

SMALL BUSINESS RELIEF UNDER THE CARES ACT:

The Paycheck Protection Program and Economic Injury Disaster Loan

This document is for informational purposes only and is not intended as legal advice. Contact your legal counsel for additional information and questions.

The federal Coronavirus Aid, Relief and Economic Security (CARES) Act has made available two opportunities for small business relief under the Small Business Administration's (SBA) loan programs. This document provides an overview of those programs and what your business needs to do to determine eligibility, apply and comply with loan terms and conditions.

Paycheck Protection Program

The Paycheck Protection Program (PPP) is intended to incentivize small businesses to retain employees and rehire any laid-off workers by providing assistance businesses need to maintain or regain normal operations.

The PPP provides a low interest, forgivable loan to cover up to eight weeks of payroll costs, including benefits, utilities, mortgage interest and rent payments.

Who is eligible?

Any of the following that were operational on Feb 15, 2020 and are in need of the funding to support ongoing operations during the current economic uncertainty:

- ❖ Small businesses with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons)
- ❖ 501(c)(3) non-profits with less than 500 employees
- ❖ Some 501(c)(19) veterans' organizations
- ❖ Some businesses with more than 500 employees

Additional eligibility considerations:

- All employee types are included in the employee count for purpose of eligibility – full-time, part-time, temporary, etc.
- Number of employees is determined by one of three methods: average in previous 12 months, average in CY19, average paid per pay period in 12 months prior to loan application
- Faith-based organizations that otherwise meet the criteria are eligible

What are the loan amounts and limits?

- ❖ 2.5 times average monthly payroll costs up to a maximum of \$10 million
- ❖ Average total monthly payroll costs are calculated using the average monthly payroll for 2019, excluding any amounts over \$100,000 for each employee.
"Payroll costs" include: salary/wage/compensation, payment for leave time, separation payments, payment for group health care and retirement benefits, payment of taxes assessed on employee compensation
- ❖ Additional guidance on how to calculate maximum loan amounts by Business Type can be found at:
<https://home.treasury.gov/system/files/136/How-to-Calculate-Loan-Amounts.pdf>

What are the loan terms and conditions?

- ❖ Loan proceeds can only be used to retain workers, to maintain payroll and to make payments on mortgage interest, lease/rent and covered utilities for the eight-week period following disbursement of the loan.
- ❖ No collateral or personal guarantees required
- ❖ No lender fees, prepayment fees/penalties
- ❖ Approval not based on ability to repay the loan
- ❖ Applicant not required to seek funding from other sources before applying

- ❖ Loan maturity (final payment due) is 2 years
- ❖ Interest rate is 1% on any portion not forgiven
- ❖ Loan payments are deferred for 6 months but interest accrues during that time
- ❖ Borrower cannot take out another loan for the same expenses during the same time period

How do I apply for the loan?

- ❖ Ask your current bank/lender if they are an SBA-participating lender
 - Many banks/lenders are prioritizing applications for current customers
 - If your current bank/lender is not an SBA-participating lender, find a lender at: <https://www.sba.gov/paycheckprotection/find>
- ❖ The application is only two pages and very simple and straightforward. To prepare for meeting with your lender, review the application at this link: <https://www.sba.gov/sites/default/files/2020-04/PPP-Borrower-Application-Form-Fillable.pdf>
- ❖ Compile necessary payroll documentation and tax documents (must be identical to those submitted to IRS)
- ❖ Application must be processed by June 30th
- ❖ The applicant must certify certain statements, including the following:
 - The loan is necessary to support ongoing operations due to economic uncertainty.
 - An applicant must take into account its current business activity, as well as its ability to access other sources of revenue that would be sufficient to support its ongoing operations in a way that would not be “significantly detrimental” to the business.
 - The loan will be used to retain workers, maintain payroll and pay for mortgage interest, rent and utility payments
 - The applicant will provide required documentation

What are the requirements for loan forgiveness? **

To obtain loan forgiveness, you must do both of the following:

- ❖ Maintain or quickly rehire employees and maintain salary/wage levels; and
- ❖ Use **at least 75% of loan proceeds to cover payroll costs and benefits** (excluding compensation above \$100,000 annually) and use the remaining amount only for interest on mortgage, rent and utilities over the 8-week “covered period” after the date of disbursement of the loan

Loan forgiveness amounts will be reduced if:

- FTE headcount is reduced (regardless of whether employer has attempted to retain or regain FTE headcount and was unsuccessful). The borrower has two options for calculating the “reduction in number of employees” so the calculation that shows a lower reduction can be utilized to help limit any reduction to loan forgiveness amounts.
- Wages/salary paid to any employee making less than \$100,000 in 2019 is reduced by more than 25%.
- Employee headcount and wage/salary levels are not maintained or restored by June 30.
- Greater than 25% of loan proceeds are used for non-payroll expenses.

How do I request loan forgiveness? **

To request forgiveness of your PPP loan:

- ❖ Submit a request for loan forgiveness to your lender. There is conflicting information as to whether loan forgiveness can be requested after the conclusion of the eight-week “covered period” or after completion of an audit.
- ❖ Provide documentation verifying number of FTE employees, pay rates and payments made on other eligible expenses.
- ❖ Must certify documents are true and that funds were used to retain employees and make eligible payments.
- ❖ The lender must make a decision within 60 days as to compliance and amount of loan forgiveness.

*** Information about loan forgiveness is subject to change, including when the 8 week “covered period” begins and when a request for forgiveness can be submitted. The SBA is expected to issue additional guidance on these issues. ***

Are there special requirements for independent contractors, self-employed persons and sole proprietors?

- ❖ “Payroll costs” are equivalent to compensation replacement not to exceed eight weeks of 2019 net income up to a maximum of \$100,000.
- ❖ Loan proceeds can only be used for utilities, rent and mortgage interest if a deduction was claimed for that category of expense on 2019 taxes.
- ❖ Required documentation must include Form 1040 Schedule C showing self-employment income and expenses and 2019 1099-MISC and other documentation showing self-employment status in 2019 and income in 2020.
- ❖ See the U.S. Chamber of Commerce guidance for independent contractors, self-employed persons and sole proprietors at: https://www.uschamber.com/sites/default/files/uscc_coronavirus_independent-contractors.pdf

Recommendations:

- ❖ Ensure your business can certify at the time of the loan application and when forgiveness is requested that the loan proceeds are necessary as a result of lost revenue during the COVID-19 emergency.
- ❖ Ensure calculations are accurate.
- ❖ Keep good documentation of expenses and use of loan proceeds.
- ❖ It is expected that loans in excess of \$2,000,000 will receive full audits and “spot checks” will occur for lesser amounts.

DO NOT WAIT TO APPLY!

Funding for these programs is expected to be depleted quickly.

Contact your bank/lender ASAP if you want to apply.

COVID-19 Economic Injury Disaster Loan

The COVID-19 Economic Injury Disaster Loan (EIDL) is a more traditional type loan but some of the barriers to the typical loan process, terms and conditions have been reduced or removed. Applicants may also request an emergency grant that does not require repayment.

Who is eligible?

- ❖ Small businesses with less than 500 employees (including sole proprietorships, independent contractors and self-employed)
- ❖ 501(c)(3) non-profits with less than 500 employees

What are the loan terms and conditions?

- ❖ Must have operational/financial obligations that cannot be met due to COVID-19.
- ❖ Loan proceeds must be used for payroll costs, including benefits and sick leave, increased supply costs, making rent or mortgage payments, accounts payable, and repaying other debt obligations that cannot be met due to the emergency situation.
- ❖ Maximum \$2 million working capital loan
- ❖ Based on ability to repay
- ❖ 3.75% interest rate for businesses
- ❖ 2.75% interest rate for non-profits
- ❖ Up to 30-year term
- ❖ Payments deferred 1 year

- ❖ No personal guarantee required for less than \$200,000
- ❖ No collateral for loans of \$25,000 or less. Loans greater than \$25,000 will take a general security interest in business assets instead of real estate
- ❖ Applicant not required to seek funding from other sources before applying
- ❖ Approval based on credit score
- ❖ Must allow SBA to review tax records
- ❖ If also secure a PPP loan for same purpose, \$10,000 will be subtracted from loan forgiveness under that program

How can I obtain the EIDL Emergency Grant?

- ❖ Eligible applicants for an EIDL loan can request an emergency **grant** of up to \$10,000 within 3 days of loan application (through December 31).
- ❖ Amount of grant is \$1000 for each employee up to a maximum of \$10,000
- ❖ No obligation to repay emergency grant even if EIDL loan is not approved
- ❖ Disbursement of the emergency grant will be made within days of application

How do I apply?

- ❖ Apply at [SBA.gov/disaster](https://www.sba.gov/disaster)
- ❖ As of April 28th-new applications for new funding not yet being accepted

Resources

There is A LOT of information about these programs on the internet. It can be overwhelming to sift through. You will find all you need to know on the following websites. Begin with the US Chamber of Commerce link to find guides and checklists for each of the programs.

U.S. Chamber of Commerce: <https://www.uschamber.com/coronavirus>

U.S. Department of the Treasury: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

Small Business Administration: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>