

## CARES ACT: UNDERSTANDING SBA LOAN PROGRAMS TO DETERMINE ELIGIBILITY AND BEST FIT FOR YOUR COMPANY

### Authors

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**As a result of the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) passed by the Senate on Wednesday March 25, 2020 and expected to be passed by the House of Representatives and signed into law by the President on March 27, 2020, multiple avenues of relief will be available to small businesses through programs administered by the Small Business Administration (SBA). Notably, the size limits for consideration as a "small business concern" have been changed, making many more entities eligible for assistance through programs administered by the SBA.**

Because each business is different, every business should consider the various assistance programs available to determine which fit it best, including other programs and benefits available under the Family First Coronavirus Response Act and the CARES Act. In addition, some states may have their own loan, grant and incentive programs. Please check with your local Baker Donelson office for availability of these programs.

### Economic Injury Disaster Loan Program

The CARES Act made several changes to the Economic Injury Disaster Loan (EIDL) Program under Section 7(b) of the Small Business Act and described in previously issued Alerts. Those alerts are available [here](#) and [here](#). As modified by the CARES Act:

- EIDL Loans are available to small businesses in a declared disaster area (all 50 states, Puerto Rico, Guam and the North Mariana Islands have all been declared disaster areas for purposes of the EIDL Program effective January 31, 2020) to cover economic injury resulting from the disaster (e.g., loss of revenue).
- EIDL Loans are processed directly through the SBA, although the SBA may determine to enlist the assistance of lenders for the processing and making of loans.
- EIDL Loans are available in a maximum amount of \$2 million, carry an interest rate of 3.75 percent and have a maximum term of 30 years.
- Loans over \$200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant (the CARES Act removed the requirement for personal guarantees on loans under \$200,000).

- The CARES Act also removed standard EIDL Program requirements that the borrower not be able to secure credit elsewhere or that the borrower have been in business for at least one year, as long as it was in operation on January 31, 2020.
- Applicant may request an expedited disbursement that is to be paid within three days of the request. The advance may not exceed \$10,000 and must be used for authorized costs but is otherwise not repayable if the EIDL Loan is not approved.

**NOTE:** An applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program described below) as long as the basis for the loans/costs being paid with each are different (no "double-dipping").

### **Paycheck Protection Program**

The Paycheck Protection Program authorized by the CARES Act makes loans of up to \$10 million available to certain qualified small businesses. These loans are intended to be forgivable if the borrower maintains employees and otherwise complies with the CARES Act. Congress has appropriated \$349 billion for this program.

#### **A qualified small businesses is a business that:**

- Does not have more than 500 employees or the maximum number of employees specified in the current SBA size standards, whichever is greater; or
- If the business has more than one location and has more than 500 employees, does not have more than 500 employees at any one location and the business' primary NAICS code starts with "72" (Accommodation and Food Service); or
- Is a franchisee holding a franchise listed on the SBA's registry of approved franchise agreements; or
- Has received financing from a Small Business Investment Corporation.

**NOTE:** Sole proprietorships and self-employed individuals may qualify under this program. Additionally, the CARES Act makes certain nonprofit organizations (must be tax-exempt under Section 501(c)(3) of the Internal Revenue Code), qualified veterans organizations and certain Tribal business concerns eligible.

The maximum amount of the loan is set by formula (average monthly payroll prior to the COVID-19 pandemic times 2.5 plus the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of \$10 million.

#### **Other key provisions:**

- Maximum interest rate of 4 percent per annum.
- Loans are made by SBA-approved lenders that have delegated authority to make the loans without approval from the SBA (no SBA Authorization required for each individual loan). This should help expedite the application and closing process.
- In reviewing the application, a lender has to evaluate whether the borrower was in business on February 15, 2020 and had employees and paid salaries and taxes or had independent contractors and filed 1099-MISC for them.

- Guarantee fees are waived (these are typically 2 percent-3.75 percent of the loan amount, depending on the size of the loan, and would otherwise be paid by the borrower).
- Loans are non-recourse to the borrower. In addition to waiving any guaranty that might otherwise be required by the Small Business Act, the CARES Act specifically provides each loan is nonrecourse to the shareholders, members and partners of the borrower.
- No "credit elsewhere test." That is, the borrower does not have to demonstrate it was unable to secure financing elsewhere before qualifying for SBA financing.
- No collateral requirement.
- No prepayment penalties.
- Payments are deferred for six to 12 months.
- The applicant is required to certify:
  - Current uncertain economic times make the loan request necessary to support ongoing operations; and
  - Funds will be used to keep workers and make payroll, mortgage payments, lease payments and utility payments; and
  - Applicant does not already have an application pending for other payroll assistance under the CARES Act.

**NOTE:** A loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit made available under the CARES Act. This only applies to the Employee Retention Tax Credit in the CARES Act and does not apply to any credits available under the FFCRA (such as the paid sick leave tax credit) or other credits available under the CARES Act.

### Loan Forgiveness Provisions

Under the CARES Act, small business loan borrowers will be eligible for loan forgiveness, both for new loans under the Paycheck Protection Program and for existing 7(a) loans.

For borrowers under the Paycheck Protection Program, the loan forgiveness will equal the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):

- payroll costs (not to exceed \$100,000 of annualized compensation per employee); and
- payments of interest on any mortgage loan incurred prior to February 15, 2020; and
- payment of rent on any lease in force prior to February 15, 2020; and
- payment on any utility for which service began before February 15, 2020.

The amount forgiven is not considered taxable income to the borrower.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee's prior

year compensation. A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020, as long as the employee is rehired by June 30, 2020.

Any amount outstanding after considering the amount forgiven will be repayable over a term not to exceed 10 years.

**NOTE:** The borrower must apply to the lender for loan forgiveness with supporting documentation.

For borrowers with existing 7(a) or microloan program loans, the SBA will pay principal, interest, and any associated loan fees for a six-month period starting on the loan's next payment due date. Payment on loans that are on deferment will begin with the first payment after the deferment period. Please note that this relief will not include loans made under the Paycheck Protection Program.

### **Considerations for Lenders and Others**

The risk rating of Payroll Protection Program loans under risk-based capital requirements is 0 percent.

The SBA will pay lenders fees for processing loans under the Payroll Protection Program as follows:

- 5 percent of loan up to \$350,000
- 3 percent of loan from \$350,000 to \$2 million
- 1 percent of loans of \$2 million or more.

Fees to lenders are payable within five days of disbursement of the loan.

Express Loan Program loan limit is raised to \$1 million from \$350,000 until December 31, 2020.

**MAJOR NOTE:** The SBA has up to 30 days following the enactment of the CARES Act to issue regulations implementing and providing guidance under certain provisions of the CARES Act. In addition, the Treasury Department is required to issue regulations implementing and providing guidance under certain provisions of the CARES Act. Issuance of regulations and guidance may delay loan approval and disbursement or modify/waive certain loan requirements.

Baker Donelson is working hard to assist its clients during these uncertain times. Our team of professionals continues to monitor and advise on new issues as they develop. For specific guidance or more information please contact [Jeff Wagner](#), [Scott Sargent](#), or [Chris Saville](#). For additional information you can also visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.