

## COVID-19 ECONOMIC RELIEF

### U.S. Small Business Administration Economic Injury Disaster Loans

**Revised April 24, 2020**

**\*\*\*\*Note:** *This article was revised in line with the enactment of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) on March 27, 2020, and in line with the enactment of the Paycheck Protection Program and Health Care Enhancement Act (the “Enhancement Act”) on April 24, 2020. For more information, please [click here](#).* \*\*\*\*

On March 6, 2020, the federal government enacted the Coronavirus Preparedness and Response Supplemental Appropriations Act, providing \$8.3 billion to federal agencies responding to the COVID-19/Coronavirus outbreak.<sup>1</sup> A portion of the economic relief will fund loans to small businesses suffering economic losses related to the COVID-19 pandemic. Specifically, the U.S. Small Business Administration (“SBA”) is now offering low interest Economic Injury Disaster Loans (“EIDL”) to qualifying small businesses in certain designated disaster areas. Through EIDLs, small businesses impacted by a qualified economic disaster can borrow money on favorable terms to help them pay bills and meet other financial obligations. This update provides a general overview.

#### EIDL Terms:

- **Rate:** EIDLs are fixed-rate loans. Interest rates are 3.75% per year for private businesses and 2.75% per year for non-profit organizations.
- **Term Length:** Up to 30 years. Likely, all terms will be 30 years.
- **When payments begin:** Borrowers can defer payments for up to twelve (12) months from approval (i.e., a time when the business is likely to return to normalized operations).<sup>2</sup>
- **Fees:** There are no application or commitment fees.
- **Maximum Loan Amount:** The amount of each EIDL varies up to a general statutory maximum of \$2 million. Nevertheless, according to the SBA, “[i]f a business is a major source of employment, SBA has the authority to waive the \$2,000,000 statutory limit.”<sup>3</sup>
- **Increases:** EIDLs are term loans and do not function as lines of credit; however, the SBA may grant loan increases after an initial funding, if requested, on a case-by-case basis. Under the CARES Act, EIDLs may be refinanced into a Paycheck Protection Program Loan.<sup>4</sup>
- **Grant:** Under the CARES Act, within 3 days of submitting an application, qualified applicants can receive a grant in the amount of up to \$10,000. The SBA recently announced that this advance is limited to \$1,000 per employee at the business, up to ten employees. Provided the granted funds are used for eligible working capital purposes,

<sup>1</sup> The text of the Act is available [here](#).

<sup>2</sup> Under existing legislation and regulation, interest accrues during the 12-month deferral period; however, such accrued interest may be waived pursuant to future legislation.

<sup>3</sup> SBA Fact Sheet – [Michigan Declaration 16356](#), Mar. 19, 2020.

<sup>4</sup> Important Relief for Small Businesses Under Title I of the CARES ACT: Forgivable Paycheck Protection Program Loans, Grants in Connection with Economic Injury Disaster Loans, Relief for Other SBA Loans, and Increased SBA Express Loans, Mar. 20, 2020. Text available [here](#).

they do not need to be repaid, even if the SBA ultimately rejects the loan application. The amount of any such grant reduces the available loan forgiveness under any Paycheck Protection Program loan to the same borrower. The CARES Act initially appropriated \$10 billion for these Grants, which was exhausted as of April 10, 2020. However, with the enactment of the Enhancement Act on April 25, 2020, an additional \$10 billion has been appropriated to these grants.

- **Collateral**: Borrowers and/or guarantors must pledge collateral (personal and/or business assets) to secure EIDL obligations of \$25,000 or more. The SBA will not decline a loan if an applicant lacks a particular amount of collateral as long as the SBA is reasonably sure that the applicant can repay its loan.
- **Guaranty**: Principals must sign a personal guaranty (except where the principal is a co-borrower).
- **Prepayment**: There is no prohibition or penalty for prepayment. Nevertheless, loans less than \$200,000 do not require a guaranty.
- **Specific Terms**: The exact terms of each EIDL is determined on a case-by-case basis, primarily based upon the applicable borrower's ability to repay. Loan amount determinations are based in part on normalized financials and may take into account the economic injury suffered by the business, less business interruption insurance and other recoveries. SBA representatives have indicated that loans amounts for businesses seeking loans under \$500,000 may be based on a simple calculation of Gross Margin (calculated as Normalized Gross Revenue – Normalized Cost of Goods Sold) divided by two.<sup>5</sup> The SBA may also consider potential contributions that are available from the business and/or its owner(s) or affiliates.

### **Permitted Uses:**

EIDL funds may only be used for working capital purposes, including payment of fixed debts, payroll, accounts payable or other bills that could have been paid had the COVID-19 pandemic not occurred. EIDL proceeds cannot be used to refinance long-term debt (but can be used to service such debts), for expansion, for payment of dividends or bonuses, to repay loans from principals, to acquire assets or for other uses inconsistent with SBA disaster loan lending. The SBA will allow short term debt to be refinanced and is presently in the process of clarifying its internal procedures to encourage 7(a) lenders to immediately provide SBA Express bridge loans, which can then be refinanced through and EIDL.

### **Qualifying Businesses:**

SBA loan eligibility requirements are complex; however, the SBA's online application process is not particularly difficult and is designed to assist businesses and the SBA in making eligibility determinations. Here are some general guidelines for EIDLs:

- **Not the Same as PPP Loans (Landlords)**: Importantly, EIDL eligibility requirements are not exactly the same as PPP Loan requirements. For instance, landlords, which are generally ineligible for PPP loans (with some limited exceptions), are generally eligible for EIDLs.
- **Size**: For-profit businesses must qualify as a "small business," taking into account both the size of the applicant alone and the size of the applicant when combined with its affiliates. SBA size requirements vary by industry and are based on either (a) number of employees or (b) annual revenue. The applicable maximum for each industry is listed in the Code of Federal Regulations<sup>6</sup> and can also be determined by using the SBA's online [size table tool](#). Non-profit businesses (other than affiliates of for-profit applicants) are not limited by size.<sup>7</sup> Under the CARES Act, eligibility for EIDL has been expanded to all businesses, cooperatives and employee stock ownership plans with 500 or fewer employees and individuals who operate under a sole proprietorship, with or without employees, or as an independent contractor.

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<sup>5</sup> Based on a verbal statement made by and SBA representative during a recent conference call with 7(a) lenders. Conflicting, but potentially outdated, guidelines exist under the SBA's Standard Operating Procedure for the Disaster Assistance Program. See SBA SOP 50 30 9, May 31, 2018.

<sup>6</sup> Specifically, [13 CFR § 121.201](#).

<sup>7</sup> See [13 CFR § 121.301](#) for more information on size and affiliate determinations.

- Time in Existence: A business need only have been in existence prior to January 31, 2020.
- Disaster Area: The business must be located in an area covered by a disaster declaration (see the Eligible Geographic Areas section below) and have suffered (or be likely to suffer) substantial economic injury as a result of the declared disaster.
- Ability to Repay: The SBA must be reasonably assured that the business can repay its loan (once payments become due) based on analysis of the business's credit and cash flow. The SBA has indicated that credit scoring will play a primary role in its determinations.
- Ineligible Business Activities: Certain business activities or business types are generally excluded from eligibility, including any business:
  - Engaged in illegal activities, (as defined by federal guidelines – for example, most marijuana-related businesses);
  - Engaged in the production or distribution of any product or service determined to be obscene by a court of competent jurisdiction;
  - Engaged in the sale of products or services or live performances of a prurient sexual nature;
  - Owned or controlled by a member of congress;
  - Owned by an individual delinquent on child support obligations;
  - Considered a hobby;
  - Primarily engaged in subdividing real property into lots and developing them for resale;
  - Primarily engaged in agriculture (with some limited exceptions);
  - Involved in a substantial change of ownership after the economic injury became apparent (with some limited exceptions);
  - Established after the declared disaster;
  - That is a publicly owned institution, public entity and organization owned by a government entity;
  - That owns unimproved real estate held for speculation, investment, or future development;
  - That is a lending or investment business (except for real estate investments held for rental);
  - That is a multi-level sales distribution business;
  - That is a consumer or marketing cooperative;
  - That derives more than one-third of its annual gross revenue from legal gambling activities, or, regardless of gross revenue derived from gambling, a gambling business (such as casinos, racetracks, poker parlors, etc.);
  - That is a loan packager deriving more than one-third of its annual volume from the preparation of applications seeking financial assistance from the SBA;
  - That is a religious organization;
  - That is a political or lobbying concern;
  - That is a pawn shop deriving 50% or more of its income from interest;
  - That is a life insurance company; or
  - That is a feedlot operator.

The foregoing is a generalized listing summarizing voluminous SBA administrative and regulatory publications.<sup>8</sup> Additional information can be obtained through the application process, by reviewing the SBA's publications, or by consulting the SBA and or other professional resources listed at the end of this update.

### **Eligible Geographic Areas:**

As of March 20, 2020, EIDLs were not yet available to all communities. The designation process requires the Governor of an affected State to coordinate with the SBA's Office of Disaster Assistance to obtain an EIDL declaration. On March 19, 2020, the SBA issued a declaration for the State of Michigan (and certain contiguous counties of adjacent states).<sup>9</sup> **\*\*\*UPDATE\*\*\* EDILs are now available in all U.S. states and territories.**

<sup>8</sup> *E.g.* 13 CFR 121.101 *et seq.* and SBA SOP 50 30 9.

<sup>9</sup> *See* SBA Disaster Declaration #16356, *supra*.

## **Applying for an EIDL:**

To expedite processing, the SBA encourages all applicants to apply online at <https://disasterloan.sba.gov/ela/>. There are no costs to apply and there is no obligation to accept a loan if approved. Applicants should be prepared to provide financial information including profit and loss statements, monthly sales figures, personal financial statements, and recent tax filings. Loans greater than \$500,000 will require more information than those under \$500,000. A listing of applicable SBA forms (with links to the forms) is available [here](#).

EIDLs are underwritten, processed, and funded directly by the SBA; so, unlike certain other SBA loan programs, borrowers do not need to apply through or work with a bank or Certified Development Company. While this streamlines the loan process in some respects, applicants should understand that the SBA has never addressed a crisis of this magnitude and its internal resources with EIDL-specific expertise are stretched thin. To this end, the Michigan Small Business Development Center (“MSBDC”) has published a list of tips, such as saving work at every prompt in case of system overloads and writing down passwords, as neither the system nor any SBA personnel are able to retrieve them. The MSBDC’s full list is available [here](#).

## **Additional Resources:**

- Legislation that may provide an additional \$300 billion in economic relief through a modified version of the SBA’s 7(a) loan program, SBA loan forgiveness, and other means related to SBA lending is currently being negotiated in the U.S. Senate.<sup>10</sup> Jaffe will continue to monitor such developments. **\*\*\*UPDATE\*\*\* This information is now available. Please see our CARES Act summary [here](#).**
- Borrowers with one or more existing SBA loans can request that their lender(s) defer payments for up to six (6) months. The SBA recently issued an official notice to all SBA lenders on this subject.<sup>11</sup>
- Localized state assistance is available from Certified Development Companies or similar entities. Such resources in Michigan include the [Michigan Small Business Development Center](#) and the [Michigan Economic Development Corporation](#) (“MEDC”). In addition to free advice, the MEDC currently offers small business grants and loans.<sup>12</sup> **Please see our summary of localized state assistance [here](#).**
- The SBA Disaster Assistance Customer Service Center can be reached at 1-800-659-2955 (TTY: 1-800-877-8339) or via e-mail at [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov).

We are ready to assist you and your business in navigating these unprecedented times. Please feel free to consult with us for any questions or assistance. For SBA and government-backed lending specific questions, please reach out to Eric Novetsky at 248.727.1406 or [enovetsky@jaffelaw.com](mailto:enovetsky@jaffelaw.com).

On behalf of the firm, we hope you, your employees, and your loved ones remain healthy and safe.



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<sup>10</sup> The proposed text of the Senate bill is available [here](#).

<sup>11</sup> See [SBA Information Notice](#), Control No. 5000-2004, Mar. 10, 2020.

<sup>12</sup> See <https://www.michiganbusiness.org/covid19/>