

Business Aid: COVID-19

Three options for middle market businesses

- 1) U.S. Small Business Administration (SBA) Economic Injury Disaster Loan Assistance (EIDL) – SBA program that existed before COVID-19 that offers up to \$2 million in loans for eligible businesses.
- 2) Paycheck Protection Program – Created through the Coronavirus, Aid, Relief, and Economic Security Act (CARES Act), the Paycheck Protection Program expands SBA support for businesses with loans of up to \$10 million.

Borrowers are precluded from receiving SBA funding under the Paycheck Protection Program and an Economic Injury Disaster Loan (EIDL) for the same purpose (i.e., double dipping).

- 3) Emergency Relief Funding: Midsize Businesses – The CARES Act authorizes a relief program for losses incurred as a result of coronavirus, an amount not to exceed \$500 billion, for the Treasury to make loans, loan guarantees and other investments in support of eligible businesses, states and municipalities. This includes special assistance for eligible mid-size businesses (500 to 10,000 employees). We expect guidance on this program to be published in the near future.

EIDL Program

The Coronavirus Preparedness and Response Supplemental Appropriations Act enacted on March 6, 2020 expanded the EIDL Program to provide SBA loans to qualified small businesses. Qualifying business can receive up to \$2 million in loans to be used for working capital and ordinary expenditures. The actual amount available to any business is tied to its economic injury from COVID-19.

EIDLs are applied for directly with the SBA and funded by the SBA.

Paycheck Protection Program

This program provides federally guaranteed loans to small businesses. The program is administered by the SBA through its 7(a) lending program under which the SBA guarantees loans made by banks to qualifying borrowers. Loans can be as large as 2.5 times a borrower's monthly payroll costs as measured over the prior twelve months, or \$10 million, whichever is smaller.

Loans under the Paycheck Protection Program are third-party loans with SBA guarantees. It might make sense for some clients to submit applications under the EIDL program while they consider whether loans under the Paycheck Protection Program are appropriate. There is no obligation to accept funds received under EIDL, but a company's application to EIDL does enable the process to start moving forward.

Emergency Relief Funding: Midsize Businesses

Section 4003 of the CARES Act calls for special assistance for eligible midsize businesses with 500 to 10,000 employees. We expect guidance to be published in the near future, and we will share more details as they are finalized and published.

Rates and debt forgiveness

EIDL Program

Interest rates are 3.75% for small businesses and 2.75% for not-for-profit organizations. EIDL loans are not forgivable.

Paycheck Protection Program

Loans shall bear interest at a rate not to exceed 4%. For loans issued through June 30, 2020, payments of both principal and interest will be deferred for a minimum of six months and a maximum of one year.

Provided a company retains existing employees at or near current salary levels, the debt will be forgiven to the extent that proceeds are used in an eight-week period following loan origination for payroll costs, mortgage interest, rent and utility payments. The amount forgiven will be reduced by a formula that takes into consideration any reduction of workforce. Any employee cuts or wage reductions will reduce forgiven amounts.

Emergency Relief Funding: Midsize Businesses

Loans for midsize businesses in this program are not to have an annualized interest rate higher than 2% and for the first six months (or longer, as the Secretary may determine), no principal or interest is due and payable. Loans are not forgivable.

Eligibility

EIDL Program

An eligible small business is determined by the number of employees and average annual sales with different standards per industry. Most manufacturing companies with 500 or fewer employees and most non-manufacturing businesses with average annual receipts under \$7.5 million can qualify. There are exceptions by industry.

Loans under this program are only available to borrowers that can show they are unable to meet their existing financial obligations as a result of the COVID-19 crisis. Cannabis businesses, casinos, racetracks, charitable organizations and religious institutions are among the businesses that are not eligible.

Paycheck Protection Program

Eligible recipients must meet one of the following requirements:

- a. 500 employees or fewer, or
- b. Meet applicable employee size standards for their North American Industry Classification System (NAICS), or
- c. 500 employees or fewer BY LOCATION for those in the Accommodation and Food Service industry as defined by their NAICS code, or for any business acting as a franchise that is assigned a franchise identifier code by the Small Business Administration

Also eligible are sole proprietors, independent contractors and other self-employed individuals, including gig economy workers. Cannabis businesses, casinos, racetracks, charitable organizations, and religious institutions are among the businesses that are not eligible.

The SBA website offers [a size standards tool](#) to assist in determining whether a business is classified as small.

Emergency Relief Funding: Midsize Businesses

Businesses with 500 to 10,000 employees will be eligible. We expect additional guidance to be published in the near future. The Act currently states that all eligible businesses that participate must make a good-faith certification that:

- The uncertainty of the economic conditions as of the date of application makes necessary the loan request to support the ongoing operations of the recipient

- The recipient is an entity or business domiciled in the United States with significant operations and employees located in the United States
- The funds the recipient receives will be used to retain at least 90% of its workforce, at full compensation and benefits, until September 30, 2020
- The recipient intends to restore not less than 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than four months after the termination of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020
- The recipient is not a debtor in a bankruptcy proceeding
- The recipient will not pay dividends with respect to the common stock of the eligible business, or purchase an equity security that is listed on a national securities exchange of the recipient or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment
- The recipient will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan and will remain neutral in any union organizing effort for the term of the loan

How to apply

EIDL Program

The EIDL program is applied for directly with and administered by the SBA. An online application is available at <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>.

Paycheck Protection Program

Applications are made directly through a participating lending institution. Such institutions can be found at www.sba.gov. The site includes lists of participating institutions, as well as a Lender Match tool, which asks for basic information to share with participating lenders in an effort to match applicants with interested lenders.

Emergency Relief Funding: Midsize Businesses

Application processes for these loans are not yet available. We expect guidance to be published in the near future.

SBA Loan Q&A for EIDL Program and Paycheck Protection Program

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Additional details on the SBA loan programs are available in the subsequent Q&A. It will be amended with details on the program for midsize businesses when available.

What direct financial assistance programs for small and medium enterprises (SMEs) have become available as a result of the COVID-19 virus outbreak?

EIDL Program

The Coronavirus Preparedness and Response Supplemental Appropriations Act enacted on March 6, 2020, expanded the EIDL Program to provide SBA loans to qualified small businesses. Qualifying business can receive up to \$2 million in loans to be used for working capital and ordinary expenditures. The actual amount available to any business is tied to its economic injury from COVID-19.

Paycheck Protection Program

This program provides federally guaranteed loans to small businesses. This program is administered by the SBA through its 7(a) lending program under which the SBA guarantees loans made by banks to qualifying borrowers. Loans can be as large as 2.5 times a borrower's monthly payroll costs as measured over the prior twelve months, or \$10 million, whichever is smaller.

How much is available to SMEs through each program?

EIDL Program

Qualifying business can receive up to \$2 million in loans to be used for working capital and ordinary expenditures. The actual amount available to any business is tied to their economic injury from COVID-19.

Paycheck Protection Program

Eligible recipients may be able to receive up to \$10 million. Businesses that have been in existence for at least a year can obtain the lesser of 2.5 times their average monthly payroll for the previous 12 months, plus any amount refinanced from the Economic Injury Disaster Loan (EIDL) assistance or \$10 million. Entities not in existence for the previous 12 months can use their average monthly payroll for the period from January 1, 2020, through February 29, 2020. Any non-COVID-19 related EIDL in existence prior to the origination of a Payroll Protection Program loan can be refinanced.

What are the approved uses for the funds?

EIDL Program

Can be used for working capital and ordinary expenditures.

Paycheck Protection Program

Funds can be used to cover payroll costs or employee benefits, operating costs and interest on debt obligations.

Funds cannot be used for to compensate individual employees at an annual rate above \$100,000, or to pay for emergency sick or family leave under the second coronavirus response package (Public Law 116-127).

Borrowers are precluded from receiving SBA funding under the Paycheck Protection Program and an Economic Injury Disaster Loan (EIDL) for the same purpose (i.e., double dipping).

Who is an Eligible Recipient?

EIDL Program

An eligible small business is determined by the number of employees and average annual sales with different standards per industry. Most manufacturing companies with 500 or fewer employees and most non-manufacturing businesses with average annual receipts under \$7.5 million can qualify. There are exceptions by industry.

Loans under this program are only available to borrowers that can show that they are unable to meet their existing financial obligations as a result of the COVID-19 crisis. Cannabis businesses, casinos, racetracks, charitable organizations and religious institutions are among the businesses that are not eligible.

Paycheck Protection Program

Eligible Recipients must meet one of the following requirements:

- a. 500 employees or fewer, or
- b. Meet applicable employee size standards for their North American Industry Classification System (NAICS), or
- c. 500 employees or fewer BY LOCATION for those in the Accommodation and Food Service industry as defined by their NAICS code (Group 72x) or for any business acting as a franchise that is assigned a franchise identifier code by the Small Business Administration

Also eligible are sole proprietors, independent contractors and other self-employed individuals, including gig economy workers. Cannabis businesses, casinos, racetracks, charitable organizations and religious institutions are among the businesses that are typically not eligible for SBA programs.

The SBA website offers [a size standards tool](#) to assist in determining whether a business is classified as small.

What do I need to provide to obtain funds?

The Paycheck Protection Program allows for loans to be issued by lenders outside of the normal SBA channels. As a result, the information required may differ depending upon the source of the loan. Most applicants should be prepared to provide the following:

- a. Tax returns and/or financial statements for the previous one to three years
- b. Year-to-date financial statements through the date of the loan application
- c. March 1, 2020, financials through the date of application, broken out as a separate period, so as to be able to isolate the negative impact of COVID-19
- d. Proof of monthly payroll costs for the 12 months before the application date
- e. Any additional information that substantiates the direct financial impact of COVID-19 to the business
- f. No collateral or personal guarantees are required for a loan under the provisions of the CARES Act

How long does it take to obtain funds?

EIDL Program

The typical time frame for approval is two to three weeks with funds disbursed within five to seven days thereafter. Timelines may be extended given the increased applications.

Paycheck Protection Program

It is worth noting that loans under the Paycheck Protection Program are third-party loans with SBA guarantees, which may contribute to the speed at which funds will be accessible.

Notably, the CARES Act invites new lenders to join the program and gives the authority to existing lenders to determine borrower eligibility without going through the standard SBA process. Anyone interested in applying for a loan should contact their local lenders to find out which are participating, and how quickly they may be able to lend to an Eligible Recipient.

What are interest rates and payment terms?

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EIDL Program

Interest rates are 3.75% for small businesses and 2.75% for not-for-profit organizations. Payment terms are determined by whether there is partial or full refinancing of an existing loan.

Paycheck Protection Program

Loans shall bear interest at a rate not to exceed 4%. In addition, for loans issued through June 30, 2020, payments of both principal and interest will be deferred for a minimum of six months and a maximum of one year.

Is the loan forgivable?

EIDL Program

Loans under the EIDL program are not forgivable.

Paycheck Protection Program

Yes. Provided a company retains existing employees at or near current salary levels, the debt will be forgiven to the extent that proceeds are used in an eight-week period following loan origination for the following:

- Payroll costs and interest payments made on any mortgage incurred prior to February 15, 2020;
- Payment of any lease in force prior to February 15, 2020; and
- Payment on any utility for which service before February 15, 2020.

The amount forgiven will be reduced by a formula that takes into consideration any reduction of workforce. Any employee cuts or wage reductions will reduce forgiven amounts. Employers are allowed to rehire any employees previously let go before the application without penalty. The loan program is designed to encourage companies to retain as many employees as possible. If companies reduce headcount or payroll below certain thresholds they may be ineligible for the full forgiveness.

Certain documentation is required to be retained, provided as proof and certified to include with an application for loan forgiveness as detailed in Section 1106(e).

Any amount of the loan that is forgiven is not includible as taxable income.

Does applying for other programs or having existing funding under other programs preclude an organization from applying for funding under the Paycheck Protection Program? RSM US LLP

Borrowers are precluded from receiving SBA funding under the Paycheck Protection Program and an Economic Injury Disaster Loan (EIDL) for the same purpose (i.e., double dipping).

Refinancing of outstanding loan balances made under the SBA's EIDL program between January 31, 2020 and the date of the Paycheck Protection Program loan is permitted as long as the maximum loan amount of \$10 million is not exceeded.

If a company has an EIDL from a non COVID-19 event, it can roll that into a new Paycheck Protection Program loan. A company cannot receive both an EIDL and a Paycheck Protection Program loan for COVID-19 related reasons. Under the EIDL program, a company can request an immediate \$10,000 advance on the loan. The \$10,000 does not have to be paid back if the loan is ultimately denied. If a company received the \$10,000 and then ultimately received a Paycheck Protection Program loan, the \$10,000 is netted against the Paycheck Protection Program loan.

EIDLs are funded directly by SBA while the Paycheck Protection Program loans are third-party loans with SBA guarantees. It might make sense for some clients to submit applications under the EIDL program while they consider whether loans under the Paycheck Protection Program are appropriate. There is no obligation to accept the funds received under EIDL, but the application does enable the process to start moving forward. EIDL funding is limited to \$2 million and requirements may be more rigid than the SBA rules provided by the Paycheck Protection Program.

How are private equity-backed companies and sponsors impacted by the CARES Act?

The SBA requires applicants to aggregate their operations with those of any affiliates as defined by the SBA. The aggregated company for purposes of the SBA must not exceed the small business standards. An affiliate exists when one business controls or has the power to control another, or when a third party controls or has the power to control both businesses.

Private equity-owned companies may be considered affiliated when all of the other portfolio companies and employee numbers are combined. This is a very specific analysis that must be done on a case by case basis. If the total employee threshold is exceeded, a company does not qualify. See above (Who is an Eligible Recipient?) for more information.

This also applies for venture capital firms that control more than 50% of voting stock or when two or more venture capital firms hold the largest stake, compared to that of other investors.

The CARES Act includes a waiver to the affiliate rule for borrowers classified as a Small Business Investment Company (SBIC) small business, but further clarification is needed to



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determine if SBIC small businesses that also have investment from conventional private equity still qualify for the waiver.

See SBA affiliation rules [here](#) to determine if the rules of affiliation are met. Lenders within the SBA program will ultimately make final decisions on eligibility.

What are the tax changes in the bill?

See [tax alert issued on March 26, 2019](#) for details on tax changes resulting from the CARES Act.

How do I apply?

EIDL Program

The EIDL program is applied for directly with and administered by the SBA. An online application is available at <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>.

Paycheck Protection Program

Applications are made directly through a participating lending institution. Such institutions can be found at www.sba.gov. The site includes both lists of participating institutions, as well as a Lender Match tool, which asks for basic information to share with participating lenders in an effort to match applicants with interested lenders.

For more information or for questions about business aid available, please reach out to:

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