

ALERT

Qualifications and Application Procedures for CARES Act Relief Program

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[Last updated April 2, 2020]

On Friday, March 27, 2020, President Trump signed a \$2 trillion stimulus package, entitled the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"). The CARES Act is described in detail in our website Alert published March 30, 2020, which is available at the following web address: <https://www.brothersmithlaw.com/publications/alert-the-cares-act-and-small-businesses/>.

The CARES Act is primarily comprised of three (3) relief programs: (1) the Paycheck Protection Program, (2) the Small Business Debt Relief Program and (3) Economic Injury Disaster Loans and Emergency Economic Injury Grants.

On April 1, 2020, we issued an Alert that provided certain information regarding the eligibility requirements and application processes for each of these relief programs. **Since that time, the Treasury Department has issued guidelines regarding the requirements and components applicable to the Paycheck Protection Program Loans ("PPP Loans"), which guidelines are incorporated into this publication. Substantive changes to the PPP Loan Program as indicated by the Treasury guidelines and related sources are highlighted in yellow.** Please be advised that the situation is still evolving with respect to the relief programs addressed in this publication, and that the information included herein is subject to change.

1. Paycheck Protection Program Loans

Which businesses qualify?

- Must have been in operation as of February 15, 2020
- Must have been affected by COVID-19 related events, including economic uncertainty
- Must have five hundred (500) employees or less or be in an industry that uses an employee-based size standard
- Includes:
 - For-profit businesses, including most franchises
 - Sole proprietorships, independent contractors, gig economy workers and other self-employed individuals
 - Tribal businesses
 - Veterans organizations
 - Nonprofit Organizations (generally 501(c)(3) charitable organizations and 501(c)(19) veterans organizations)

What can the PPP Loan be used for?

- Payroll, including salary, hourly wages, commission payments and cash tips, where applicable (employee/owner compensation over \$100,000 is excluded)
- ○ **It is unclear at this time whether wages to part-time employees and independent contractor payments will be covered**
- Payment for vacation, parental, family, medical and sick leave

- Severance payments
- Costs related to group health care benefits, including insurance premiums
- Payment of retirement benefits
- Payment of payroll taxes
- Interest on mortgage obligations, incurred before February 15, 2020
- Rent on lease agreements in effect before February 15, 2020
- Utilities, for which service began before February 15, 2020
- Interest on debts that were incurred before February 15, 2020

How much can a business borrow?

- Up to two and one-half times (2.5x) the business' "Average Monthly Payroll" expenses for 2019, for a maximum of \$10 million
 - For seasonal businesses, you may elect to base your Average Monthly Payroll on the period between February 15, 2019 and June 30, 2019
 - For new businesses, the maximum loan amount is 2.5x the average monthly payroll costs between January 1, 2020 and February 29, 2020
- A PPP Loan may be forgiven in its entirety if the following conditions are met:
 - At least seventy-five percent (75%) of the loan funds are used for qualifying expenses in the eight (8) week-period after the loan is approved
 - The business retains all of its full-time employees, or rehires laid-off employees by June 30, 2020
 - If the business lays off some employees and/or decreases by more than 25% the salary or wages of any employee who made less than \$100,000 in 2019, the forgiveness amount will be proportionately reduced
 - Apply for forgiveness after the eight (8)-week period
 - Lenders are required to make a decision regarding forgiveness within sixty (60) after your request
- Loans are retroactive to February 15, 2020, so that businesses may rehire workers who were already laid off
- The terms of all PPP Loans will be the same
 - Any loan amounts not forgiven are payable over two (2) years, at an interest rate of One-Half Percent (0.5%)
 - Loan payments will be deferred for six (6) months, but interest will still accrue during the six (6) months
 - No collateral or personal guaranty is required
 - No prepayment fees
 - No requirement to prove that the business cannot obtain funds elsewhere

NEXT STEPS

Where to apply:

- Any existing SBA lender, or any federally insured depository institution, federally insured credit union, or Farm Credit System institution that is participating in the program. Additional lenders who are approved by the Treasury Department
- Therefore, your business may be able to apply at any bank or institution that you already use, or at a nearby bank or institution
- How to find approved lenders?
 - Inquire with your bank or credit union
 - SBA's online Lender Match tool
 - Call your local Small Business Development Center or Women's Business Center
 - Chase Bank has indicated that its application will be entirely online, and that applicants need a Chase business checking account in order to apply with them; the **application with Chase will be entirely online.**
 - Research indicates that US Bank, Sunrise Banks, Key Bank and Live Oak Bank are among the approved lenders.
 - The 100 most active SBA 7(a) lenders in the U.S. in 2019: <https://www.sba.gov/article/2020/mar/02/100-most-active-sba-7a-lenders>
 - **The SBA has released the Paycheck Protection Program application here:** <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

Relevant Time Periods:

- **Small Business, Sole Proprietorship and Nonprofits: Applications accepted beginning Friday, April 3**
 - Certain banks are accepting pre-applications
- **Independent Contractors and Self-Employed Individuals: Applications accepted beginning Friday, April 10**
- Deadline to apply: **June 30, 2020**
- Loans are first come, first served

- The total amount of loan funds available is fixed

Required and/or Recommended Documents:

- The application requests documentation of the following information pertaining to the eight (8)-week period following loan approval:
 - The number of full-time equivalent employees on payroll
 - The dollar amounts of payroll costs
 - Mortgage interest payments and rent payments
 - Utilities
- Although the following categories of documents are not indicated on the Paycheck Protection Program application, your business should nonetheless begin gathering these documents, where applicable, because these categories are addressed in the CARES Act and may be considered allowable expenses for the PPP Loan:
 - Payroll Records for part-time employees (it is unclear at this time whether wages to part-time employees will be covered)
 - Amounts paid to independent contractors by cash, check, ACH, payment services (Paypal, Venmo, Zelle, etc.) for the last twelve (12) months (it is unclear at this time whether independent contractor payments will be covered)
 - EDD documentation
 - Documents relating to the costs of group health insurance, retirement benefits and other employee benefits
 - Financial statements for 2019 and 2020
 - 2019 tax returns, if available

2. Small Business Debt Relief Program

Purpose

- A program to assist businesses in making payments on their current or potential SBA loans
- Applies to non-PPP SBA loans, particularly 7(a), 504 and microloans

Which loans qualify?

- Current SBA loans
- New SBA loans issued prior to September 27, 2020

Which businesses qualify?

- Generally small businesses under the North American Industry Classification System (“NAICS”) standard

What does the program cover?

- The SBA will pay the principal, interest and fees of these loans for up to six (6) months

NEXT STEPS

How to apply:

- Contact the bank or lending institution through which your business obtained its existing non-PPP SBA loan or intends to apply for a non-PPP SBA loan

3. Economic Injury Disaster Loans (“EIDL”) and Emergency Economic Injury Grants (“EEIG”)

Purpose:

- Intended to quickly provide a modest amount of cash to cover operating expenses, including payroll, sick leave, increased production costs due to supply chain disruptions and other business obligations such as rent and mortgage
- EIDL Loans: Up to \$2 million
 - Not eligible for loan forgiveness
- EEIG Grants: Emergency cash advance of up to \$10,000
 - If a business receives both a PPP Loan and an EEIG Grant, the amount of the EEIG Grant will be deducted from the amount of the PPP Loan that may be forgiven
- If the business also applied for the PPP Loan, the EIDL Loan must be used for different expenses

Which businesses qualify?

- Small business concerns and small agricultural cooperatives that meet size standards
- Most non-profit businesses of any size
- Sole proprietorships, with or without employees
- Independent contractors

- Cooperatives and employee-owned businesses
- Tribal small businesses
- All categories of applicants must have 500 or fewer employees
- Must have been in operation as of January 31, 2020

NEXT STEPS

How to apply:

- Unlike the PPP Loans, the EIDL Loans are administered directly by the SBA
- Application available online at: <https://covid19relief.sba.gov/#/>
- Businesses may apply for both the EIDL Loan and EEIG Grant in a single application
 - SBA currently predicts that the EEIG Grant funds will be available three (3) days after submitting the application
 - Your business has the option of accepting only the EEIG Grant and not the EIDL Loan

Information Needed to Apply:

- Basic information concerning the business (legal name/dba, contact information, EIN, nature of business, type of business organization, number of employees)
- Gross revenues for February 1, 2019 through January 31, 2020
- Cost of goods sold from February 1, 2019 through January 31, 2020
- Lost rents from rental properties due to COVID-19
- For nonprofits, costs of operation from February 1, 2019 through January 31, 2020
- Compensation from other sources received as a result of COVID-19
- Other information and documents as may be requested

Relevant Time Periods

- Deadline: **December 31, 2020**; however, businesses are advised to apply as soon as possible

If you have any questions or would like any further clarification on the CARES Act, its impacts and/or qualification and application processes, please feel free to reach out to us.

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