



## SBA Provides Emergency Disaster Loans for Small Businesses

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**On March 31, we published a summary of the SBA Loan Programs under the CARES act that describes Economic Injury Disaster Loans (EIDL) in greater detail.**

The federal government, through the United States Small Business Administration (SBA), has made **Economic Injury Disaster Loans (EIDLs)** available to small businesses severely impacted by the Coronavirus (COVID-19) emergency. Unlike typical SBA loans which are funded through private lending partners, EIDLs are underwritten and funded directly by SBA.

### **Key Highlights for Impacted Businesses**

- Eligible businesses must have no other available source of credit.
- Eligible businesses must qualify as a small business under federal regulations.
- Maximum amount of any EIDL is \$2 million.
- Interest rates are fixed for the term of the loan.
- Loans are typically 15-year terms, with a maximum available term of 30 years.
- Eligible business must complete and submit its loan application by December 19, 2020.

### **SBA Emergency Disaster Loan Guidance**

#### Background

The Economic injury is defined by the SBA as a change in the financial condition of a small business attributable to the effect of a specific disaster, resulting in the inability of the business to meet its obligations as they mature, or to pay ordinary and necessary operating expenses. Economic injury may be reduced working capital, increased expenses, cash shortage due to frozen inventory or receivables, accelerated debt, etc.

The authority for the use of EIDLs comes from Section 7(b)(2) of the Small Business Act, as amended. It permits the SBA to lend money to affected businesses to be used for working capital necessary to carry the business until resumption of normal operations and for expenditures necessary to alleviate a specific economic injury. The use of loan proceeds should generally be limited to working capital, notes payable and accounts payable.

Unlike the more familiar SBA 7(a) and 504 loan programs, EIDLs are funded and administered by the SBA, without the involvement of a private lender partner. Businesses should remember that most senior loans will prohibit additional debts and liens, so a senior lender's consent may be necessary for a borrower to obtain a new loan or grant collateral to a different lender.

### Timing and Logistics

Each eligible business must complete and submit its loan application within nine (9) months from the day after the date of declaration of the disaster. Both Virginia and North Carolina were declared disaster areas on March 19, 2020.

SBA strongly encourages the filing of electronic loan applications (ELAs) **online**, but accepts paper applications as well. Both ELAs and paper applications can be filed in person at a field office where the **SBA is located**.

### Eligibility

Small business concerns, small agricultural cooperatives (but not agricultural businesses), small businesses engaged in aquaculture and most private non-profits **are eligible to apply for EIDLs**. Owners of commercial or residential rental property are eligible for EIDLs as well. Non-citizen nationals and qualified aliens are eligible to apply, subject to certain guidelines.

Whether a business qualifies as "small" is determined under SBA's size standards, which are established by type of economic activity or industry, under the North American Industry Classification System ("NAICS"). NAICS codes and corresponding size standards can be found at **13 CFR Section 121.201**.

SBA excludes a number of businesses, even if they are small businesses, from eligibility for EIDLs, including agricultural enterprises (as opposed to small agricultural cooperatives), nurseries, lending or investment concerns (except for real estate investments held for rental), speculative activities and real estate developers, among others.

Applicants who have "Credit Available Elsewhere" are ineligible for EIDLs. An applicant does not have Credit Available Elsewhere when the SBA determines the applicant does not have sufficient funds or other resources, or the ability to borrow from non-governmental sources at reasonable terms, to provide for its own disaster recovery. An applicant that the SBA determines to have the ability to provide for its own recovery is deemed to have Credit Available Elsewhere.

### EIDL Loan Terms

The maximum amount of any EIDL is \$2 million. That limit applies to the combined total amount of all loans to any one applicant, including its affiliates, for any one disaster event. Calculation of the loan amount takes into account any insurance proceeds or other sources of funds available to alleviate the loss.

The SBA may waive the \$2 million limit if the applicant is a Major Source of Employment (MSE). An MSE is a business that (1) employed 10% or more of the entire workforce within the commuting area of a geographically identifiable community, no larger than a county, or (2) employed 5% or more of the workforce in an industry within the disaster area and, if the business is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or (3) if the business is a manufacturing concern, employed no less than 150 employees in the disaster area, or (4) employed no less than 250 employees within the disaster area.

Interest rates are fixed for the term of the loan. Rates are below-market and assigned based on the content of each application. The current rate being quoted in Virginia and North Carolina reportedly is 3.75% for business loans and 1% lower for nonprofits.

The loan term is generally 15 years with a maximum available term of 30 years. Collateral is required for all EIDLs over \$25,000.00. SBA takes real estate as collateral when it is available. SBA generally requires guarantees from all principals of the affected business.

Section 7(b)(2) is not a new program promulgated in response to the COVID-19 crisis. It is a time-tested method of disaster recovery and may be the primary program employed by the federal government to help small businesses suffering economic injury from this pandemic.

If you have any questions concerning the SBA Disaster Loan program or how to apply, please contact John Faber or Wyatt Booth.

*Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.*

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