

# CARES Act Update

March 30, 2020



President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law on March 27, 2020. The CARES Act allocates \$2.2 trillion for assistance to individuals, business, and hospitals economically impacted by the Coronavirus (COVID-19) pandemic.

The CARES Act's *Title I: Keeping American Workers Paid and Employed*, contains several relief provisions. Two programs of note for NSA Members include:

1. The temporary expansion of the Small Business Administration's (SBA) Economic Injury Disaster Loans (EIDL) to include emergency advance of upto \$10,000 within 3 days of applying for an EIDL.
2. The new Paycheck Protection Program Loans administered under the SBA's 7(a) Loan Program offering various loans to small businesses.

Highlights of these two programs are detailed in the summary below. You may also visit the SBA's website for information and applications.

Website Link: [SBA EIDL Program](#)

Website Link: [SBA Paycheck Protection Program](#)

## 1. Temporary Expansion of the Small Business Administration's Economic Injury Disaster Loans (EIDL)

The CARES Act temporarily expands eligibility for Economic Injury Disaster Loans (EIDL) administered by the SBA and provides an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19. The advance will be available within 3 days of applying for an EIDL. To access the advance, you first apply for an EIDL and then request the advance. You will not have to repay the advance, even if your application for a loan is denied. The advance may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent, and mortgage payments.

### Who is eligible?

In addition to the entities that are currently eligible for SBA disaster loans (small businesses, private non-profits, and small agriculture cooperatives), eligibility is temporarily expanded to include:

- Business entities with 500 or fewer employees:
- Sole proprietorships, with or without employees
- Independent contractors
- Cooperatives and employee owned businesses
- Tribal small businesses
- Private non-profits of any size

You must have been in business as of January 31, 2020. Expanded eligibility criteria and the emergency advance are only available between January 31, 2020 and December 31, 2020.

### How do I apply?

- You can apply for an EIDL online with the SBA by clicking [here](#)
- When you apply, you can request an emergency advance of \$10,000. The SBA will provide the advance within 3 days of receiving your application.
- Visit an SBA resource partner who can help guide you through the loan application process. You can find your nearest Small Business Development Center (SBDC) or Women's Business Center by clicking [here](#).

### Can I apply for other SBA loan programs?

If you apply for an EIDL and the advance, you can still apply for a Paycheck Protection Program loan (see loan summary in Section 2 below). However the amount forgiven under a Paycheck Protection loan will be decreased by the \$10,000 advance.



## 2. Paycheck Protection Program Loans

The cornerstone of the CARES Act Title I is \$349 billion for the Paycheck Protection Program loans administered by the SBA. These 100% federally-guaranteed loans are available under a new subsection 36 of Section 7(a) of the Small Business Act. The central goals of this program are to a) help employers retain their employees and b) help business cover their near-term operating expenses during the COVID-19 crisis for the period between February 15, 2020 and June 30, 2020.

### Who is eligible?

- A small business with fewer than 500 employees (includes all employees full-time, part-time, and any other status)
- A small business that otherwise meets the SBA's size standard
- A 501(c)(3) with fewer than 500 employees
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on a trade or business
- A Tribal business concern that meets the SBA size standard
- A 501(c)(19) Veterans Organization that meets the SBA size standard
  - *Special eligibility may apply if:*
    - If you are in the accommodation and food services sector (NAICS 72), the 500- employee rule is applied on a per physical location basis
    - If you are operating as a franchise or receive financial assistance from an approved Small Business Investment Company the normal affiliation rules do not apply

In evaluating eligibility of borrowers, a lender must consider whether the borrower was operating on February 15, 2020 and had employees or independent contractors for whom the borrower paid. Additionally, unlike other SBA loans, you are not required to prove you cannot receive credit elsewhere in order to receive funds provided under this program

### What can the loans can be used for?

- Payroll costs:
  - Includes: compensation to employees, such as salary, wage, commissions, cash, etc.; paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) who earn up to \$100,000 in 1 year, prorated for the covered period;
  - *Excludes:* individual employee compensation above \$100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal place of residence is outside of the US; and sick and family leave wages for which credit is allowed under the Families First Act;
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Payments of interest on mortgage obligations;
- Rent/lease agreement payments;
- Utilities; and
- Interest on any other debt obligations incurred before the covered period.

In evaluating eligibility of borrowers, a lender must consider whether the borrower was operating on February 15, 2020 and had employees or independent contractors for whom the borrower paid.

### How much of a loan can I receive?

- Loans are designed to cover two-and-a-half months of payroll, using a calculation of the average monthly payments during the last year period before the loan is issued.

*For example, if your annual payroll payment was \$1.2 million, you can request a loan of up to \$250,000 ( $\$1,200,000/12 = \$100,000$ ,  $\$100,000 \times 2.5 = \$250,000$ ).*

- No loans may be larger than \$10 million.



*Note:*

A. Allowable payroll costs for employers are the sum of payments of any compensation with respect to employees that is a: salary, wage, commission, or similar compensation; payment of cash tip or equivalent; payment for vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment required for the provisions of group health care benefits including insurance premiums; payment of any retirement benefit; and payment of state or local tax assessed on the compensation of the employee.

- B. Allowable payroll costs for sole proprietors, independent contractors, and
- self-employed individuals are the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in one year, as pro-rated for the covered period.

### **Are there loan fees?**

There are no borrower or lender fees for participation.

### **What are the loan Terms?**

- Up to one year deferral of principal and interest payments.
- Loans are available for up to a 10-year term (amortized) at an interest rate not to exceed 4 percent.
- Some traditional SBA requirements are waived for this loan program. Specifically, these loans are available with:
  - No personal guaranties of shareholders, members or partners
  - No collateral
  - No proving recipient cannot obtain funds elsewhere
  - No SBA fees (may still have to pay lender processing fee)
  - No prepayment fee

### **Is there loan forgiveness?**

Borrowers must apply for forgiveness with the lender servicing the loan. Lenders have 60 days to review and make a determination. Any portion of the loan that is forgiven will be excluded from gross income. Section 1106 of Title I outlines forgiveness of loans obtained under the CARES Act.

Specifically:

- The forgiven amount will be equal to the amount actually paid for payroll costs, salaries, benefits, rent, utilities and mortgage interest during the eight weeks
- following disbursement of the loan. Additional wages paid to tipped employees under Section 3(m)(2)(A) of the Fair Labor Standard Acts may also be forgiven.
- The forgiveness amount is subject to reduction if there is a workforce reduction or a reduction in the salary or wages of an employee.
- The loan forgiveness incentivizes companies to retain employees by reducing the amount forgiven proportionally by any reduction in employees retained compared to the prior year.
- To encourage employers to rehire any employees who have already been laid off
- due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Reductions in workforce, salaries and wages that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020.
- The forgiven amounts are not taxable as income to the borrower.

**The CARES Act is 880 pages and consists of several Divisions, Titles, and Sections. A variety Federal Agencies will be responsible for administering different parts of the CARES Act and will provide additional, detailed guidance on the CARES Act implementation.**

