



## Congress Set to Enhance SBA's Emergency Disaster Loans for Small Businesses

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**This alert serves as a follow-on to our alert [SBA Provides Emergency Disaster Loans for Small Businesses](#), published March 25, 2020, and takes into account recent federal legislative developments.**

As we reported in our previous alert, 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.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes important updates for businesses considering an EIDL. SBA implementing regulations, which are required to be issued within 15 days of the CARES Act becoming law, are expected to provide further details on the EIDL program.

### Key Highlights for Impacted Businesses

- Eligible businesses may have other available sources of credit.
- Eligible businesses must qualify as a small business under federal regulations or as an eligible entity under the CARES Act and have been in operation on January 31, 2020.
- Eligible businesses may receive an advance of up to \$10,000 within 3 days of submitting a loan application.
  - Advances made prior to loan approval do not need to be repaid, even if the loan application is denied.
- 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.
- Personal guarantees are not required for advances and loans up to \$200,000.
- Eligible businesses must complete and submit their loan applications by December 31, 2020.

## **SBA Emergency Disaster Loan Guidance**

### Background

An 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 lending 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 by December 31, 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**. For businesses that may not qualify under the size standards, the CARES Act expands EIDL eligibility to any business, cooperative, employee stock ownership plan, or tribal small business concern that has no more than 500 employees. The CARES Act also makes EIDLs available to individuals who operate as a sole proprietorship (with or without employees) or as an independent contractor.

The CARES Act allows applicants who have "Credit Available Elsewhere" to apply for EIDLs. Previous EIDL eligibility criteria required that an applicant must not have "Credit Available Elsewhere."

In addition, the CARES Act directs the SBA to waive the typical requirement that eligible businesses must have been in operation for one year before the disaster. The CARES Act provides instead that any eligible business in operation on January 31, 2020 may apply.

Applicants may be approved based solely on a credit score. Tax returns are not required to be submitted with the application.

#### EIDL Advances

The CARES Act allows SBA to provide advances of up to \$10,000 to applicants within 3 days of receiving an EIDL application. An applicant seeking an advance must self-certify under penalty of perjury that it is an eligible business. Applicants are not required to repay advances made prior to loan approval to SBA, even if the SBA denies the application.

Advanced funds may be used for any allowable purpose under the EIDL program, including (1) providing paid sick leave related to employees unable to work due to the emergency; (2) maintaining payroll; (3) meeting increased costs due to interrupted supply chains during the emergency; (4) paying rent or mortgage payments; and (5) meeting obligations that cannot be met due to revenue losses.

Applicants who receive EIDL advances and later obtain a loan for payroll costs under Section 7(a) of the Small Business Act will have their Section 7(a) loan forgiveness amount reduced by the amount of the EIDL advance.

#### 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, (a) if the business is a non-manufacturing concern, employed no fewer than 50 employees in the disaster area, or (b) if the business is a manufacturing concern, employed no fewer than 150 employees in the disaster area, or (3) employed no fewer 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. SBA takes real estate as collateral when it is available. SBA generally requires guarantees from all principals of the affected business, but the CARES Act waives this requirement for EIDL advances and loans up to \$200,000.

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 to help small businesses suffering economic injury.

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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