

1320 19th Street, N.W.,
Suite 601
Washington, DC, 20036
202-596-5291



2000 Duke Street
Suite 300
Alexandria, VA 22314
912-655-1736

EMERGENCY COVID-19 LOAN PROGRAMS

On March 27, 2020 the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) ([complete text](#)). Among other benefits, it provides two loan programs: the Paycheck Protection Program and Emergency Economic Injury Disaster Loan. **to bridge businesses over the Novel Covid-19 Pandemic.** Each has different benefits and opportunities as well as downsides. The most important decision is whether and to what extent your business can take advantage of these programs. **In addition, time is of the essence – the Small Business Administration and, with respect to PPP loans, banks will be inundated with applications and delays are likely to ensue.**

Below is a summary of the key aspects of the two programs and their respective benefits and requirements. Before taking any action, please review the bolded language on page 3 concerning advice from your counsel, accountant, or other professional:

1. The CARES Act creates a \$349 billion **Paycheck Protection Program (PPP)** that through a network of lenders;

2. The legislation expands unemployment compensation eligibility to include independent contractors and the self-employed, and provides for a refundable payroll tax credit of up to \$5,000 for each employee on the payroll (provided that the nonprofit or small business experiences a drop in revenue of at least 50 percent in Q1 of 2020 as compared to the Q1 of 2019); and,

3. The CARES Act also expands SBA's **Emergency Economic Injury Disaster Loan (EIDL)** program in response to COVID-19 (including an "emergency grant," or "advance," of up to \$10,000 to applicants that must be distributed by the SBA within 3 days and need not be repaid). For businesses that do not have employees but instead rely on independent contractors (*i.e.* individuals issued 1099s instead of W-2s), the EIDL program has significant advantages over the PPP program. Bear in mind, however, that individuals issued 1099s through the so-called "gig economy" may take advantage of the PPP program as well.

4. The PPP loan program *will launch as soon as the Treasury Department issues formal guidance. Subject to that guidance*, key components should include:

A. Loans are available to *all small businesses and 501(c)(3) nonprofits that employ up to 500 employees*, regardless of annual receipts, subject to certain additional criteria.

B. **Covered period** is the “period beginning on February 15, 2020 and ending on June 30, 2020” (for purposes of determining loan maximum, loan forgiveness, and other criteria).

C. **Maximum loan** amounts up to *\$10 million* are available for *permissible uses*, including:

- i. Payroll support (including compensation, leave, severance, insurance, retirement benefits, and state & local taxes on employee compensation);
- ii. Mortgage interest, rent and utility payments; and,
- iii. Interest on any debt obligations incurred before the covered period.

D. Many standard loan requirements are waived.

5. **Maximum interest rate is 4 percent.**
6. **PPP loans are due within two (2) years; EIDL loans are payable over ten (10) years.**
7. **All owners with 20% or more equity** must be named on the application.
8. PPP applicants must certify the following to be eligible:
 - i. The uncertainty of the economic condition makes the loan request necessary to support the ongoing conditions of the business;
 - ii. The loan proceeds will be used for the permissible uses listed above; and,
 - iii. The applicant does not have another 7(a) loan outstanding nor an application pending for the same purpose.
9. Some portion of the **PPP** loan is eligible for *loan forgiveness*—the amount spent by the borrower during an 8-week period following loan origination for: 1) certain payroll costs (including compensation, per employee, up to \$100,000 in wages); 2) *mortgage interest payments* (not principal) on debt incurred before February 15, 2020; 3) *rental payments* on leases in force before February 15, 2020; and 4) *utility payments* on utility services that began before February 15, 2020.

A. “Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8-week period compared to the previous year or time period, proportionate to maintaining employees and wages: [list of covered costs].” [Senate Small Business Committee Section-by-Section Analysis](#), page 4. (Note: This provision is to help ensure that, in most cases, for payroll costs, the 8-week period from last year is comparable to the 8-week period from this year, for purposes of documentation and to limit fraud and abuse.)

- B. Borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- C. It is unclear whether business owners can qualify for loan forgiveness based on funds paid to themselves; we believe this will not qualify.

THIS DOCUMENT DOES NOT CONSTITUTE LEGAL ADVICE.

YOUR RECEIPT AND REVIEW OF THIS DOCUMENT DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP WITH OSTER McBRIDE PLLC.

WE STRONGLY RECOMMEND YOU CONSULT WITH YOUR LEGAL COUNSEL, ACCOUNTANT, AND/OR OTHER PROFESSIONAL BEFORE MAKING ANY DECISION OR TAKING ANY ACTION UNDER THE AFOREMENTIONED PROGRAMS.

EIDL	PPP
<p>Lender is: the SBA</p>	<p>Lender is any:</p> <ul style="list-style-type: none"> • bank that is already an SBA lender; • federally insured depository institution; • Federally insured credit union; or • Farm Credit System institution. <p>Other regulated lenders may be approved to be eligible lenders in the future.</p>
<p>Applicants may apply now.</p>	<p>Small businesses and sole proprietors may apply as of April 3, 2020.</p> <p>Independent contractors and self-employed individuals may apply as of April 10, 2020.</p>
<p>Applicants include:</p> <ul style="list-style-type: none"> • Businesses with not more than 500 employees; • An individual who operates under a sole proprietorship, with or without employees, or as an independent contractor; • A cooperative with not more than 500 employees; • An Employee Stock Ownership Plan (ESOP), as defined in 15 U.S.C. 632, with not more than 500 employees; • A tribal small business concern, as described in 15 U.S.C. 657a(b)(2)(C), with not more than 500 employees; • An agricultural cooperative, aquaculture enterprise, nursery, or producer cooperative, that is small under SBA Size Standards found at https://www.sba.gov/size-standards; • A private non-profit organization that is a non-governmental agency or entity that currently has an effective 	<p>Applicants include:</p> <ul style="list-style-type: none"> • Businesses and entities that were in operation on February 15, 2020; • Small businesses, 501(c)(3) nonprofit organizations, 501(c)(19) veterans organization, or Tribal businesses that have fewer than 500 employees, or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by SBA, if higher; • Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals; • Any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72 (Hotels and Restaurants), for which the affiliation rules are waived; • Affiliation rules are also waived for any business concern operating as a

EIDL	PPP
<p>ruling letter from the IRS granting tax exemption under sections 501(c),(d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law, or a faith-based organization;</p> <ul style="list-style-type: none"> • A business with more than 500 employees that is small under SBA Size Standards found at https://www.sba.gov/size-standards 	<p>franchise that is assigned a franchise identifier code by the Administration, and company that receives funding through a Small Business Investment Company</p>
<p>Affiliation rules become important when SBA is deciding whether a business’s affiliations preclude them from being considered “small.” Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses.</p>	<p>Affiliation rules have been waived for:</p> <ul style="list-style-type: none"> • Business concerns that are assigned a NAICS code beginning with 72 (Hotels and Restaurants) – definition changed to 500 employees per physical location; • Business concerns operating as a franchise that are assigned a franchise identifier code by the SBA; • Companies that receive funding through a Small Business Investment Company.
<p>The maximum loan size is \$2 million. Applicants who apply for this loan may request an advance of up to \$10,000 from the SBA. The advance will be distributed within 3 days. Applicants are not required to repay this advance if they not qualify.</p>	<p>The maximum loan size is \$10 million. The calculation is as follows:</p> <ul style="list-style-type: none"> • If you were in business February 15, 2019 – June 30, 2019, the max loan is equal to 2.5x the average monthly payroll costs of the 12 months prior to your application. If your business employs seasonal workers, you can opt to choose March 1, 2019 as your time period start date; • If you were <u>not</u> in business between February 15, 2019 – June 30, 2019,

EIDL	PPP
	<p>the max loan is equal to 2.5x the average monthly payroll costs between January 1, 2020 and February 29, 2020;</p> <ul style="list-style-type: none"> • If you took out an EIDL between February 15, 2020 and June 30, 2020 and you want to refinance that loan into a PPP loan, you would add the outstanding loan amount to the payroll sum. <p>Payroll includes:</p> <ul style="list-style-type: none"> • Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent); • Payment for vacation, parental, family, medical, or sick leave; • Allowance for dismissal or separation; • Group health care benefits, including insurance premiums; • Retirement benefits; and • State or local tax assessed on the compensation of employees. <p>Payroll excludes:</p> <ul style="list-style-type: none"> • Employee/owner compensation in excess of \$100,000; • Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code; • Compensation of employees whose principal place of residence is outside of the U.S.; • Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.

EIDL	PPP
<p>The annual interest rate is:</p> <ul style="list-style-type: none"> • 3.75% for businesses; and • 2.75% for non-profits. 	<p>The annual interest rate is 4% for the unforgiven portion of the loan.</p>
<p>The term of the loan is up to 30 years.</p>	<p>The term of the unforgiven portion of the loan is 2 years.</p>
<p>The first loan payment is due one year after the loan origination date (interest is accrued during the deferment).</p>	<p>The first loan payment is due at least six months after the loan origination date (interest is accrued during the deferment).</p>
<p>Loan proceeds may be used for financial obligations and operating expenses that could have been met had the disaster not occurred</p>	<p>Loan proceeds may be used for:</p> <ul style="list-style-type: none"> • Employee salaries, commissions, or similar compensations (see exclusions above); • Health insurance premiums and costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave; • Payments of interest on any mortgage obligation but excluding any prepayments or payments of principal; • Rent (including rent under a lease agreement); • Utilities; and • Interest on any other debt obligations that were incurred before the Covered Period (as defined below).
<p>There is no loan forgiveness program.</p>	<p>Loan forgiveness is calculated as the amount spent on Permitted costs by the borrower during an 8-week period (the “Covered Period”) after the origination date of the loan.</p>
	<p>The amount forgiven is reduced based on failure to maintain the average number of</p>

EIDL	PPP
	<p>full-time equivalent employees versus the period from either February 15, 2019, through June 30, 2019, or January 1, 2020, through February 29, 2020, as selected by the borrower.</p> <p>The amount forgiven is also reduced to the extent that compensation for any individual making less than \$100,000 per year is reduced by more than 25% measured against the most recent full quarter.</p> <p>Reductions in the number of employees or compensation occurring between February 15, 2020, and 30 days after enactment of the CARES Act will generally be ignored to the extent that reductions are reversed by June 30, 2020.</p> <p>Forgiven amounts will not constitute cancellation of indebtedness income for federal tax purposes.</p>
	<p>You must apply through your lender for forgiveness on your loan. In this application, you must include:</p> <ul style="list-style-type: none"> • Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings; • Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities; and • Certification from an officer of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program’s guidelines for use.

EIDL	PPP
<p>The SBA will place a UCC lien against the assets of the business.</p>	<p>No collateral is required from either the business or its owners.</p>
<p>A personal guarantee is required for loans over \$200,000 by any owner having at least a 20% interest of the business.</p> <p>However, no liens will be taken against real estate owned by the guarantor.</p>	<p>Loans are non-recourse to the borrower, its shareholders, members and partners.</p>
<p>You do not need to file your 2019 taxes prior to applying for the loan.</p> <p>However, businesses will be asked to submit IRS form 4506T, which provides the SBA with access to historical tax returns.</p>	<p>Certain lenders may require that you file your 2019 taxes prior to applying thru their bank.</p>
<p>Applicant may request an expedited disbursement that is to be paid within three days of the request.</p> <p>The advance may not exceed \$10,000 and must be used for authorized costs but is otherwise not repayable if the EIDL Loan is not approved.</p>	<p>No advances.</p>