

Small Business Loan Relief From CARES Actⁱ

Answers to more questions than you ever thought possible (except for those who do regular business with the Federal Government)

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](#).

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.

¹ Compiled from ArnoldandPorter.com, Small Business Administration, US Chamber of Commerce.