

In response to the global COVID-19 pandemic, on March 27, 2020 Congress enacted and the President signed the Federal Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”). Among other things, the CARES Act:

1. Creates a new 7(a) SBA Business Loan Program called the “Paycheck Protection Program”, which authorizes the making of loans to eligible entities (a “**PPP Loan**”) for a limited period of time, without any personal guaranty or collateral requirements, and with the PPP Loans being subject to forgiveness under certain circumstances.
2. Significantly expands for a limited period the availability of Economic Injury Disaster Loans (an “**EID Loan**”) under the SBA’s 7(b) Disaster Assistance Program for COVID-19 related economic injury, and which provides for, among other things, small emergency advances for which no repayment is required.

Below is a table that outlines key terms of each program.

	Paycheck Protection Program Loans under the Amended 7(a) Business Loan Program	Economic Injury Disaster Loans under the Amended 7(b) Disaster Assistance Program
Covered Period for Loan Program	February 15, 2020 to June 30, 2020.	February 15, 2020 to December 31, 2020.
General Eligibility	<p>In addition to SBA “small business concerns”, eligible businesses include any business concern, nonprofit organization, veterans’ organization, or Tribal business if it:</p> <p>Employs not more than the greater of: (1) 500 employees (includes full-time, part-time, and those employed on other basis) or (2) if applicable, the size standard in number of employees established by the SBA for the applicant’s industry;^[1]</p> <p>Was in operation on February 15, 2020; and</p> <p>Had W-2 employees or 1099-MISC independent contractors.</p>	<p>In addition to current eligible businesses, the following qualify:</p> <p>Tribal small business concerns, with not more than 500 employees;</p> <p>A business with 500 or fewer employees;</p> <p>Cooperatives with 500 or fewer employees;</p> <p>ESOPs with 500 or fewer employees; and</p> <p>Any individual who operates as a sole proprietorship, with or without employees, or as an independent contractor.</p>

		Applicant must have been in operation on January 31, 2020.
Loan Amount	<p>Up to the <i>lesser of</i>:</p> <p>(1) \$10,000,000 OR</p> <p>(2) 2.5 times either:</p> <p>(A) average total monthly payroll costs^[2] incurred in the one-year period before the loan is made^[3] (plus the outstanding amount of an EID Loan refinanced with a PPP Loan);</p> <p>OR</p> <p>(B) upon request, for businesses that were not in existence during February 15, 2019 to June 30, 2019, the average total monthly payroll payments from January 1, 2020 to February 29, 2020 (plus the outstanding amount of any EID Loan to be refinanced with the PPP Loan).</p>	Loan amounts are based on the amount of economic injury. The maximum amount for an applicant is \$2,000,000.
General Terms	<p>Interest rate shall not exceed 4%.</p> <p>PPP Loans that have a remaining balance after reduction based on the loan forgiveness, the loan shall have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.</p> <p>No prepayment penalty will apply.</p>	<p>Interest rate shall be 3.75% for businesses and 2.75% for non-profits.</p> <p>Payment schedules up to a maximum of 30 years. Payment terms are determined on a case-by-case basis.</p> <p>No prepayment penalty will apply.</p>
Loan Forgiveness	Yes. ^[4] The sum of the following costs incurred and payments made during the 8-week period beginning on the date the PPP Loan is	No.

	<p>originated (“Forgiveness Period”) are subject to forgiveness:</p> <p>Qualified payroll costs;</p> <p>Any payment of interest on any covered mortgage obligation;^[5]</p> <p>Any payment on any covered rent obligation;^[6] and</p> <p>Any covered utility payment;^[7] and</p> <p>Additional wages paid to tipped employees may also be forgiven.</p> <p><u>Note:</u> Forgiveness amounts will be reduced for any employee cuts^[8] or reductions in wages^[9], subject to a rehiring incentive.^[10]</p>	
<p>Use of Proceeds</p>	<p>Businesses may, in addition to uses already allowed under the SBA’s 7(a) Business Loan Program, use the loans for:</p> <p>Payroll costs, which:</p> <p>Includes (unless excluded below): (1) compensation to employees, such as salary, wage, commissions, cash, etc.; (2) payment of cash tips (or equivalent) to tipped employees; (3) paid leave; (4) severance payments; (5) payment for group health benefits, including insurance premiums; (6) retirement benefits; (7) state and local payroll taxes; and (8) compensation to sole proprietors or independent contractors (including commission-based compensation); and</p> <p>Excludes: (1) compensation of an individual employee in excess of an annual salary of \$100,000; (2)</p>	<p>EID Loans may be used to pay:</p> <p>fixed debts</p> <p>payroll</p> <p>accounts payable and</p> <p>other bills that can’t be paid because of the disaster’s impact.</p> <p>May not be used for refinancing, expansion, growth of any kind, or infrastructure improvements.</p>

	<p>certain federal taxes imposed or withheld; (3) compensation of an employee whose principal residence is not the United States; (4) qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act; or (5) qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.</p> <p>Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;</p> <p>Salaries, commissions, or similar compensations;</p> <p>Payments of interest on mortgage obligations;</p> <p>Rent/lease agreement payments;</p> <p>Utilities; and</p> <p>Interest on any other debt obligations incurred before the Covered Period.</p> <p><u>Note:</u> In addition, EID Loan made on or after January 31, 2020 (through the date PPP Loans are available), may be refinanced with a PPP Loan.</p>	
<p>Personal Guarantees Required</p>	<p>No.[11]</p>	<p>Yes[12], except no guaranty required on loans of \$200,000 or less.</p>
<p>Collateral Required</p>	<p>No.</p>	<p>Yes, if available, although it is unclear whether collateral will be required for loans of \$200,000 or less even if available.</p>

<p>“Credit Elsewhere” Test Applies[13]</p>	<p>No.</p>	<p>No.</p>
<p>Credit Worthiness</p>	<p>Applicant must make a good-faith certification that:</p> <p>The loan is needed to continue operations during the COVID-19 emergency;</p> <p>Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;</p> <p>The applicant does not have any other application pending under this program for the same purpose; and</p> <p>The applicant has not received duplicative amounts under the program.</p>	<p>Allows lenders to approve applicants based solely on credit scores (no tax return submission required) or “alternative appropriate methods to determine an applicant’s ability to repay.”</p>
<p>Special Loan Deferral Rules</p>	<p>Yes, lenders are required to provide complete payment deferment relief for PPP Loan borrowers for at least 6 months, not to exceed 1 year.</p>	<p>Yes, up to a 1-year deferment on payments.</p>
<p>Emergency Advances</p>	<p>No.</p>	<p>Yes, up to \$10,000 within 3 days of an application.[14]</p>
<p>How Funded</p>	<p>SBA is granted the right to make PPP Loans directly or loans may be made through third party lenders. Lenders currently authorized to make 7(a) loans are automatically approved to make PPP Loans without SBA approval.[15]</p>	<p>Directly from the SBA.[16]</p>

[1] Certain industries have size standards of up to a maximum of 1,500 employees. See the [SBA's definition of a small business here](#).

[2] The term "payroll costs" excludes: (a) compensation of an individual employee in excess of an annual salary of \$100,000; (b) certain federal taxes imposed or withheld; (c) compensation of an employee whose principal residence is not the United States; (d) qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Response Act; or (e) qualified family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.

[3] For seasonal employers, the average monthly payroll costs for the 12 weeks beginning on either February 15, 2019 or from March 1, 2019 (at the business' election) to June 30, 2019.

[4] Forgiveness amounts are also *excluded* from "gross income" for federal income tax purposes.

[5] The term "covered mortgage obligation" means any indebtedness or debt instrument incurred in the ordinary course of business that (a) is a liability of the borrower; (b) is a mortgage on real or personal property; and (c) was incurred before February 15, 2020.

[6] The term "covered rent obligation" means rent obligated under a leasing agreement in force before February 15, 2020.

[7] The term "covered utility payment" means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

[8] The amount attributable to a workforce reduction will be equal to the initial forgiven amount multiplied by the quotient of average full-time employees during the Forgiveness Period divided by the average full-time employees for the period from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020, as determined by the borrower.

[9] The amount attributable to a compensation reduction will be the amount of any compensation decrease in excess of 25 percent of the total compensation during the most recent full quarter such employee was employed before the Forgiveness Period. However, only employees who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in excess of \$100,000 are included in this calculation.

[10] Reductions in employees and compensation that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020.

[11] In addition, the CARES Act expressly provides that the SBA has no recourse against any individual, shareholder, member, or partner of an eligible loan recipient for non-payment (unless the individual uses the loan proceeds for unauthorized purposes).

[12] Generally, anyone that owns 20% or greater will have to guaranty the loan and if nobody owns greater than 20% then someone will have to guaranty the loan.

[13] This typically means that if a guarantor or the business has greater cash and marketable securities on their personal financial statement than the loan request then they may be considered ineligible.

[14] Emergency advance does not have to be repaid, *even if the loan application is later denied*.

[15] SBA has developed [Lender Match](#), a free online referral tool that connects small businesses with participating SBA-approved lenders within 48 hours.

[16] Applicants can apply through the [SBA's Disaster Assistance Program](#) website.