments after the deferment period. Borrowers who obtain new loans under those programs within six months after the enactment of the CARES Act are also entitled to have the SBA make a full 6 months of loan payments. These provisions of the CARES Act do *not* apply to loans under the new Paycheck Protection Program. The SBA is directed to promulgate implementing regulations within 15 days of enactment of the CARES Act.

## **Paycheck Protection Program**

### **What is the Paycheck Protection Program?**

The Paycheck Protection Program is designed to enable employers to maintain their payroll during the COVID-19 emergency. The Paycheck Protection Program is an expansion of the SBA's 7(a) loan program that authorizes financial institutions to issue loans to qualifying small businesses on the terms set forth in the CARES Act. The federal government will fully guarantee these loans. The Act directs the SBA to issue necessary regulations within 15 days of the law's enactment.

### ***Eligibility***

#### **Who is eligible for a loan from the Paycheck Protection Program?**

Under the CARES Act, an eligible entity includes—in addition to any business that already qualifies as a "small business concern" under existing SBA rules—any business concern, nonprofit (501(c)(3)), veterans organization (501(c)(19)), or Tribal business concern that employs not more than the greater of:

- 500 employees;

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<sup>1</sup> Arnold & Porter Kaye Scholer LLP 2020

- if applicable, the size standards in number of employees established by the Administration for their industry; or
- if the business has more than 1 physical location and is assigned a NAICS code beginning with 72 (i.e., is in the accommodation and food services industry) at the time of loan disbursement, 500 employees per physical location of the business.

### **Am I eligible for the Paycheck Protection Program if I'm a sole proprietor, an independent contractor, or self-employed?**

Yes.

### **What are the eligibility requirements for non-profit organizations to apply for Paycheck Protection Program loans?**

Nonprofit organizations that are tax-exempt under sections 501(c)(3) and 501(a) of the Internal Revenue Code (IRC) are eligible for SBA loans under the Payroll Protection Program to the same extent as small businesses, provided they otherwise satisfy the requirements of the Paycheck Protection Program. This means that a wide variety of "charitable" nonprofit organizations will be eligible for this funding, including, for example, certain educational institutions, research institutes, foundations, social service organizations, houses of worship, and hospitals. Veterans organizations that are tax-exempt under section 501(c)(19) will be similarly eligible. Nonprofit organizations that are not tax-exempt under sections 501(c)(3) or 501(c)(19) of the IRC are not eligible; those include trade associations, advocacy organizations, unions, and social clubs.

### **What businesses already qualify as "small business concerns"?**

In general, the SBA defines "small" based on norms applicable to the industry in which a business primarily operates, together with one of two metrics: (1) the average number of employees over the past 12 months or (2) the average annual receipts over the past three years. A business that qualifies under the size standards applicable to its primary industry is eligible to apply for the Paycheck Protection Program. The [SBA offers a size standards Size Standards Tool](#) that can help determine whether a business qualifies as small.

### **What are the SBA's size standards?**

Whether a business is "small" is not determined solely by the size of its workforce or its revenue. Rather, the SBA recognizes that those metrics are

relative and vary by industry. Accordingly, the SBA publishes a list, by industry, that describes the number of employees and the volume of receipts that qualify a business as "small" within the meaning of the SBA's programs. For example, using the current list, a commercial bakery (i.e., a business with a NAICS code of 311812) with 1,000 employees is still considered "small," but a new car dealer (i.e., a business with the NAICS code 441110) is considered "small" only if it employs 200 or fewer. The SBA's current size standards are available on the [SBA's website](#).

### **How does the SBA calculate the number of employees?**

For eligibility purposes, the SBA calculates the average number of employees—including full-time, part-time, temporary, leased,

and affiliate employees—per pay period for the 12 completed months before the concern's size is determined. For example, if SBA is looking at the size of a business on April 10, 2020, the agency would look at pay periods from April 1, 2019 to March 31, 2020, the end of the last completed month.

- **Concerns in business for fewer than 12 months.** If a concern has not been in business for 12 full months, the SBA looks to the average number of employees for each of the pay periods during which the concern has been operating.
- **Part-time, temporary, and volunteer employees.** Part-time and temporary employees are counted the same as full-time employees, but volunteers (i.e., individuals who do not receive monetary or in-kind compensation) are not counted at all.
- **Independent contractors.** Per guidance issued by the SBA in June 2016, independent contractors are subcontractors and do not count in the calculation of employees.

### **How does the SBA calculate annual receipts to determine eligibility under the size standards?**

For the SBA, "receipts" refers to "all revenue in whatever form received or accrued from whatever source." That calculation includes revenue from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns or allowances. In general, receipts are "total" or "gross" income plus the cost of goods sold. The SBA's rules on calculating annual receipts are available at [13 CFR 121.104](#).

### **How does the SBA determine a concern's primary industry?**

A business may have operations that touch on a variety of industries. In those cases, in order to determine a business's primary industry, the SBA will consider certain of the business's metrics over the most recently completed fiscal year:

- The attribution of receipts to various parts of the operation;
- The distribution of employees among the business's operations; and
- The costs of doing business among the different industries in which the business operated.

The SBA may also consider other factors, including the distribution of patents, contract awards, and assets.

### **What businesses have a NAICS code beginning with 72?**

According to the [2017 NAICS manual](#), Sector 72 covers "Accommodation and Food Services." Businesses in this sector provide consumers with lodging and/or prepare meals, snacks, and beverages for a consumer's immediate consumption.

- Accommodation businesses include, among others, hotels; motels; bed-and-breakfasts; RV parks and recreational camps; rooming and boarding houses; dormitories; and workers' camps.
- A lodging establishment is considered part of Sector 72 even if it generates more revenue by providing a complementary service, such as providing meals.
- Food services businesses include, among others, food service contractors; caterers; bars; restaurants and other eating places; cafeterias; carryout doughnut, bagel, or pretzel shops with on-premises baking; coffee shops with on-premises brewing; and ice cream parlors.

Sector 72 does *not* include civic and social organizations; amusement and recreation parks; theaters; and other recreation or entertainment facilities providing food and beverage services.

### **What is the operative date for the SBA to determine the size status of a business applying to participate in the Paycheck Protection Program?**

Under the CARES Act, the general rule is that size status is determined as of the date the SBA accepts the application for processing. However, language in the CARES Act suggests that, for the Paycheck Protection Program, the operative date is when the loan is disbursed.

Absent contrary SBA guidance, we anticipate that this is the rule for Paycheck Protection Program loans.

### **How do the SBA rules for affiliates work for the purpose of determining whether a business is eligible for a Payment Protection Program loan?**

In determining whether a business is "small," the SBA looks at the concern together with its affiliates. SBA's affiliation analysis is intended to determine whether those that might appear small are, in fact, tied to other entities to an extent that the SBA would no longer consider them to be in that category.

As a general matter, concerns are deemed affiliates when one controls or has the power to control the other, regardless of whether an entity actually exercises that power. Entities that are commonly controlled by another entity, often called sister companies, are also treated as affiliates of each other and of the controlling entity. In determining whether an affiliation exists, the SBA looks at the totality of the circumstances, considering factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships. Control may also be affirmative or negative, such as through contractual blocking rights or veto rights. Control may also exist indirectly through third parties.

Below are several, though not all, scenarios that provide insight into when SBA may find entities are affiliates:

- *Stock ownership*—Companies may be deemed affiliates if the same individuals or groups own controlling or significant minority blocks of stock in those entities.
- *Stock options, convertible securities, and agreements to merge*—These instruments and contracts are given present effect on the power to control a concern, except where they are still in negotiation, incapable of fulfillment, speculative, or unenforceable.
- *Common management*—Affiliation may arise where one or more officers, directors, managing members, or partners control more than one concern.
- *Identity of interest*—An identity of interest may exist where individuals or firms have identical or substantially identical business or economic interests, such as family members or economically dependent firms.
- *Newly organized*—Affiliation may arise where officers, directors, investors, or key employees of one concern organize a new concern in the same or related industry or field, and the old concern is furnishing

the new one with contracts, financial or technical assistance, indemnification, or other facilities.

- *Ostensible subcontractor*—A contractor may be considered an affiliate of a subcontractor that performs primary and vital requirements of a contract, and when the contractor is unusually reliant on the subcontractor.
- *Franchise and license agreements*—While centralized coordination of quality control, advertising, accounting, or other similar functions generally would not result in affiliation among franchisees or between franchisees and the franchisor, affiliation may arise through common ownership or management or excessive restrictions upon the sale of the franchise interest.

Ascertaining whether entities are affiliates is a nuanced and fact-intensive exercise, and these examples highlight the complexity of the necessary analysis. The SBA gathers the relevant information for its size determination on [SBA Form 355](#). In preparation, prospective applicants should examine the relationships (including other employment) and holdings of their stockholders, directors, and officers; contractual relationships; employee count per pay period for the past year; and revenue sources to determine whether and the extent to which the affiliation rules may apply. Relevant documentary materials for such information include, but are not limited to, recorded documents, operating documents, financial statements, and tax returns for both the concern and relevant individuals.

### **What are the affiliation rules for funds and portfolio companies under the Small Business Investment Act?**

The affiliation rules generally apply to funds and portfolio companies under the Small Business Act. However, there are several exceptions to the affiliation rules for certain funds and portfolio companies under the Small Business Investment Act (SBIA). In that context, there are scenarios where the SBA may not find such entities to be affiliates:

- Business concerns owned wholly or in substantial part by licensed small business investment companies (SBICs) or development companies qualifying under the SBIA are not considered affiliates of such SBICs or development companies.
- Applicants for financial, management, or technical assistance under the SBIA are deemed not affiliated with certain venture capital operating companies, investment companies, and other companies.

If the funds and portfolio companies do not fall into any of those exceptions, they may still be eligible for financing under other SBA programs. One such example is the Express Bridge Loan Program, which uses the affiliation rules and size criteria (i.e., employee count and annual receipt thresholds based on NAICS Code) applicable to 7(a) loans outside the Paycheck Protection Program. Another option is the upcoming Main Street Business Lending Program, [recently announced by the Federal Reserve Board](#) on March 23, 2020.

### **How does the CARES Act change the application of affiliation rules?**

The CARES Act carves out three categories of concerns that do *not* need to consider any of the affiliate rules when counting their employees.

1. businesses with no more than 500 employees and a NAICS code beginning with 72 (i.e., accommodation and food services businesses);
2. franchises that have been assigned a franchise identifier code by the SBA; and
3. businesses that receive financial assistance from an SBIC (15 U.S.C. § 681).

For those concerns, the calculation of the number of employees and annual receipts will include only the average number of employees and annual receipts.

For concerns not affected by the changes the CARES Act made to affiliation rules, the SBA's normal affiliation rules will apply.

For many concerns, the key to calculating the number of employees will be whether they have any "affiliates" within the SBA's understanding of the term.

### **How do affiliates play into the employee and annual receipts calculations?**

- **Former affiliates.** The employees of a former affiliate *do not* need to be counted—for the entire measurement period—if the affiliation ceased before the date on which the SBA will determine concern's size. For example, if a concern's size status is determined on April 10, 2020, and the concern and an affiliate terminated their relationship on January 1, 2020, the concern would not need to include the affiliate's employees in the calculation for the entire measurement period, i.e., April 1, 2019, through March 31, 2020.

- **Newly acquired affiliates.** The employees of a newly-acquired affiliate *do* need to be counted—for the entire period of measurement—if the affiliation began before the date on which the concern is applying. For example, if a concern's size status is determined on April 1, 2020, and the concern and an affiliate began a relationship on February 29, 2020, the concern would need to include the affiliate's employees in the concern's calculation for the entire measurement period, i.e., April 1, 2019, through March 31, 2020.

### ***Paycheck Protection Program Loan Terms***

#### **What are the loan terms for the Paycheck Protection Program?**

The maximum interest rate that a lender may charge is 4% per annum. Payments of principal, interest, and fees by the borrower are deferred for at least 6 months and up to 1 year. Both borrower and lender fees ordinarily payable to the SBA are waived for Paycheck Protection Program loans that originate between February 15 and June 30, 2020. If, after amounts of the loan have been forgiven pursuant to the CARES Act, there is a balance on the Paycheck Protection Program loan, the loan will have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under section 1106 of the CARES Act.

The maximum loan amount that may be borrowed through June 30, 2020 will be the lesser of:

- The sum of (i) 2.5 multiplied by the average total monthly payments for payroll costs incurred during the 1-year period before the date on which the loan is made and (ii) the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and the date on which Paycheck Protection Program loans are made available to be refinanced under the Paycheck Protection Program loan (if applicable);
- For a seasonal employer, the sum of (i) 2.5 multiplied by the average total monthly payments for payroll for February 15, 2019 (or March 1, 2019, at the election of the recipient) through June 30, 2019 and (ii) the outstanding amount of an EIDL made between January 31, 2020 and the date on which Paycheck Protection Program loans are made available to be refinanced under the Paycheck Protection Program loan (if applicable);
- If requested by an eligible recipient that was not in business from February 15 through June 30, 2019, then the sum of (i) 2.5 multiplied by the average total monthly payments by the applicant for payroll costs

incurred January 1 to February 29, 2020 and (ii) the outstanding amount of an EIDL that was made between January 31, 2020 and the date on which Paycheck Protection Program loans are made available to be refinanced under the Paycheck Protection Program loan (if applicable); or

- \$10 million.

### **What are payroll costs?**

Payroll costs include:

- Compensation to employees that is a salary, wage, commission or similar compensation; cash tips; vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; group health care benefits; retirement benefits; and state or local taxes on the compensation of employees; and
- Compensation to sole proprietors, or independent contractors that is an amount not more than \$100,000 in 1 year (prorated for February 15 - June 30, 2020).

However, payroll does *not* include compensation of an employee in excess of \$100,000/year (prorated for February 15 - June 30, 2020), federal income taxes, compensation for employees who principally reside outside the U.S., and qualified sick and family leave wages for which a borrower receives a credit under §§ 7001 and 7003 of the Families First Coronavirus Response Act.

### **How can a borrower use the loan?**

In addition to the allowable uses for 7(a) loans, Paycheck Protection Program loans can be used for:

- payroll costs;
- mortgage interest payments;
- rent;
- utilities; and
- interest on debt obligations incurred before February 15, 2020.

### **What certifications must a borrower make in order to obtain a loan under the Paycheck Protection Program?**

Entities that meet those conditions must also be prepared to certify, in good faith, that:

1. the loan request is necessary to support the concern's ongoing operations due to the uncertain economic conditions;
2. the funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
3. the concern does not have an application pending for another SBA loan for the same purpose; and
4. between February 15, 2020 and December 31, 2020, the concern has not already received an SBA loan for the same purpose.

### **For how long is a loan payment deferred?**

All lenders will be required to defer payments on covered loans for at least 6 months and no more than 1 year, including payments of principal, interest, and fees. The SBA will issue guidance to lenders within 30 days of enactment of the CARES Act (that is, by April 27, 2020) on the deferment process.

### **Are personal guarantees or collateral required, including for fund-backed portfolio companies?**

The CARES Act waives the borrower requirement for any personal guarantees or collateral for any loans made pursuant to the Paycheck Protection Program.

### ***Loan Forgiveness***

#### **Can a loan granted under the Paycheck Protection Program be forgiven?**

In general, yes. The principal amount of a loan may be forgiven in an amount equal to payroll costs, interest on mortgage obligations incurred before February 15, 2020, rent payments for leases in force before February 15, 2020, and utility payments for service which began before February 15, 2020 during the 8-week period following the origination of the loan (the "covered period"). However, as described in more detail below, the loan forgiveness amount cannot exceed the loan principal and may be reduced in the event the business has laid off employees or decreased their compensation during the covered period.

## **How do reductions in staffing affect the amount eligible for forgiveness?**

The amount forgiven is reduced by multiplying the loan forgiveness amount (calculated as described above) by a fraction:

- the numerator of which is the average number of full-time employee equivalents (FTEs) per month employed during the covered period, and
- the denominator of which is the average number of FTEs per month employed from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020, with the employer electing which period to use.

If you reduce the number of FTEs between February 15, 2020 and 30 days after the enactment of the CARES Act (April 27, 2020) as compared to the number of FTEs on February 15, 2020, you may rehire the same number of FTEs not later than June 30, 2020, and thereby avoid application of the reduction to the amount of your loan forgiveness by reason of a reduction in the number of your employees during the covered period.

The average number of FTEs for purposes of the loan forgiveness reduction and rehiring is determined by calculating the average number of FTEs during each payroll period falling within a month. Neither the CARES Act nor the Small Business Act defines "full-time employee equivalent." In other contexts, the slightly different term "full-time equivalent employee," that is used for purposes of the Affordable Care Act, aggregates the hours of part-time employees to derive an equivalent number of hours for full-time employees. It is possible that the SBA will, in future guidance, use this or a similar standard for purposes of loan forgiveness.

## **How do reductions in compensation affect the amount eligible for forgiveness?**

The amount forgiven is reduced by the amount of any reduction during the covered period in an employee's total salary or wages in excess of 25% of the total salary or wages paid to the employee during the most recent full quarter in which the employee was employed before the covered period. This only applies to employees earning no more than \$100,000, on an annualized basis, during any pay period in 2019.

If you employ tipped employees, you may receive forgiveness for additional wages paid to your tipped employees.

If you reduced the salary or wages of your employees between February 15, 2020 and 30 days after the enactment of the CARES Act (April 27, 2020) as compared to their salaries or wages on February 15, 2020, you may restore their compensation before June 30, 2020, and thereby avoid application of the reduction to the amount of your loan forgiveness by reason of a reduction in salary or wages during the covered period.

### **What do I need to do to have all or part of my loan forgiven?**

You must apply to your lender. The application must include:

- documentation (including payroll filings) verifying the number of FTEs you employ and employed during the relevant periods and the compensation that you paid them, and documentation (including cancelled checks, payment receipts, transcript of accounts, etc.) verifying payments of mortgage obligations, rent, and utilities;
- a certification representing that the documentation is true and correct and that the amount of forgiveness requested was used for retaining employees and paying mortgage interest, rent, and utilities during the covered period;
- any additional information that the SBA Administrator requires.

### **When do I find out if my loan is forgiven?**

The lender will issue a decision on your loan forgiveness within 60 days of receiving the complete application.

### **Is the loan forgiveness treated as gross income for federal tax purposes?**

No, the amount of the loan forgiveness is not included in gross income for federal tax purposes.

### **Will the SBA have recourse against my business for nonpayment?**

If a borrower fails to repay a Paycheck Protection Program loan and the lender receives payment from the SBA under the guarantee, the SBA will have a claim by subrogation against the business. Nevertheless, the SBA will not have recourse against a shareholder, member, or partner of a loan recipient for nonpayment except to the extent the loan was not used for the authorized purposes.

### **What if my loan has a remaining balance after application of forgiveness?**

The SBA will continue to guarantee the remaining balance. The loan will have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under section 1106 of the CARES Act.

**Will there be further guidance regarding loan forgiveness?**

Yes. The SBA Administrator is required to issue further guidance regarding loan forgiveness within 30 days of the enactment of the CARES Act (by April 27, 2020)

**Are there other considerations under the CARES Act that will impact the decision to request a loan and/or loan forgiveness?**

An employer who receives a Paycheck Protection Program loan is ineligible for the employee retention credit in Section 2301 of the CARES Act. In addition, employers whose loans are forgiven are not eligible for deferral of payroll taxes as provided under Section 2302 of the CARES Act.

***Applying for a Paycheck Protection Program Loan***

**What is the process to apply for a loan through the Paycheck Protection Program?**

A small business should apply for a loan directly from any approved 7(a) lender that has opted to participate in the Paycheck Protection Program. Within 15 days of the enactment of the CARES Act, the SBA Administrator will be issuing guidance and regulations implementing the Paycheck Protection Program.

Additionally, the Treasury Department will be issuing regulations providing criteria under which new lenders may be eligible to make loans under the Paycheck Protection Program.

**How do I find an already approved 7(a) lender?**

Lenders authorized to issue SBA 7(a) loans and that opt into the Paycheck Protection Program will be authorized to issue loans under the program. We recommend reaching out first to existing lenders to determine whether any are already approved 7(a) participants. A borrower can also contact its [local SBA office](#) to find a list of approved 7(a) lenders in their area. In addition, [SBA maintains a list](#) of the 100 most active SBA lenders in the country.

## **How does a loan get approved?**

An approved 7(a) lender participating in the Paycheck Protection Program will be authorized to make and approve these loans.

The lender may consider only whether the business (1) was in operation on February 15, 2020 and (2) had employees and paid them salaries and payroll taxes, or paid independent contractors as reported on a Form 1099-MISC. A borrower does not need to:

- demonstrate that it cannot obtain credit elsewhere;
- put up collateral; or
- make a personal guarantee.

## **Can an existing loan be refinanced as a Paycheck Protection Program loan?**

Paycheck Protection Program loans may be used to refinance existing indebtedness to the same extent and subject to the same limitations as 7(a) loans. Paycheck Protection Program loans may also be used to pay interest on debt obligations incurred before February 15, 2020. They may also be used to refinance an economic injury disaster loan (EIDL) made between January 31, 2020, and the date on which Paycheck Protection Program loans are made available.

# **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.