

U.S. Small Business Administration offering Emergency Financing for Payroll and Other Expenses to Qualified Entities Suffering Substantial Economic Injury as a Result of the Coronavirus (COVID-19)

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The ongoing spread of Coronavirus/COVID-19 (“CV19”) continues to have massive effects on the global economy generally and U.S. businesses, large and small, specifically. The U.S. federal government has been hard at work implementing measures to bolster the economy during this current crisis. One source of relief for many small businesses and other entities may be a federal disaster loan in an amount up to \$2 million as provided via the U.S. Small Business Administration (“SBA”). Another source of relief for most small businesses, and many large businesses and certain other entities located in the U.S. can be found in Section 1102 of the Coronavirus Aid, Relief, and Economic Security Act (“*CARES Act*”) which creates a new program under Section 7(a) of the Small Business Act of 1958 (the “*Paycheck Protection Program*”). The Paycheck Protection Program will provide federally-guaranteed emergency forgivable loans in amounts up to \$10 million to small business concerns (and some larger businesses) nonprofits, veteran’s organizations, tribal businesses, sole proprietorships, independent contractors and self-employed individuals to cover payroll and health-care related costs, salaries, commissions, mortgage and certain other interest payments, rent and utilities. In short, these two distinct programs can assist tens of thousands of small and large U.S.-based businesses and other entities adversely impacted by CV19.

For many years the U.S. federal government has provided disaster loan assistance to small businesses located in the U.S. via the SBA under what is known as the Economic Injury Disaster Loan Program. In light of recent events and the impact of CV19 on the broader economy, the Economic Injury Disaster Loan Program has been expanded to assist small businesses and other entities impacted by CV19 (the “*SBA Disaster Relief Program*”). Pursuant to the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020 as of March 6, 2020, the SBA Disaster Relief Program now provides up to \$2 million of financial assistance to small businesses and private, non-profit organizations that suffer substantial economic injury as a result of CV19. To qualify

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under this program, the business or organization must (i) satisfy certain size standards and (ii) be located in any of the fifty states, the District of Columbia or a U.S. territory (American Samoa, Guam, Northern Mariana Islands, Puerto Rico and US Virgin Islands). Pursuant to the CARES Act, the SBA Disaster Relief Program has been expanded to, among other things, provide disaster relief loans to not just standard SBA small businesses but, during the period starting January 31, 2020 and ending December 31, 2020, to tribal businesses, cooperatives, and ESOPs with fewer than 500 employees, any sole proprietor or an independent contractor or any qualifying business with not more than 500 employees.

On March 27, 2020, the U.S. Congress approved, and the U.S President signed into law, the Paycheck Protection Program with the objective of providing the SBA additional tools and resources including up to \$10 million of financial assistance during the period between February 15, 2020 and June 30, 2020 to a myriad of for and non-profit businesses, veteran's organizations and tribal business concerns substantially and adversely impacted as a result of CV19. As an initial qualification threshold under this program (in lieu of needing to be a "small business" located in an impacted area), eligible recipients under the Paycheck Protection Program include small business concerns, nonprofit organizations, veteran's organization, tribal business concerns, and sole proprietorships and independent contractors and eligible self-employed individuals that (i) employ not greater than 500 employees, or, if applicable, the SBA's size standard/employees currently in effect and (ii) are able to certify that the financial assistance is necessary for ongoing operations in light of economic uncertainty and acknowledge that loan proceeds will be used to retain workers, maintain payroll or other payments as permitted uses.

Businesses that end up qualifying for both the SBA Disaster Relief Program and the Paycheck Protection Program will have to choose one program over the other. Nevertheless, any loan made after January 31, 2020 under the SBA Disaster Relief Program will be able to be refinanced in part by a loan made under the Paycheck Protection Program.

Below is a side-by-side comparison of each program.

	SBA Disaster Relief Program	Paycheck Protection Program¹
Loan Amount	<i>Up to \$2 million per loan (needs based)²</i>	<i>Up to \$10 million per loan (capped at 2.5x all payroll costs (monthly average of wages/benefits, etc., but excluding tax credits re family/sick leave and salaries >\$100k) incurred during, at option of</i>

		<i>applicant, 1-year period before loan is made or 2019 FYE (subject to adjustment for seasonal and new businesses) plus the outstanding amount of any loan made after January 31, 2020 under the SBA Disaster Relief Program)</i>
Interest Rate	<i>≤ 3.75% per annum (≤ 2.75% per annum for nonprofits)</i>	<i>1%</i>
Term/repayment	<i>May contain repayment terms up to a maximum of 30 years (case-by-case basis, based upon each borrower's ability to repay)</i>	<i>Payment deferment 6 months; term after forgiveness 24 months</i>
Covered Period (e.g., small business was operational)	<i>N/A</i>	<i>February 15 - June 30, 2020 (borrower must be in existence on February 15, 2020 and paying employees at such time)</i>
Use of Proceeds	<i>Paying fixed debts, payroll, accounts payable and other bills that can't otherwise be paid due to the economic impact of CV19</i>	<i>Paying payroll/employee benefits of U.S. based employees; operating costs (i.e., rents; mortgage interest payments; utilities; interest on previously incurred secured debt)</i>
Size of Business³	<i>Standard SBA size limitations/restrictions⁴ or concerns not greater than 500 employees (all full and part-time employees at time loan is disbursed) are also eligible for loans made between January 31, 2020 and December 31, 2020</i>	<i>Employ not greater than (i) 500 employees (all full and part-time employees at time loan is disbursed including that of "affiliates"), (ii) if applicable, the SBA's size standard/employees currently in effect (businesses assigned a NAICS code starting with</i>

		72 with less than 500 employees per location are eligible) or (iii) the “alternative size standards” previously designated by the SBA (i.e., tangible net worth of ≤ \$15 million and average net income after taxes of ≤ \$5 million over the two most recently completed fiscal years) ⁵
Type of Business	<i>nonprofits, sole proprietors/independent contractors, ESOPs, cooperatives, tribal business and other businesses</i>	<i>“small business concerns”, nonprofits (501(c)(3)/501(c)(19)), sole proprietors/independent contractors/self-employed, veterans organization, tribal business and other business concerns</i>
Affected Areas	<i>U.S.</i>	<i>U.S.</i>
Loan Forgiveness	<i>No</i>	<i>Yes; amount forgiven to be lesser of (i) loan amount and (ii) sum of payroll costs (<\$100k/yr) and real and personal mortgage interest, rent obligations and utility obligations incurred for eight weeks beginning on the date of the loan origination pursuant to contracts established prior to February 15, 2020 (forgiven amount reduced (i) if reduction of employees (monthly average) during the covered period from that of prior period and (ii) by an amount equal to reduction of salary of an employee</i>

		<i>over covered period in excess of 25% of salary for such employee in recent quarter); amount forgiven to be limited to no greater than 25% of non-payroll costs⁶</i>
Justification	<i>Substantial economic injury (i.e., decrease in income from operations or working capital with the result that the business is unable to meet its obligations and pay ordinary and necessary operating expenses in the normal course of business)</i>	<i>Current economic uncertainty makes loan request necessary to support ongoing operations</i>
Guarantee	<i>Yes; unless loan/advance amount is <\$200k (must be guaranteed by at least one individual or entity and will include all entities that own 20% or more of an applicant)</i>	<i>No (recourse against individual shareholder/member/partner if improper use of proceeds)</i>
Collateral	<i>Yes; first \$25,000, no collateral; loans in excess of \$350,000, collateral required⁷</i>	<i>No</i>
Showing of lack of access to other credit	<i>Yes (i.e., unable to access credit "on reasonable terms through traditional lending channels" - SBA Administrator Jovita Carranza)</i>	<i>No</i>
Fees or Prepayment Penalty	<i>No</i>	<i>No</i>
Amounts Appropriated	<i>\$50 billion</i>	<i>\$349 billion</i>
Providers	<i>Qualified 7(a) lenders</i>	<i>7(a) lenders, credit unions, FDIC insured banks and</i>

		<i>other designated institutions (Treasury and SBA may designate “additional lenders” under this emergency loan program that “have the necessary qualifications to process, close, disburse an service loans”)⁸</i>
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In addition to the above, the CARES Act modifies “traditional” SBA loans (also known as “7(a) Loans”, but excluding loans under the Paycheck Protection Program), 504 and microloans to (i) provide for principle, embed and fee payment coverage by the SBA for six months (ii) increase the SBA’s guarantee to 100 percent through December 31, 2020 and thereafter stepping down to 75 percent for loans exceeding \$150,000 and 85 percent for loans equal to or less than \$150,000 and (iii) increase the maximum amount for an SBA express loan from \$350,000 to \$1 million through December 31, 2020.

While these are unprecedented times and the long term economic effects of CV19 are still to be seen, relief may be available to qualifying businesses under the Economic Injury Disaster Loan Program currently in effect with additional relief expected to be provided to a myriad of entities nationwide under the CARES Act. If you have any questions regarding the above, please contact one of the attorneys listed below. If either of the above described programs may be helpful to your business, we suggest reaching out to a local SBA qualified lender immediately to get the application process started (a link for local SBA participating lenders can be found below).

Other Resources for small business owners

- SBA Application: <https://disasterloan.sba.gov/ela/>
- Lender match tool: <https://www.sba.gov/funding-programs/loans/lender-match>
- Local resources: <https://www.sba.gov/local-assistance>
- SBA disaster assistance customer service: 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail disastercustomerservice@sba.gov

¹ Note that the SBA has been granted emergency rulemaking authorization and is required to issue regulations with 15 days of the CARES Act becoming law.

² Through December 31, 2020, permits emergency advance in an amount not to exceed \$10,000 within three days after SBA receives an application provided proceeds are used to maintain payroll, provide sick leave related to COVID-19, and meet costs due to interrupted supply chains, etc. (accomplished via self-certification by borrower under penalty of perjury). Any such amounts advanced will not be required to be repaid if subsequently denied by SBA.

³ Requirement for business operations of at least one year period prior to loan under

SBA Disaster Relief Program waived for all business in operation January 31, 2020.

⁴ *A comprehensive list of the parameters broken-down by industry can be found here: https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf. In the determination of the size and nature of a business, the “affiliate” group, total income, or, as applicable, employee number calculations all must be done in accordance with federal regulations (see <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>).*

⁵ *Affiliation rules waived for (i) businesses assigned a NAICS code starting with 72 (hospitality and food services), (ii) franchises, and (iii) SBIC portfolio companies. Affiliation rules in all other cases remain applicable.*

⁶ *SBA to remit an amount equal to forgiven loan amount plus accrued interest w/in 90 days of date of an approved forgiveness. Above described reduction rules in respect of loan forgiveness shall be determined without reduction in number of full-time employees or reduction in salary during period from February 15, 2020 through 30 days of CARES Act provided the borrower has rehired such employees or increased salaries, as the case may be, not later than June 30, 2020. Lenders to verify payroll costs and payments made on debt obligations and excludes forgiveness amounts from taxable income.*

⁷ *If business fixed assets do not “fully secure” the loan the lender may include trading assets (using 10% of current book value for the calculation), and must take available equity in the personal real estate (residential and investment) of the principals as collateral.*

⁸ *Applicable federal banking agencies applying capital requirements shall give covered loans a risk weight of 0%. Authorized lenders to be reimbursed 5% (for loans ≤ \$350k), 3% (for loans >\$350k and <\$2 million), and 1% (≤ \$2 million) of loan amount within 5 days of loan disbursement.*