

COVID-19 SBA FAQs: Economic Injury Disaster Loans



Robinson+Cole has been tracking relief programs being offered by the Small Business Administration (“SBA”) to help alleviate the economic impact of COVID-19 on small businesses in the United States. Among other programs, the SBA is offering an economic injury disaster loan program which provides small businesses and private non-profit organizations with working capital loans of up to \$2 million if the business has incurred economic injury as a result of COVID-19. An overview of these loans, as modified by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), is set forth below.

What is an Economic Injury Disaster Loan (“EIDL”)?

- + The SBA, acting through the United States Treasury Department, is issuing working capital loans to small businesses and other eligible organizations that are directly and indirectly affected by the COVID-19 pandemic. The EIDLs are **directly** funded by the Treasury; no outside banks or other lending institutions are involved. EIDLs have long been offered by the SBA; however, the CARES Act has, among other things, relaxed eligibility standards and application requirements for EIDLs extended to alleviate the economic impact of COVID-19 (“COVID-19 EIDLs”).

What businesses are eligible to apply for COVID-19 EIDLs?

- + COVID-19 EIDLs are available to (a) a “small business” that meets the SBA’s size standard (see question below regarding the SBA’s definition of a “small business”); (b) a business with not more than 500 employees;¹ (c) an individual who operates as a sole proprietor or as an independent contractor; (d) a cooperative with not more than 500 employees; (e) an ESOP with not more than 500 employees; and (f) a tribal small business concern with not more than 500 employees. During the covered period (i.e. February 15, 2020 until June 30, 2020), the “credit elsewhere” requirement is waived (i.e. COVID-19 EIDLs will be available to businesses regardless of their ability to find alternative funding).

What is the SBA’s definition of a “small business”?

- + The SBA’s definition of a “small business” depends on the business’s industry, and is generally based on the number of employees or the amount of annual receipts the business has. The SBA has a comprehensive table of standards that are used to determine the size of a business. These standards are tied to NAICS codes (the applicable threshold for each industry can be found [here](#)). It is important to note that a business may be required to include the employees or receipts of all affiliates when determining the size of its business. Affiliation with another business is based on the power to control, regardless of whether control is exercised.

How much can a business borrow?

- + Eligible businesses may qualify for a loan of up to \$2 million. The loan amount will be determined by the SBA based on the actual economic injury of the applicant. Applicants do not request a loan amount; instead, the SBA will review the application materials and calculate the amount of loan to be granted.

What is the interest rate?

- + The interest rate for these loans is 3.75% for small businesses and 2.75% for non-profit organizations.

When does the loan need to be repaid?

- + COVID-19 EIDLs are long-term loans with terms up to 30 years. The term of each COVID-19 EIDL will be determined on a case-by-case basis depending upon the borrower’s ability to repay the loan. Some business may qualify for a payment deferral of up to 12 months.

What can the proceeds of these loans be used for?

- + COVID-19 EIDLs issued by the SBA may be used to pay fixed debts, payroll, accounts payable, employee sick leave and other bills that cannot be paid because of the impact of COVID-19. Proceeds of COVID-19 EIDLs may **not** be used to refinance debts incurred prior to COVID-19, make payments on other loans issued by the SBA or another federal agency, pay penalties or fines (e.g. tax or civil), repair physical damage, pay dividends or bonuses, or finance expansions.

¹ Although the CARES Act does not specifically state that affiliation rules apply to businesses who qualify because they have 500 or less employees, the affiliation waiver provisions of the CARES Act suggest that the rules are intended to apply unless there is an express exemption. Regulations may provide clarity on this matter. Assuming the affiliation rules apply, the total number of employees would need to include employees of the applicant as well as employees of all the applicant’s affiliates (i.e. the total number of employees of the business, any parent, any subsidiary and any other business under common control).

COVID-19 SBA FAQs: Economic Injury Disaster Loans



Does the SBA have collateral requirements for EIDLs?

- + The SBA will seek collateral for all loans that exceed \$25,000. Although the SBA requires borrowers to pledge whatever collateral is available, it will not decline a loan due to lack of collateral.

Does the SBA have personal guarantee or credit requirements for COVID-19 EIDLs?

- + Pursuant to the CARES Act, the SBA will waive the requirement for personal guarantees for COVID-19 EIDLs if the loan is for \$200,000 or less. The SBA may approve an applicant for a COVID-19 EIDL based solely on the credit score of the applicant and will not require an applicant to submit a tax return transcript for such approval.

Will the SBA provide an emergency advance for COVID-19 EIDL applicants?

- + COVID-19 EIDL applicants may request an advance from the SBA of not more than \$10,000, which (if approved) will be provided to the applicant within 3 days of the SBA's receipt of such application. Emergency advances may only be used for eligible purposes (i.e. any allowable use under the Small Business Act, including, without limitation, providing paid sick leave, maintaining payroll, and rent or mortgage payments).

Will my business's application for an EIDL be approved?

- + There are four criteria for approval of a COVID-19 EIDL: (a) the applicant must have a credit history acceptable to the SBA, (b) the SBA must determine that the applicant will have the ability to repay the COVID-19 EIDL, (c) the applicant must be physically located in an area that has declared a disaster (all fifty states meet this criteria), and (d) the applicant must have suffered working capital losses as a result of COVID-19 (and not due to the downturn in the economy or other reasons).

How does a business apply?

- + Businesses can apply online for a COVID-19 EIDL [here](#). There is no cost to apply and no obligation to take a loan if offered. Once the application is submitted, an SBA loan officer will be assigned to the application and will work with the individual applicants. If businesses cannot apply on-line, they can apply by mail. The SBA strongly encourages on-line applications because paper applications take longer to process. To assist small businesses with the application process, the SBA has coordinated with resource partners, including Small Business Development Centers ("SBDCs"). The list of SBDCs is available [here](#). The SBA encourages businesses to apply for COVID-19 EIDLs as soon as possible. The average application requires 2-3 weeks for approval, and disbursement can take up to 5 days; however, the approval and funding timeline depends on the volume of applicants at any given time.

This alert is being issued as of March 30, 2020. Please note that the SBA has up to 30 days following the enactment of the CARES Act to issue guidance and regulations under certain provisions of the CARES Act which could, among other things, modify eligibility and/or loan requirements.

CONTACTS



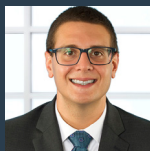
TAYLOR A. SHEA
Partner
Business Transactions Group
tshea@rc.com
860.275.8305



ENDICOTT PEABODY IV
Counsel
Business Transactions Group
epeabody@rc.com
617.557.5922



FRANK EUCALITTO
Associate
Business Transactions
Group
feucalitto@rc.com
203.462.7586



JEFFREY VOLPINTESTA
Associate
Business Transactions
Group
jvolpintesta@rc.com
203.462.7517



BARRETT WILSON-MURPHY
Associate
Business Transactions
Group
bwilsonmurphy@rc.com
617.557.5974