

SMALL BUSINESS LOANS UNDER THE CARES ACT

INFORMATION GUIDE

This guidance was drafted as of April 6, 2020. The situation is rapidly evolving and materials are subject to change.

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CARES ACT LOAN PROGRAMS

What are the CARES Act loan programs?

- The Coronavirus Aid, Relief and Economic Security Act (CARES Act) was signed into law on March 27, 2020 and included several provisions to address the impact on small business of the economic disruption caused by the COVID-19 pandemic
- **The CARES Act has important provisions for two types of loans:**
 1. Economic Injury Disaster Loans (EIDL)
 2. Paycheck Protection Program Loans (PPP)
- You can apply for both loans but the proceeds cannot be used for the same expenses
- Both loan programs involve the Small Business Administration in different ways

What is the SBA?

- The Small Business Administration (SBA) is a U.S. Agency that assists small businesses by providing them with financing which they would not otherwise be able to access
- SBA loans are issued by SBA eligible lenders and are backed by the government

What are the key differences between PPP Loans and EIDL Loans?

- These are separate programs and a business may not use either loan for the same purpose
- PPP loans are entirely forgivable if used for specified requirements; EIDL loans are not forgivable (except for an initial \$10,000 grant)
- PPP loans are capped at \$10 million per organization; EIDL loans are capped at \$2 million per organization
- PPP loans carry an interest rate of 1%; EIDL loans carry an interest rate of either 3.75% or 2.75%, depending on the type of organization
- PPP loans are issued by banks; EIDL loans are issued directly by the SBA
- If your EIDL loan was used for payroll costs, the PPP loan must be used to re-finance the existing EIDL loan

PAYCHECK PROTECTION PROGRAM – ELIGIBILITY

What is the Paycheck Protection Program?

- The Paycheck Protection Program is a lending program created under the CARES Act.
- Provides \$349 billion in loans and expands eligibility for Small Business Administration (“SBA”) loans under section 7(a) of the Small Business Act
- Designed to incentivize small businesses and non-profits to maintain employment and operations during global pandemic caused by COVID-19

Who is eligible for a PPP Loan?

- Any of the following, provided they (1) have 500 or fewer employees and (2) are impacted by coronavirus-related issues from February 15, 2020 through June 30, 2020
 - Small Business Category (can apply beginning April 3, 2020)
 - Small businesses
 - Non-profits
 - Veteran's organizations
 - Religious organizations
 - Tribal business

- Sole Proprietorship Category (can apply beginning April 10, 2020)
 - Sole proprietors
 - Independent contractors
 - Gig economy workers
 - Self-employed individuals

Are there any exceptions to the 500-Employee Rule?

- There are exceptions for independently owned franchises approved by the SBA and for restaurants or hospitality businesses that have more than one physical location if they employ 500 employees or less at each location

Are venture-backed and private equity-backed companies eligible for PPP loans?

- This question arose because of the “affiliation rules” that apply to most SBA loans
- These rules determine when related companies are eligible for SBA loans
- According to the guidance provided by the SBA on April 3, 2020, venture-backed and private equity-backed companies may be eligible for PPP loans
- The official guidance can be found [here](#) – the rules are complicated, so owners of these companies need to do additional due diligence before applying for a PPP loan

What about other affiliated companies?

- The short answer is “it depends”. The guidance should be reviewed in connection with each situation. The guidance can be found [here](#)

Are non-profits other than 501(c)(3) organizations eligible for PPP loans?

- No, only 501(c)(3) organizations are eligible

Is there a limit to the number of loans the SBA can issue?

- The CARES Act allocates \$349 billion to the PPP loan program
- If total loan applications exceed that amount, later applicants will not be able to obtain loans
- President Trump has promised that additional funds would be made available

PAYCHECK PROTECTION PROGRAM – TIMELINE OF APPLICATION

When can a business apply?

- Small businesses can apply starting April 3, 2020
- Sole proprietors, independent contractors, gig economy workers and self-employed individuals are eligible and can apply starting April 10, 2020
- All applications are processed on a first come, first serve basis

When does the Program end?

- Individuals and businesses who are eligible may receive PPP loans from the start date through June 30, 2020

TERMS OF PPP LOANS

Who administers the loans?

- PPP loans will be administered by SBA-approved banks and lending institutions

How much can a company borrow?

- The maximum loan amount is 250% of average monthly payroll costs, with a maximum loan size of \$10 million

How is the loan amount calculated?

- Aggregate payroll costs for the past 12 months for all employees
- Subtract any compensation paid over \$100,000 to any employees
- Divide that number by 12 to get the average monthly cost
- Multiply average monthly costs by 2.5
- Add any EIDL loans made between January 31, 2020 and April 3, 2020

What do payroll costs include?

- For an employer:
 - Salary, wages, commissions or tips
 - Employee benefits, including costs for vacation, parental, family, medical or sick leave; allowance for separation or dismissal; payments required for the provision of group health care benefits including insurance premiums; and payment of any retirement benefits
 - State and local taxes assessed on compensation
 - Compensation for any employee over \$100,000 will not be counted
- For a sole proprietor or independent contractor:
 - Wages, commissions, income, or net earnings from self-employment
 - Compensation over \$100,000 will not be counted

Do payroll costs include payments to independent contractors?

- No, because independent contractors are authorized to apply for their own PPP loans

What is the interest rate and maturity?

- One percent interest and matures in 2 years on any amount not forgiven

Does the loan need to be collateralized?

- No, collateral or personal guarantees are necessary for PPP loans

Can a business obtain multiple PPP Loans?

- No, each organization is only eligible for one PPP loan

Are there other tax benefits available under the CARES Act?

- Yes, most businesses are eligible to defer social security payroll taxes under the CARES Act
- If a business experiences (1) a full or partial shutdown by the government or (2) a 50% decline of gross receipts in a given quarter, that business may take advantage of an Employee Retention Credit of up to \$5,000 per employee

- Note that neither of these options are available if one takes a PPP loan

ADMINISTRATION OF PPP LOANS

What can loan proceeds be used for?

- The loan proceeds may be used for:
 - Payroll costs
 - Health Care benefits
 - Employee salaries, commission or compensation
 - Payments of mortgage interest
 - Rent and utility charges
 - Refinancing an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020
- At least 75% of the loan proceeds must be used for payroll costs and no more than 25% of any loan forgiveness amount can be used for non-payroll costs

PPP LOAN – FORGIVENESS

What portion of a PPP Loan will be forgiven?

- Any portion of the PPP loan is eligible for forgiveness if used to maintain payroll costs (including benefits) in the 8-week period after the loan has been granted
- The amount of forgiveness will be reduced in proportion to the reduction in the number of employees and any reduction in employee pay greater than 25% from February 15, 2020 through June 30, 2020
- No more than 25% of the loan forgiveness amount may be used for non-payroll costs

Are there any tests that will be used to further limit forgiveness?

- Yes, the government will apply two tests that might limit forgiveness of a loan:
 1. Employee retention test
 2. Employee compensation test

How does the employee retention test work?

- For each entity receiving the loan, the government will multiply the funds used for permissible uses during the first 8 week period after the loan has been granted by a fraction
 - The fraction's numerator is the average number of employees during the first eight weeks since the issuance of the loan
 - The fraction's denominator is the average number of employees for the entity for either:
 - February 15, 2019 to June 30, 2019
 - January 1, 2020 to February 15, 2020
 - The entity selects which period to use for the denominator

How does the employee compensation test work?

- After multiplying the funds used for permissible uses by the applicable fraction under the employee retention test, subtract from the forgiven amount any reduction in employees' wages greater than 25% compared to the most recent quarter
 - This test only looks at reduction in employees' wages for those that made \$100,000 or less on an annualized basis in 2019

How do I calculate the full amount of forgiveness?

- Determine how much of the loan's funds went pay for payroll costs or specified operating expenses
- Multiply that number by the fraction of (1) average employees during the first eight weeks of the divided by (2) the average employees of entity for the chosen period, and
- Subtract the amount of wage reduction greater than 25% of employees making \$100,000 or less on an annualized basis in 2019

Is the forgiveness of the loan a taxable event?

- No, loan forgiveness will not be taxable

If we already laid off employees, do we need to rehire all of them to qualify for loan forgiveness?

- If employees are laid off between February 15th and April 26th, 2020, you can rehire all previously laid off employees by June 30th to avoid the reduction of loan forgiveness

PPP LOANS – PRACTICAL INFORMATION

Where can I find the application?

- As of April 3, 2020, the updated application can be found [here](#)

What banks are issuing loans for the PPP loan program?

- All existing SBA certified lenders can process PPP loans
- All federally insured depository institutions, federally insured credit unions and Farm Credit System Institutions are eligible to participate
- This link provides a list of lenders: <https://www.sba.gov/paycheckprotection/find>
- Due to the high volume of applications, it may be difficult to find a lender

How do I apply?

- Numerous banks are partnering with the SBA
- Consult with your local lender as to whether it is participating
- Note that it can be difficult to find a bank to partner with as many banks are struggling to figure out the specific requirements for issuing the loans and will only issue loans to their current customers at this time

Can Brown Advisory clients with ownership of accounts at U.S. Bank apply for a PPP loan through U.S. Bank?

- U.S. Bank is working with Brown Advisory to provide loans to as many clients as possible
- Detailed information about U.S. Bank's programs can be found [here](#)

Economic Injury Disaster Loans

What are EIDL loans?

- Economic Injury Disaster Loans provide up to \$2 million for working capital needs to continue business operations
- These loans may also be used to cover sick leave for employees unable to work due to COVID 19, payroll costs, supply costs, rent or mortgage, and repayment of debt (although proceeds may not be used to re-finance debt)

Who is eligible for an EIDL loans?

- Small businesses with less than 500 employees (including sole proprietorships, independent contractors, self-employed individuals)
- Nonprofit organizations
- Veterans organizations

When can I apply for an EIDL loan?

- Immediately

What is the interest rate and applicable term for EIDL Loans?

- 3.75% for businesses
- 2.75% for non-profits
- The term is up to 30 years with an automatic one year deferral on repayment
- Interest begins accruing at the time the loan is issued

What is the EIDL emergency advance?

- If you apply for an EIDL loan, you are also eligible to apply for an Economic Injury Disaster Loan advance up to \$10,000
- This loan advance will not need to be repaid

Is collateral required?

- Collateral is required for loans over \$25,000
- Personal guarantee is waived for loans of \$200,000 or less from January 31, 2020 – December 31, 2020

Will EIDL loans be forgiven?

- EIDL loans are generally not eligible for forgiveness (other than the advance grant of up to \$10,000)

Where can I apply for an EIDL Loan?

- The application is [here](#)

Where can I find additional resources?

- Treasury: [Paycheck Protection Program: Final Borrower Application Form](#)
- Treasury: [Paycheck Protection Program: Lender Electronic Data Form](#)
- Treasury: [PPP New Lender Application Form](#) (Federally Insured Depository Institutions, Federally Insured Credit Unions, Farm Credit System Institutions)

- Treasury: [Paycheck Protection Program – Interim Final Rule](#)
- Treasury: [Find an eligible lender](#)
- Treasury: [Interim Final Rule on Affiliation](#)
- Treasury: [Applicable Affiliation Rules](#)
- Treasury: [Frequently Asked Questions](#)

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