

COVID-19: SBA Lending and the CARES Act

Presented by Leslie Smith
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**Thank you for joining us today.
To minimize disruption, please ensure you are muted.**

The presentation will begin momentarily.

Before we begin

- Today's briefing is listening-only
- We will not be able to take questions live.
- Please submit questions to casey.hampton@dentons.com or use the Zoom chat to submit questions, and we will synthesize answers into subsequent updates.
- Dentons clients: Please submit questions to your Dentons relationship attorney, or email casey.hampton@dentons.com.

Agenda

- Economic Injury Disaster Loan Program (“EIDL”)
- Paycheck Protection Program (“PPP”)
- Key Differences between EIDL and PPP
- How EIDL and PPP work (or don’t work) together
- FAQs
- Application Process

EIDL Program

Eligibility

- Small Business: The CARES Act relaxed the guidelines for qualification to include:
 - A business, cooperative, ESOP or tribal concern with not more than 500 employees;
 - A sole proprietorship or independent contractor;
 - Any other business that qualifies under the SBA's eligibility standards (generally less than 500 employees, but other SBA size standards (including some based on the amount of annual receipts rather than employees) may apply depending on the applicant's NAICS code.
- Size includes affiliates
- Physical presence
- Substantial Economic Injury
- Acceptable credit history and ability to pay
- Collateral for loans in excess of \$25,000
- Ineligible (agricultural, religious, charitable, gambling)

EIDL Program

Terms

- Up to \$2,000,000
 - May not exceed what the applicant could have paid had the disaster not occurred.
 - Specific amount determined by SBA based upon review of applicant's financials
- Interest rate 3.75% (profit) and 2.75% (non-profit)
- Up to thirty (30) years depending on ability to repay
- No personal guaranty for loans less than \$200,000
- Emergency Grant up to \$10,000. Applicant may not be required to repay the Emergency Grant, even if subsequently denied for an EIDL.

EIDL Program

Terms

- Proceeds may be used to pay fixed debts, payroll, accounts payable, and other bills that cannot be paid due to impact of COVID-19.
- Proceeds may **not** be used to:
 - Refinance indebtedness incurred prior to the disaster event;
 - Make payments on loans owned by another federal agency (including SBA);
 - Pay, directly or indirectly, any obligations imposed as a tax or other non-tax penalty due to non-compliance with a law, regulation, or governmental order;
 - Repair physical damage; or
 - Pay dividends or disbursements to owners, except for reasonable remuneration directly related to performance of services for the applicant business.

Paycheck Protection Program

What is it?

- Previously called the Small Business Interruption Loan (“SBIL”) Program. Now known as Paycheck Protection Program (“PPP”)
- PPP is a forgivable SBA loan program created by the CARES Act.

Paycheck Protection Program

Eligibility

- Small business
 - Based on SBA size standards for the business' industry
 - Typically < 500 employees
 - SBA “affiliate” rules apply
 - EXCEPTION: For hospitality and restaurant industries, no more than 500 employees **per location**
- In operation on February 15, 2020
- May refinance an EIDL loan made between January 31, 2020 through the date on which PPP loans are made available.
- Applicant must make good faith certification that it has been impacted by COVID-19 **and** will use the funds to retain workers and maintain payroll and other debt obligations **and** does not have an outstanding application pending for the same purpose and duplicative of amounts applied for and received under the PPP program.

Paycheck Protection Program

Terms

- Maximum loan amount equal to 2.5 times average monthly payroll costs, capped at \$10 million
- Interest rate no greater than 4%
- SBA to waive all otherwise applicable fees
- SBA will require lenders to defer payments for not less than 6 months and not greater than 12 months (inclusive of principal, interest, and fees)
- No collateral or personal guaranties

Paycheck Protection Program

Terms

- Proceeds may be used to pay:
 - Paid sick leave
 - Group health care benefits
 - Employee salaries
 - Mortgage payments
 - Rents
 - Utilities
 - Payment on other debt obligations

Paycheck Protection Program

Loan Forgiveness (the rule)

- The maximum amount of forgiveness may not exceed the amount of principal financed.
- Loans disbursed under PPP qualify for loan forgiveness equal to the following costs incurred and payments made during the eight week period following disbursement of the loan:
 - Payroll Costs
 - Mortgage Interest Payments
 - Rent
 - Utility Payments

Paycheck Protection Program

Reduction of Forgiveness (the exception to the rule)

- Forgiveness reduced if employer reduces its workforce or wages.
- **Workforce Reduction Formula: $A * (B/C)$ or $A * (B/D)$**
 - “A” = The maximum available forgiveness available under the Program
 - “B” = The average number of FTE per month, calculated by the average number of FTE for each pay period within a month during the covered period
 - “C” = The average number of FTE per month employed from Feb. 15, 2019 – June 30, 2019 (“2019 FTE”)
 - “D” = The average number of FTE per month employed from Jan. 1, 2020 – Feb. 29, 2020 (“2020 FTE”)
 - Borrower may choose either “C” or “D”
- **Wage Reduction Formula:** Forgiveness reduced by the percentage of any reduction in salary or wages of any employee during the covered period that exceeds 25% of the employee’s salary/wage during the most recent full quarter of employment before the covered period.

Paycheck Protection Plan

Re-Hire Incentive (the exception to the exception)

- The CARES Act includes a provision to incentivize the re-hiring of any employees who have been laid off due to COVID-19.
- Workforce Reduction and Wage Reduction will not apply to employees who are terminated or whose pay is reduced by more than 25% between February 15, 2020 and 30 days following the passage of the CARES Act, **IF, before June 30, 2020:**
 - Borrower re-hires terminated employees, or
 - Borrower increases salaries to previous amounts.

Key Differences between EIDL and PPP

Loan Terms	EIDL	PPP
Amount	Up to \$2,000,000	2.5 times average monthly payroll costs, capped at \$10,000,000
Interest Rate	3.75% (for profit) 2.75% (non-profit)	Not to exceed 4%
Collateral	No collateral for loans less than \$25,000	No collateral required
Guaranty	Not required for loans less than \$200,000	No guaranty required
Repayment	Amortized principal and interest over up to 30 years	Payments deferred for 6-12 months and then forgiven*
Affiliate Rules	A business, cooperative, ESOP or tribal concern with less than 500 employees; a sole proprietorship or independent contractor; any business that qualifies based on NAICS code	Modified for hospitality and restaurant businesses to allow measurement per location; otherwise, any small business that qualifies based on NAICS code

*Subject to satisfaction of terms for forgiveness

How do EIDL and PPP work together?

- An applicant cannot “double-dip” and receive duplicate funds for the same losses.
- EIDL loan proceeds may be refinanced into a PPP loan.
- EIDL applications are open and currently available. SBA guidance for SBA-approved lenders to process PPP loans is not yet available.

FAQs

- What is an “affiliate”?
 - The SBA definition of “affiliate” is expansive and includes, for example, a business that controls or has the power to control another, or a third party that controls or has the power to control both businesses.
 - Affiliate rules are complex and additional analysis may be required for businesses with common ownership (private equity, venture capital, subsidiaries, parent entities, etc.) For further review of affiliation, please reach out to your Dentons relationship attorney.
- I fired “x” employees on March 15th and now I have less than 500 employees, do I qualify?
 - It depends, as the determination of an applicant’s size is made as of the Date of Disaster, which may be a different date in each state. For reference, in Indiana the “Date of Disaster” was March 18th.
- Where do I find my NAICS number?
 - Usually found on your Federal Income Tax Return and is called the “business activity code” or “business code number”.

EIDL Program

Application Process

- Step 1: Submit Application as soon as possible to avoid extended wait times for processing.
 - Business Loan Application (SBA Form 5)
 - Tax Information Authorization for the Applicant and each owner of 20% or more of Applicant (IRS Form 4506-T or IRS Form 8821)
 - Personal Financial Statement (SBA Form 413)
 - Schedule of Liabilities (SBA Form 2202)
 - Complete copies of Applicant's most recent Federal income tax returns
 - Other information as may be requested:
 - Year-end and current Profit & Loss Statements
 - Monthly breakdown report of sales
- Step 2: Review, verification and processing
- Step 3: Loan closing and disbursement

PPP

Application Process

- Application process to be determined based on SBA guidance
- Apply through SBA-qualified lenders
- SBA-qualified lenders accept applications online, in-person, or through the mail.
- For a list of SBA-qualified lenders, please visit the [SBA Directory Website.](#)

Other tips on getting through the process

- Time is of the Essence
- Expect hiccups with the SBA and its lenders
- The lenders are learning as they go, be patient with them
- Get in line early
- Be prepared for adjustments and pivots along the way
- Regulations are being written and will likely be adjusted
- Judgments will need to be made about eligible expenses and determination of loan amount

How can Dentons help?

- Engage Dentons to represent you in the process
 - Step 1. Complete the Information Form (PDF) emailed to you at the conclusion of the presentation and send it back to casey.hamption@dentons.com
 - Step 2. We'll respond with a streamlined fee quote and the process to get started

SBA Disaster Loan Team Contacts



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Resources

Dentons.com Resources and Public Policy Links

- **USA Guidance: Dentons COVID-19 US Hub**
 - Offering clients the best of our insights, guidance, and counsel in addressing COVID-19 issues across the US, such as Families First Act (sick pay and FMLA issues), SBA lending and business continuity concerns.
- **Global Guidance: Dentons COVID-19 Global Hub**
 - A dedicated hub containing all the guidance and information Dentons is able to provide you with as the COVID-19 situation evolves.
- **Public Policy Links**
 - See your webinar invitation email for complete listing.
 - To be added to webinar invitations, email casey.hampton@dentons.com

Public Health Resources

Helpful Links

- CDC information: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- Kentucky government: <https://kycovid19.ky.gov>
- Indiana government: <https://www.in.gov/coronavirus/>
- Ohio government: <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/>
- World Health Organization:
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>

Thank you

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[Leslie Smith](#)

Partner

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