



Comparing Paycheck Protection Program and Emergency Economic Injury Disaster Loan Options for Small Business under the CARES Act.

Shannon Kuhl, Becky Moore, Jana Syrcle and Adam Okuley

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) has authorized significant funds under the SBA’s 7(a) loan program through the Paycheck Protection Program and the Emergency Economic Injury Disaster Loan program. As many small businesses develop their plans to address the impacts of COVID-19, we are supplying a comparison of these two programs.

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
Source	CARES Act (3/27/2020) modified SBA 7(a) loans	Existing program modified by the CARES Act
Who is the Lender	<p>Any existing SBA lender or through any federally insured depository institution, federally insured credit union and Farm Credit System institution that is participating</p> <p>Other regulated lenders will be available to make these loans once they are approved and enrolled in the program.</p> <p>Application can be found here</p>	<p>US Small Business Administration</p> <p>Apply online here</p>
Who is Eligible	<p>Subject to greater of (i) 500 employees or less size limitation, or (ii) if applicable, SBA employee-based size standards for its industry (click here to be taken to the small business size table and look for your applicable NAICS code)</p>	<p>Subject to 500 employees or less size limitation</p> <ul style="list-style-type: none"> ➤ Small business concerns ➤ Private nonprofit organizations¹ ➤ Small agricultural cooperatives ➤ ESOPs

¹ According to the National Council of Nonprofits, eligible private nonprofits for purposes of EIDLs include, without limitation, nursing homes, food kitchens, educational facilities, senior citizen centers, daycare centers, playhouses, and shelters. Religious institutions are excluded.

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
	<ul style="list-style-type: none"> ➤ Business concerns ➤ 501(c)(3) nonprofit organizations ➤ 501(c)(19) veteran organizations ➤ Tribal business concerns ➤ Sole proprietorships ➤ Independent contractors ➤ Eligible self-employed individuals <p>Applicants that fall under a NAICS code starting with the number 72 (Accommodations and Food Service sector) will be subject to no more than 500 employees at each physical location</p> <p><i>*What if I fall under more than one NAICS code? Look at the NAICS code for which the applicant is primarily engaged and the NAICS code for the applicant combined with its affiliates. The size of the applicant alone must not exceed the size limit for its primary industry and the size of the applicant and its affiliates must not exceed the size of the applicant alone or the size of the applicant taken with its affiliates, whichever is higher. The SBA considers the distribution of receipts, employees and costs of doing business among different industries to determine an applicant's primary industry. The SBA may consider other factors such as contract awards and assets. If the applicant falls under the no more than 500 employee size standard then that is what applies even if taken with its affiliates the primary industry allows a greater number of employees.</i></p>	<ul style="list-style-type: none"> ➤ Tribal business concerns ➤ Sole proprietorships <p>Some agricultural enterprises, religious organizations, some charitable organizations, gambling concerns, real estate developers and casinos/racetracks are ineligible.</p>

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
Maximum Amount	<p>Lesser of (1) \$10 million or (2) applicant’s average total monthly payroll costs² multiplied by 2.5 plus the amount of any outstanding EIDL</p> <p>Average monthly payroll is calculated by taking the average monthly payroll for calendar year 2019³, excluding salary and wages over \$100,000 on an annualized basis for each employee. Seasonal businesses may elect to use the average monthly payroll for the period beginning 2/15/2019 through 6/30/2019. New businesses may calculate average monthly payroll based on the period from 1/1/2020 - 2/29/2020, annualized.</p>	Up to \$2 million but limited to the amount of economic injury associated with COVID-19
Interest Rate	0.50%	Maximum interest rate of 3.75% (2.75% for nonprofits)
Loan Term	2 years	30 years
Personal Guarantee Required	No	Waived for loans of \$200,000 or less from 1/31/2020 through 12/31/2020.

² “Payroll costs” means any compensation with respect to employees that is a (a) salary, wage, commission, or similar compensation; (b) payment of cash tips or equivalent; (c) payment for vacation, parental, family, medical, or sick leave; (d) allowance for dismissal or separation; (e) payment required for the provisions of group healthcare benefits, including insurance premiums; (f) payment of any retirement benefits; (g) payment of State or local tax assessed on the compensation of employees. Payments of compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, or net earnings, or similar compensation that is not more than \$100,000 in one year is also included in the definition of “payroll costs”. “Payroll costs” specifically exclude costs relating to (a) the compensation of an individual with an annual salary in excess of \$100,000; (b) certain taxes imposed or withheld; (c) compensation of any employee whose principal place of residence is outside of the United States; (d) qualified sick leave wages for which a credit is allowed under the Families First Act; and (e) qualified family leave for which a credit is allowed under the Families First Act. There are special considerations made for seasonal employers.

³ Though varying from the original language of the CARES Act and other guidance that has been distributed, the PPP application released by the SBA says the standard calculation for average monthly payroll costs will be based on calendar year 2019 and that seasonal employers may use the period of 2/15/2019 to 6/30/2019. The original language and guidance indicated a time period of the one year period prior to the date of the loan for the standard calculation and provided seasonal employers with two alternatives which were (i) the average total monthly payments for payroll for the 12 weeks period beginning 2/15/2019 or (ii) average total monthly payments for payroll for the period of 3/1/2019 – 6/30/2019.

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
Collateral Required	No	General requirements of collateral for loans exceeding \$25,000 expected to apply
Ability to Repay Determination	Does not apply	At discretion of SBA. Shall not require the submission of tax returns.
Proof that Credit Not Available Elsewhere Requirement	Does not apply	Does not apply
Fees	None	None
Special Program Criteria	<ul style="list-style-type: none"> ➤ Business must be operational on 2/15/2020 ➤ Business had employees for whom it paid salaries and payroll taxes or paid 1099 independent contractors ➤ Must certify the business has been substantially impacted by COVID-19 and will use the funds to retain employees and meet payroll and other obligations ➤ (No minimum credit score required) 	<ul style="list-style-type: none"> ➤ Business must be operational on 1/31/2020 ➤ May be approved solely on the applicant's credit score <p>Businesses within all US states and territories are eligible (regardless of specific jurisdiction disaster declaration)</p>
Do SBA Affiliation Rules Apply ⁴	<p>Yes, except for the following –</p> <ul style="list-style-type: none"> ➤ Businesses within the Accommodation and Food Services sector (NAICS Sector 72) with not more than 500 employees per location are eligible (click here to view NAICS list) ➤ any business concern operating as a franchise that is assigned a franchise identifier code by the SBA (click here to check the directory) 	Yes

⁴ The affiliation rules found at 13 CFR § 121.301 and §121.103(b) continue to apply except as specifically modified by the CARES Act as described above. In general, the affiliation rules require that, for purposes of determining whether the 500 employee size limitation is met, the employees of an applicant are aggregated with the employees of the applicant's affiliates. The determination of what constitutes an affiliate is very fact specific and is based on whether one business controls or has the power to control another or if a third party controls or has the power to control both businesses. For more information concerning the affiliation rules, please visit <https://frostbrowntodd.com/the-cares-act-the-affiliation-rules-and-how-they-impact-eligibility-under-the-paycheck-protection-program/>.

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
	<ul style="list-style-type: none"> ➤ any business concern that receives funding from a Small Business Investment Company (SBIC) licensed under section 301 of the Small Business Investment Act of 1958 	
Permitted Uses of Funds	<p>During the period of 2/15/2020 through 6/30/2020</p> <ul style="list-style-type: none"> ➤ Payroll costs ➤ Costs related to the continuation of group healthcare benefits during periods of paid sick, medical or family leave, and insurance premiums ➤ Mortgage debt interest existing before 2/15/2020 ➤ interest on other debt existing before 2/15/2020 ➤ rent on leases existing before 2/15/2020 ➤ utilities for which services began before 2/15/2020 	<p>Specific authorized uses for COVID-19 related EIDLs:</p> <ul style="list-style-type: none"> ➤ Pay fixed debt, including mortgage and rent payments ➤ Payroll ➤ Accounts payable ➤ Paid sick leave ➤ Meeting increased costs to obtain materials where the regular supply chains have been interrupted ➤ Other bills that would have been paid had the disaster not occurred
Impermissible Uses of Funds	<ul style="list-style-type: none"> ➤ See the exclusions to the definition of “payroll costs” in Footnote 1. ➤ Any other use not set forth above 	<p>EIDLs cannot (under the general EIDL program rules) be used for:</p> <ul style="list-style-type: none"> ➤ Replacing lost sales or profits ➤ Expansion of business ➤ Refinancing debt ➤ Payments on loans owned by a federal agency (including the SBA) ➤ Payments of tax penalties or any criminal or civil fine ➤ Payment of dividends or other disbursement to owners, partners, shareholders or officers, other than for reasonable compensation for their performance of services
Loan Forgiveness	<p>Loan forgiveness is available up to the amount spent by a borrower during the 8-week period following the loan origination date (the “covered period”) for payroll costs, mortgage interest, rent obligations, and utility payments.</p>	<p>An applicant can request a \$10,000 advance which is payable by the SBA within 3 days of receipt of the application. This \$10,000 advance (also referred to as a grant) need not be repaid (even if the EIDL is</p>

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
	<p>The Treasury Department notes that due to demand, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.</p> <p>The forgivable amount is reduced proportionally by any reduction in the number of full-time employee equivalents retained or a reduction in the pay of any employee, making less than \$100,000 annualized in 2019 greater than 25% of the employee’s prior compensation, over the period of the 8 weeks. This reduction in the forgivable amount will not apply to the extent the full-time employee count and salaries/wages are restored to their 2/15/2020 levels before 6/30/2020.</p> <p>You may request loan forgiveness by submitting a request to the lender servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates for (i) the covered period of 3/1/2020-6/30/2020, and (ii) 3/20/2019-6/30/2019, payments on eligible mortgage, lease and utility obligations. The submitted documentation must include payroll tax filings for the periods above, state income, payroll and unemployment insurance filings, and financial statements verifying payment on debt obligations incurred before the 2020 covered period. Borrower will have to certify that the documents are true and that they used the forgiveness amount to keep employees and make eligible mortgage, interest, rent and utility payments. The lender must make a decision on the forgiveness within 60 days.</p>	<p>ultimately denied) so long as it is used for the specific permissible purposes identified in the CARES Act listed above.</p>
Payment Deferral	All payments are deferred for 6 months. Interest will accrue over this period. There are no prepayment premiums so the loan may be paid back at any time.	All payments are deferred for 12 months. Interest will accrue over this period. There are no prepayment premiums so the loan may be paid back at any time.

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
Can I get both types of Loans?	<p>Yes, but</p> <ul style="list-style-type: none"> ➤ An applicant cannot get both a 7(a)/Payment Protection Program loan and an EIDL for the same purposes. However, the EIDL can be refinanced into a 7(a)/Payment Protection Program loan.⁵ ➤ If an applicant receives the \$10,000 advance under an EIDL, this amount is reduced from the amount of the loan eligible for forgiveness under the 7(a)/Paycheck Protection Program loan. 	
When can I apply?	<ul style="list-style-type: none"> ➤ Starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans through existing SBA lenders ➤ Starting April 10, 2020, independent contractors and self-employed individuals <p>Applicants have until June 30, 2020 to apply, assuming funds are remaining</p>	<p>Now</p> <p>Applicants have until December 31, 2020 to apply, assuming funds are remaining</p>
Supporting Documentation	<p>With the completed application lenders may want to see payroll reports for 2019 showing gross wages for each employee, including officers if paid W-2 wages, paid time off for each employee, vacation pay for each employee, family medical leave pay for each employee and state and local taxes assessed on employee's compensation. Lenders may also ask for 2019 IRS Quarterly 940, 941 or 944 payroll tax reports.</p> <p><i>*Knowingly making a false statement or providing false information to get a loan is punishable by law</i></p>	<p>The application should include:</p> <ul style="list-style-type: none"> ➤ SBA Form 5 ➤ IRS Form 4506T ➤ SBA Form 2202 ➤ SBA Form 413 <p>The SBA may require additional information to process an application.</p>
Who will be Given Priority?	<p>We expect it to be on a first-come, first-serve basis so it is very important that applicants submit their application early on April 3, 2020 (or April 10, 2020, as applicable). The Senate suggested that the SBA Administrator should</p>	<p>We expect it to be on a first-come, first-serve basis.</p>

⁵ In short, the CARES Act prohibits “double-dipping” for the same use of funds. This would include the employee retention credit described in the Cares Act. This concept is also carried into the benefits received under the Families First Act such that an employer may not use a Payroll Protection Program loan for the same expenses for which tax credits are received under the Families First Act. The forgivable amount of any Payment Protection Program loan will also be reduced since these are omitted from the definition of “payroll costs”.

	Paycheck Protection Program Loans	Emergency Economic Injury Disaster Loans
	issue guidance that the processing and disbursement of covered loans prioritize certain small business concerns and entities in underserved and rural markets.	

Our team of attorneys is here to help you analyze the availability and features of these lending programs. Lenders are expecting to see a high volume of applications with the funding of covered loans starting as early as Friday, April 3, 2020.

For more information on the Payroll Protection Program, Emergency Economic Injury Disaster Loans, and other financial assistance available to businesses under the CARES Act, please contact Shannon Kuhl, Becky Moore, Jana Syrcle, Adam Okuley or any attorney in Frost Brown Todd's [Finance](#) Practice Group.

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a Coronavirus Response Team, including a special team focusing on SBA funding options under the CARES Act. Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.