

Gill Ragon Owen stands ready to assist you through these trying times.

Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was signed into law by the President on March 27, 2020. The CARES Act creates multiple avenues of economic relief to eligible small businesses through multiple programs the Small Business Administration (SBA) will administer. The CARES Act changed the definition of a “small business concern,” which makes many more entities eligible for assistance through various programs the SBA will administer under the CARES Act.

Each small business is different, and every business should consider whether the business qualifies and which of the various programs might be available, to determine which program best applies to the business, including the programs available under the Family First Coronavirus Response Act and the CARES Act. In addition, some states may have their own loan, grant and incentive programs. Please check with your local banker and economic development office for availability of these programs.

PAYCHECK PROTECTION PROGRAM

The CARES Act expanded the existing SBA 7(a) Loan Guaranty Program by creating the Paycheck Protection Program that authorizes the SBA to provide a 100% loan guaranty to SBA approved lenders that make qualified loans of up to \$10 million to eligible small businesses. Congress appropriated \$349 billion for this program. The Paycheck Protection Loans are intended to be forgivable to the extent that a borrower maintains the number of its employees and otherwise uses the loan proceeds in compliance with the CARES Act.

Your Business may be a “qualified small business” if it:

- Was in business prior to February 15, 2020 and had employees for whom it paid salaries and payroll taxes or had independent contractors;
- Does not have more than 500 employees (including part-time employees and independent contractors) or the maximum number of employees specified in the current SBA size standards, whichever is greater; or
- Has more than one location and has more than 500 employees, but does not have more than 500 employees at any one location **and** the business’ primary NAICS code starts with “72” (Accommodation and Food Service); or
- Is a franchisee holding a franchise listed on the SBA’s registry of approved franchise agreements; or
- Has received financing from a Small Business Investment Corporation.

NOTE: “Qualified Small Business” includes sole proprietorships and self-employed individuals. Additionally, the CARES Act makes certain nonprofit organizations (must be tax-exempt under Section 501(c)(3) of the Internal Revenue Code), qualified veterans’ organizations, and certain Tribal business concerns eligible. If you are an independent contractor, sole proprietor, or self-employed individual, lenders will also be looking for certain documents (final requirements will be announced by the government) such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.

Maximum Loan Amount is the lesser of \$10,000,000 and your past payroll, calculated as follows:

- **For Most Businesses:** an amount equal to 2.5 times your business’s average monthly payroll for the twelve months prior to the loan being originated **plus** the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program).
- **If your Business is a “seasonal employer” (as determined by SBA):** an amount equal to 2.5x the average total monthly payments by the applicant for payroll costs incurred during the 12-week period beginning February 15, 2019, or at the election of the borrower, March 1, 2019, **plus** the amount of any eligible EIDL to be refinanced into the covered loan
- **If your Business was not in business during the period beginning February 20, 2019 and ending June 30, 2019:** an amount equal to 2.5x the average total monthly payments by the borrower for payroll costs incurred during the period beginning on January 1, 2020 and ending on February 29, 2020, **plus** the amount of any eligible EIDL to be refinanced into the covered loan.

“Payroll costs” mean:

- **If your business has employees** — payroll means the sum of payments of any compensation with respect to employees that is a:
 - salary, wage, commission or similar compensation;
 - payment of cash tips or equivalent;
 - payment for vacation, parental, family, medical or sick leave;
 - allowance for dismissal or separation;
 - payment required for the provision of group health care benefits, including insurance premiums;
 - payment of any retirement benefit; or
 - payment of state or local tax assessed on the compensation of employees.
- **If you are self-employed or your business is organized as a sole proprietor** — payroll means 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 not more than \$100,000 in one year, as prorated for the covered period.

“Payroll cost” do NOT include the following:

- the **compensation** of an individual employee in excess of an annual salary of \$100,000, as prorated for the covered period
- taxes imposed or withheld under Chapters 21 (Social Security and Medicare taxes, employee and employer portion), 22 (railroad retirement tax), or 24 (withholding obligations from employees) of the Internal Revenue Code of 1986
- any compensation of an employee whose principal place of residence is outside of the United States
- qualified sick leave wages and qualified family leave wages, in each case, for which a credit is allowed under the Families First Coronavirus Response Act.

Other key Paycheck Protection Program loan provisions:

- Maximum interest rate of 4 percent per annum.
- Loans are made by SBA-approved lenders that have delegated authority to make the loans without approval from the SBA (no SBA Authorization required for each individual loan).
- In reviewing the application, a lender has to evaluate whether (1) the borrower was in business on February 15, 2020 and (2) had employees and paid salaries and taxes or had independent contractors and filed 1099-MISC.
- Guarantee fees are waived (these are typically 2 percent-3.75 percent of the loan amount, depending on the size of the loan, and would otherwise be paid by the borrower).
- Loans are non-recourse to the borrower. The CARES Act also specifically provides each loan is nonrecourse to the shareholders, members and partners of the borrower.
- The CARES Act removes the usual SBA “No ‘credit elsewhere test’ which otherwise requires a borrower to demonstrate it was unable to secure financing elsewhere before qualifying for SBA financing.
- A Paycheck Protection Loan:
 - requires no collateral;
 - contains no prepayment penalties; and
 - defers all payments for six to 12 months.
- Your business will have to certify as to the following:
 - Current uncertain economic times make the loan request necessary to support the business’s ongoing operations; and
 - The business will use the loan proceeds to keep workers and make payroll, mortgage payments, lease payments and utility payments; and

- The business does not already have an application pending for other payroll assistance under the CARES Act.

NOTE: A loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit made available under the CARES Act. This only applies to the Employee Retention Tax Credit in the CARES Act and does not apply to any credits available under the FFCRA (such as the paid sick leave tax credit) or other credits available under the CARES Act.

Loan Forgiveness Provisions of Paycheck Protection Program:

Under the CARES Act, small business loan borrowers will be eligible for loan forgiveness, both for new loans under the Paycheck Protection Program and for existing 7(a) loans.

For borrowers under the Paycheck Protection Program, the loan forgiveness will equal **the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):**

- payroll costs (as described above) (not to exceed \$100,000 of annualized compensation per employee); and
- payments of interest on any mortgage loan incurred prior to February 15, 2020; and
- payment of rent on any lease in force prior to February 15, 2020; and
- payment on any utility for which service began before February 15, 2020.

The amount forgiven is **not** considered taxable income to the borrower.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee's prior year compensation. A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020, as long as the employee is rehired by June 30, 2020.

Any amount outstanding after considering the amount forgiven will be repayable over a term not to exceed 10 years.

NOTE: The borrower must apply to the lender for loan forgiveness with supporting documentation.

For borrowers with existing 7(a) or microloan program loans, the SBA will pay principal, interest, and any associated loan fees for a six-month period starting on the loan's next payment due date. Payment on loans that are on deferment will begin with the first payment after the deferment

period. Please note that this relief will not include loans made under the Paycheck Protection Program.

ECONOMIC INJURY DISASTER LOAN PROGRAM

The CARES Act made several changes to the Economic Injury Disaster Loan (EIDL) Program under Section 7(b) of the Small Business Act. As modified by the CARES Act:

- EIDL Loans are available to small businesses in a declared disaster area (all 50 states, Puerto Rico, Guam and the North Mariana Islands have all been declared disaster areas for purposes of the EIDL Program effective January 31, 2020) to cover economic injury resulting from the disaster (e.g., loss of revenue).
- EIDL Loans are processed directly through the SBA, although the SBA may determine to enlist the assistance of lenders for the processing and making of loans.
- EIDL Loans are available in a maximum amount of \$2 million, carry an interest rate of 3.75 percent and have a maximum term of 30 years.
- Loans over \$200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant (the CARES Act removed the requirement for personal guarantees on loans under \$200,000).
- The CARES Act also removed standard EIDL Program requirements that the borrower not be able to secure credit elsewhere or that the borrower have been in business for at least one year, as long as it was in operation on January 31, 2020.
- Applicant may request an expedited disbursement that is to be paid within three days of the request. The advance may not exceed \$10,000 and must be used for authorized costs but is otherwise not repayable if the EIDL Loan is not approved.

NOTE: An applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program described below) as long as the basis for the loans/costs being paid with each are different (no "double-dipping").

MAJOR NOTE: The SBA has up to 30 days following the enactment of the CARES Act to issue regulations implementing and providing guidance under certain provisions of the CARES Act. In addition, the Treasury Department is required to issue regulations implementing and providing guidance under certain provisions of the CARES Act. Issuance of regulations and guidance may delay loan approval and disbursement or modify/waive certain loan requirements.

For more information on this loan program, please review our COVID-19 Resources page here: <https://www.gill-law.com/covid-19-resources/#>