

# Your Small Business May Be Eligible to Supplement Its Paycheck Protection Program Loan with an SBA Economic Injury Disaster Loan

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## Coronavirus Legal Advisory

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The Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) expanded the existing Economic Injury Disaster Loan program (“EIDL”) by streamlining the application process and providing **lower interest rates and longer repayment terms**.

The EIDL provides working capital directly from the U.S. Treasury and there’s no cost to apply and no obligation to accept the loan if your business qualifies. Small businesses can even apply for an EIDL loan if they’ve previously applied for a Paycheck Protection Program loan, so long as the proceeds are not used for the same expenses. Small businesses can apply directly to the [U.S. Small Business Administration’s \(“SBA”\) Disaster Assistance Program](#).

### **\$10,000 Advanced Grant:**

Applicants for an EIDL loan can request a \$10,000 advance (“Advance”) on the loan. The Advance is available from January 31, 2020, to December 31, 2020. The proceeds of the Advance can be used for paid sick leave; payroll; increased costs; rent or mortgage payments; or repaying obligations that cannot be met due to revenue losses attributed to COVID-19. However, these funds will be subtracted from the final loan amount. The SBA is required to issue the Advance within three days after receipt of the loan application in which the borrower is required to certify, under penalty of perjury, that it is eligible to apply for an EIDL loan. The Advance acts as a federal grant because the borrower retains the Advance even if the loan is denied and the Advance is forgiven.

The SBA’s office covering Boston, Massachusetts, posted a bulletin on its website that EIDL advances were being limited to \$1,000 for each employee and if you have 10 or more employees, the small business will get the full \$10,000 (as opposed to \$10,000 regardless of the applicant’s number of employees). However, the national SBA [website does not reflect this change](#).

### **Terms of EIDL Loan and Use of Proceeds:**

EIDL loans up to \$2 million with a maximum unsecured loan amount of \$25,000. However, a number of small businesses have reported that the \$2 million cap on an EIDL loan has been reduced to \$85,000.

- The interest rate is 3.75% for small businesses and 2.75% for nonprofit businesses.

- The maximum repayment term is 30 years.
- Payments are deferred for one year; however, interest accrues during the deferment.
- EIDL loans can be used to pay fixed debts, payroll, accounts payable and other operating expenses that would have been paid if COVID-19 had not occurred.
- Ineligible uses of EIDL loan proceeds consist of the following: (i) dividends and bonuses; (ii) disbursements to owners (except when directly related to performance of services); (iii) repayment of stockholder/principal loans (except when injected on an interim basis because of the disaster and non-repayment would cause injury to the stockholder/principal); (iv) expansion of facilities or acquisition of fixed asset; (v) repair or replacement of physical damages; (vi) refinancing long-term debt; and (vii) paying down or paying off other loans provided by any federal agency including SBA. For more information, see [this list](#) of ineligible uses of EIDL loan proceeds.

**Eligible Businesses:**

- Small businesses (including restaurants, retailers, hotels, manufacturers, owners of rental property, and wholesalers) with fewer than 500 employees
- Small agricultural cooperatives or agriculture businesses
- Employee Stock Ownership with fewer than 500 employees
- Sole proprietorships
- Independent contractors
- Most private nonprofit organizations and tribal businesses with fewer than 500 employees

Section 1110 of the CARES Act waives the requirement that an applicant be in business for a one-year period prior to the disaster and that it had been unable to obtain credit from traditional commercial sources. Applicants must only have been in operation on January 31, 2020, and suffered, or are likely to suffer, substantial economic injury as a result of COVID-19.

Notably, businesses in certain industries may have more than 500 employees if the size of the business combined with its affiliates meets SBA standards for those industries. See the [SBA table of size standards](#). For a list of ineligible businesses, please click [here](#).

**Criteria for Loan Approval:**

- SBA acceptable credit history
- Ability to repay the EDIL loan
- Physical and tangible (P.O. Box does not qualify) presence in U.S. (declared disaster area)

**Collateral Requirements:**

- No collateral is required for loans under \$25,000
- SBA will seek real estate as collateral
- SBA does not decline a loan for lack of collateral but requires applicant pledge

**Personal Guarantee Requirements:**

Loans up to \$200,000 do not require a personal guarantee. Loans in excess of \$200,000 will likely require a guarantee by owners of more than 20% of the borrower.

**Loan Filing Requirements:**

- SBA Loan Application Form 5 or 5C
  - a) [SBA Loan Application Form 5](#)
  - b) [SBA Loan Application Form 5C](#)
- [Personal Financial Statement SBA Form 413](#)
- [Schedule of Liabilities form](#)

- [IRS Form 4506T](#)

McCarter & English, LLP can assist you with determining whether you are eligible for an EIDL loan, completing the loan application and gathering the documentation necessary to be provided to SBA needed to demonstrate your business' ability to repay the loan.