

On March 11, President Donald Trump directed the Small Business Administration to offer Economic Injury Disaster Loans (EIDLs) to small businesses and private non-profits impacted by COVID-19. The Coronavirus, Aid, Relief, and Economic Security Act ("CARES Act") (Pub. L. 116-136), as signed by the President and enacted into law on 3/27/2020, amends the Small Business Act (SBA) to create a new Business Loan Program category (Paycheck Protection Loans) and provides modifications to the EIDL program. Both programs make available low-interest loans that are designed to provide economic support by aiding small businesses in overcoming temporary losses of revenue due to the virus. HunterMaclean partners [Louann Bronstein](#) and [Rob McGuirk](#) have prepared this reference to compare the Paycheck Protection Loans to the EIDLs.

Comparison: Paycheck Protection Loans and EIDL under CARES Act (as of 4/13/2020)	SBA Section 7(a) Business Loan Program for loans originated during the period 2/15/20 to 6/30/20 (as modified by the CARES Act) ("Paycheck Protection Loans")	SBA Section 7(b) Economic Injury Disaster Loans (as modified by the CARES Act for Loans during the period 1/31/20 - 12/31/20)
Potentially Forgivable	Yes	No
	<i>Funds are provided in the form of loans that will potentially be forgiven to the extent used for payroll costs, interest on mortgages, rent, and utilities. Not more than 25% of the forgiven amount may be for non-payroll costs.</i>	
Who Can Apply	All businesses – including 501 (c)(3) organizations, sole proprietorships, self-employed individuals and independent contractors – subject to the eligibility thresholds	All businesses – including non-profits, sole proprietorships, self-employed individuals and independent contractors – subject to the eligibility thresholds
Eligibility Thresholds Based on # of Employees or Revenue	500 or less employees "(based on average # employees in 2019 or average # of employees in the 12 months preceding the PPP loan application), <u>or</u>	500 or less employees (based on average # of employees in the 12 months preceding the EIDL application), <u>or</u>
	Hospitality and restaurant industries [NAICS Code 72 - Accommodation and Food Services] with more than one physical location and with no more than 500 employees per physical location, <u>or</u>	Entities that would be eligible under standard 7(a) loan program rules where such rules allow participation of companies in their NAICS Code with greater than 500 employees or based on revenue not exceeding a certain amount
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Comparison: Paycheck Protection Loans and EIDL under CARES Act <i>Continued, pg 2</i>	SBA Section 7(a) Business Loan Program for loans originated during the period 2/15/20 to 6/30/20 (as modified by the CARES Act) ("Paycheck Protection Loans")	SBA Section 7(b) Economic Injury Disaster Loans (as modified by the CARES Act for Loans during the period 1/31/20 - 12/31/20)
Application of Broad Affiliation Rules for 500 employee test	Yes, except for (A) hospitality and restaurant businesses NAICS Code 72-Accommodation and Food Services, (B) franchises approved on the SBA's Franchise Directory, and (C) businesses that receive financing through Small Business Investment Companies.	Yes
Prohibition on borrowers who can obtain non-governmental credit elsewhere	No	No
Personal guarantee of owners required	No	Yes, for 20% or more owners, if loan greater than \$200,000
Collateral required	No	Not required, but will be taken if available
Lender	Bank/Financial Institution (SBA approved)	SBA
Loan Amount	Lesser of (A) average monthly payroll costs in preceding 12 months multiplied by 2.5, plus the outstanding amount of an EIDL loan made between 1/31/2020 and 4/3/20 and used for payroll purposes or (B) \$10M.	Maximum of \$2 Million
	<i>Loan application indicates most applicants will use the average monthly payroll for 2019 (and <u>not</u> the preceding 12 months before the loan), excluding costs of \$100,000 on an annualized basis for each employee</i>	
	Seasonal businesses may elect instead to use the average monthly payroll for the time period between 2/15/2019 and 6/30/2019, excluding costs over \$100,00 on an annualized basis for each employee. For new businesses, average monthly payroll may be calculated using the time period from 1/1/20 to 2/29/20, excluding costs over \$100,000 on an annualized basis for each employee.	

Comparison: Paycheck Protection Loans and EIDL under CARES Act <i>continued, pg. 3</i>	SBA Section 7(a) Business Loan Program for loans originated during the period 2/15/20 to 6/30/20 (as modified by the CARES Act) ("Paycheck Protection Loans")	SBA Section 7(b) Economic Injury Disaster Loans (as modified by the CARES Act for Loans during the period 1/31/20 - 12/31/20)
Interest Rate	Not greater than 4%	3.75% (2.75% non-profits)
	<i>Loan application format released by Treasury indicates 1%.</i>	
Term	Maximum of 10 years from date of application for loan forgiveness	Maximum of 30 years
	<i>Loan application format released by Treasury indicates 2 years</i>	
Payment Deferral Period	6 months to 1 year based on guidance to be issued by SBA	12 months
	<i>Loan application format released by Treasury indicates 6 months</i>	
Purpose	Payroll, payment of interest on mortgages, rent, utilities, and interest on other debt obligations incurred prior to 2/15/20.	Working capital, including payments of fixed debts, payroll and accounts payable.
	<i>Loan application format released by Treasury indicates borrower must certify no more than 25% of the loan proceeds will be used for purposes other than payroll</i>	A recipient of a Paycheck Protection Loan must refinance the balance of any EIDL obtained between 1/31/2020 and 4/3/20 and used for payroll costs into the Paycheck Protection Loan. An EIDL obtained after 4/3/20 apparently can't be for the "same purpose" as a PPL
	Payroll means: (a) Salary, wage, commission or similar compensation (and in case of I/C or sole proprietor, net earnings from self-employment); (b) payments of cash tip or equivalent; (c) payment for vacation, parental, family, medical, or sick leave; (d) allowance for dismissal or separation; (e) payment required for the provision of group health care benefits, including insurance premiums; (f) payment of any retirement benefit; (g) payment of State or local tax assessed on the compensation of employees.	
	However, Payroll excludes: (a) compensation of an individual employee (and in case of I/C or sole proprietor, net earnings from self-employment) in excess of \$100,000 as pro-rated for the 8 week period following the loan, (b) Social Security or Medicare Taxes or Federal Income Tax withholdings; (c) compensation of any resident whose principal place of business is outside the USA; (d) qualified sick leave wages for which a credit is allowed under the Families First Coronavirus Act, and (e) qualified family leave wages for which a credit is allowed under the Families First Coronavirus Act.	

Comparison: Paycheck Protection Loans and EIDL under CARES Act <i>continued, pg. 4</i>	SBA Section 7(a) Business Loan Program for loans originated during the period 2/15/20 to 6/30/20 (as modified by the CARES Act) ("Paycheck Protection Loans")	SBA Section 7(b) Economic Injury Disaster Loans (as modified by the CARES Act for Loans during the period 1/31/20 - 12/31/20)
Potential Loan Forgiveness Amount	Payments during the 8-week period following origination of the loan on: Payroll, interest payment on mortgage incurred prior to 2/15/20, rent on lease in force prior to 2/15/20; utility for service which began prior to 2/15/20. The loan forgiveness amount will be reduced by the amount of any advance up to \$10,000 received on an EIDL loan.	N/A
	<i>Not more than 25% of the forgiven amount may be for non-payroll costs</i>	
Reduction in Potential Loan Forgiveness Amount <u>due to Reduction of # of Employees</u>	Reduction based on reduction of # of employees - Reduction based on multiplying potential loan forgiveness amount by a percentage equal to 1 minus a fraction, the numerator of which is the average # of FTEs per month during the 8 week period beginning with the loan and the denominator of which is the average # of FTEs employed per month, at the election of the borrower, during (x) the period beginning on 2/15/19 and ending on 6/30/19 or (y) the period beginning on 1/1/20 and ending on 2/29/20	N/A
	Incentive to re-employ or restore hours of employees - If there is a reduction in the number of FTEs beginning on 2/15/20 and ending on the date 30 days after enactment of the CARES Act as compared to the number of FTEs on 2/15/20, the loan forgiveness shall be determined without regard to such reductions in FTEs if by 6/30/20 the employer has eliminated such reduction in FTEs.	

Comparison: Paycheck Protection Loans and EIDL under CARES Act <i>continued, pg. 5</i>	SBA Section 7(a) Business Loan Program for loans originated during the period 2/15/20 to 6/30/20 (as modified by the CARES Act) ("Paycheck Protection Loans")	SBA Section 7(b) Economic Injury Disaster Loans (as modified by the CARES Act for Loans during the period 1/31/20 - 12/31/20)
Reduction in Potential Loan Forgiveness Amount due to Reduction of Salary and Wages	Reduction based on reduction of salary and wages- Reduction in amount equal to any reduction in the total salary of any employee (other than in respect of any employee who received, during any single pay period of 2019, annualized wages or salary above \$100,000) during the eight week period beginning with the loan that to the extent such reduction exceeds 25% of the total salary of such employee during the most recent full quarter during which the employee was employed before the loan.	N/A
	Incentive to reinstate salary or wages of employees that have been reduced - In case of any employees whose salaries or wages have been reduced in the period beginning on 2/15/20 and ending on the date 30 days after enactment of the CARES Act, the loan forgiveness shall be determined without regard to such reductions in salaries or wages if by 6/30/20 the employer reinstates the salaries or wages of such employees to the level prior to such reductions.	
Is Debt Cancelled under the Program Taxable?	No	N/A
Prepayment penalty	No	No
Fees	None	None
Advance	None	Maximum of \$10,000. SBA may limit the Advance to a specific amount per employee, e.g. \$1,500 per employee. (generally should be paid within 3 days of the submission of the application)
		<i>Repayment of advance is not required</i>
Total Funds Available	\$349 Billion	\$10 Billion

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Addendum: Employee Retention Credit

This credit is not available to borrowers in the Payroll Protection Program.

Refundable payroll tax credit of as much \$5,000 per employee:

Credit of 50% of (up to \$10,000) of qualifying wages and health care benefit costs of an employee

Qualifying business or non-profit:

(A) partially or suspended operations under government order due to COVID-19, or

(B) suffered a significant decline in revenues due to COVID-19 (more than 50% decline in gross revenue as compared to same quarter in prior year)

Qualifying Wages:

Larger Employers (2019 average FTES in 2019 = Greater than 100)

Wages paid to individuals who are not providing services to the business (e.g., employees on furlough) due to COVID-19 during the period 3/12/20 to 1/1/21 **and**

(A) during a quarter in which the business partially or suspended operations under government order due to COVID-19, or

(B) starting with the quarter the business suffered a significant decline in revenues due to COVID-19 (more than 50% decline in gross revenue as compared to same quarter in prior year) and ending in the quarter following a quarter which the gross receipts of the business equals or exceeds 80% of the gross receipts in the same quarter of the prior year.

Aggregation rules apply to determine number of employees

Note: does not include wages for which Federal tax credit is available under the paid leave provisions of the Families First Coronavirus Act

Smaller Employers (2019 average FTES in 2019 = 100 or less)

Same as Large Employers, but applies to wages paid to all individuals (both employees providing services and employees not providing services due to COVID-19)

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