

Prepared April 10, 2020

Updated: April 17, 2020

May 6, 2020

June 10, 2020

July 7, 2020

Memorandum - Small Business Administration Loans Under CARES Act

Pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, two Small Business Administration (SBA) loan programs are being made available to many small businesses: the SBA 7(a) Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) Program.

Brief summaries of these programs are provided below, and detailed information is available via the following hyperlinks:

- [Small Business Administration](#): Details on the EIDL
- [Small Business Administration](#): Details on the PPP
- [U.S. Treasury Department](#): Details on the PPP

Paycheck Protection Program (PPP)

The PPP program provides for loans to assist qualifying small businesses with payroll and other eligible costs. CARES Act loans are up to 100% forgivable if used during the statutory coverage period in accordance with forgiveness eligibility rules. Enacted on June 5, 2020, the Paycheck Protection Program Flexibility Act (PPP Flexibility Act) extended the statutory coverage period and provided other flexibility for loan forgiveness criteria.

Key highlights of the PPP include:

- **PPP Eligibility:** Small businesses generally are eligible for the PPP's favorable loan terms and relaxed application requirements if they have less than 500 employees, but paint and coatings manufacturing companies (NAICS code 325510) may qualify if they have fewer than 1,000 employees. Note that the SBA has detailed "affiliation" rules that can impact how company size is calculated for the purposes of SBA loans like the PPP.

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- **PPP Loan Amounts:** Loan amounts available to each business are capped at the lesser of (i) \$10 million, or (ii) 250% of average total monthly payroll costs, with employee compensation capped at \$100,000 on an annualized basis for each employee and excluding any compensation paid to employees whose principal place of residence is outside of the United States.

- **Use of PPP Loan Funds:**
 - At least 60% of loan funds must be used for payroll costs, which generally include:
 - wages, salaries, and benefit costs for most employees (including any payments made to furloughed employees and bonuses or hazard pay provided to employees), with wages/salaries capped at \$100,000 on an annualized basis for each employee;
 - payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums and retirement;
 - payment of state and local taxes assessed on compensation of employees; and
 - payments to employees for vacation, family/parental, and medical/sick leave, except for those leave wages covered by the Families First Coronavirus Response Act.
 - The remainder of the loan funds may be used for other enumerated purposes, which notably include:
 - Costs relating to continuation of group health care benefits during paid employee leave;
 - rent and utilities;
 - mortgage interest obligations; and
 - interest on debt incurred prior to February 15, 2020.

- **PPP Loan Forgiveness:** Loan forgiveness is based on the extent to which the small business maintains employee headcounts and salary levels. Loan forgiveness can be up to the full principal amount of the loan and any accrued interest.
 - Forgiveness is potentially available for documented use of loan proceeds during the statutory coverage period, which is calculated from the origination date of the loan and extending until the earlier of (i) 24 weeks after the date of origination, or (ii) December 31, 2020. Borrowers that received PPP loans prior to June 5, 2020, alternatively have the option to have the coverage period run from eight weeks after the date of the loan origination. Borrowers may alternatively calculate the start of the coverage period as beginning on the date of the first pay period after

the date of loan origination. The most notable forgiveness eligibility criteria include:

- at least 60% of loan proceeds must be used for eligible payroll costs during the coverage period; and
 - all other loan proceeds must be used for payments to satisfy obligations undertaken prior to February 15, 2020 in the nature of mortgage payments, rent payments, and utility payments.
- Loan forgiveness will be reduced if either:
- Less than 60% of loan proceeds are used for eligible payroll costs during the coverage period;
 - employee compensation decreases to less than 75% (for any employees with annual compensation less than \$100,000) relative to benchmark levels set forth in the CARES Act; and/or
 - full-time employee headcount declines relative to benchmark levels, as set forth in the CARES Act and the PPP Flexibility Act, excluding employees who were terminated for cause or voluntarily resigned or requested reduced hours.
- There is no penalty for reduction of employment or wages occurring between February 15, 2020 and April 26, 2020, if employees are rehired and wage/salary levels are restored by December 31, 2020. The PPP Flexibility Act also provides two exceptions that excuses an employer's failure to restore employee headcount for the purposes of calculating loan forgiveness:
- The first exception is if the employer can document in good faith (i) an inability to rehire individual employees who were employed on February 15, 2020, and (ii) an inability to hire similarly qualified employees for such unfilled positions on or before December 31, 2020.
 - The second exception is if the employer can document an inability to return to the same level of business activity as the level on February 15, 2020, due to the need to comply with standards set by designated federal agencies relating to sanitation, social distancing, or worker safety.
- Any loan advance the borrower may receive under an Economic Injury Disaster Loan (EIDL) will be reduced from the amount of loan forgiveness available to that borrower under the PPP loan program.
- On April 30, 2020, the IRS issued [guidance](#) clarifying that no federal income tax deductions are available for otherwise deductible expenses that result in forgiveness under the PPP loan program.

- **PPP Loan Terms:** Those PPP loans issued on or after June 5, 2020, that are not subject to loan forgiveness will carry a minimum 5-year term with an interest rate of 1%, with a deferral on payments of interest and principal until the date that a borrower's loan forgiveness amount is determined. The loans have no prepayment penalty and do not require any application fees, collateral, or personal guarantees.
- **How to Apply for PPP Loans:** Loans are available on a first-come, first-served basis through participating lenders, which typically include all FDIC institutions and federally insured credit unions. The loan application first became available for small businesses on April 3, 2020. The deadline to submit an application is June 30, 2020.

Economic Injury Disaster Loan (EIDL) Program

The CARES Act greatly expanded EIDL eligibility from January 31, 2020 to December 31, 2020 for qualifying small businesses to obtain longer-term loans with favorable borrowing terms. The CARES Act also introduced a loan advance feature where applicants can immediately obtain up to a \$10,000 advance that does not need to be repaid. Funding limitations affect availability of EIDL loans. Please check the SBA's [EIDL webpage](#) for the most up-to-date information.

Key highlights of the EIDL program include:

- **EIDL Eligibility:** EIDL loans are generally available to small businesses with fewer than 500 employees that have experienced a substantial economic injury as a result of the COVID-19 crisis. Most small businesses with fewer than 500 employees are eligible, but paint and coatings manufacturing companies (NAICS code 325510) may qualify if they have fewer than 1,000 employees.
- **Relaxation of EIDL Application Requirements:** The CARES Act relaxes certain application requirements, including waiving:
 - the requirement for a personal guarantee for loans of \$200,000 or less;
 - the “credit elsewhere test” used to assess whether the applicant can obtain loan funds from other sources; and
 - the requirement that the applicant be in business for a year, so long as the applicant was in operation on January 31, 2020.
- **EIDL Amounts:** Loan amounts under the EIDL program are based on the amount of a borrower's economic injury, as determined by the Small Business Administration, up to \$2 million.

- **EIDL Loan Advance:** Subject to eligibility requirements, borrowers may receive an advance of up to \$10,000 within three days of a successful application. The advance is not subject to repayment.
- **Use of EIDLs:** EIDLs may be used for payroll, accounts payable, and many other payment obligations that cannot be met due to the impact of the COVID-19 crisis.
- **EIDL Terms:** EIDL interest rates are fixed at 3.75% for for-profit small businesses and 2.75% for nonprofits. EIDLs may have up to a 30-year term and amortization, which are determined individually for each loan.
- **Overlap of EIDL and Paycheck Protection Program (PPP):** Although there is an overlap in eligibility for certain costs under both loan programs, EIDL applicants may not receive loans for costs already covered by a Paycheck Protection Program (PPP) loan. Any advance that a borrower receives on an EIDL will be subtracted from any loan forgiveness the borrower may seek for a loan under the Paycheck Protection Program (PPP).
- **How to Apply for EIDL:** EIDLs are available solely through applications filed directly with the SBA. To apply, please visit the [SBA's website](#). You may also contact the SBA disaster assistance customer service center at 1-800-659-2955 (TTY: 1-800-877-8339) or by email at disastercustomerservice@sba.gov.