

Economic Injury Disaster Loans¹ Current as of April 26, 2020

This document is for general informational purposes only and is not legal advice. Readers should consult their attorney, accountant, lender, and payroll provider to make determinations regarding their organization's eligibility and to ensure compliance with all applicable laws and regulations. Because every organization's situation is unique, it is important that readers seek appropriate advice before taking or refraining from taking any action as a result of this document.

The Economic Injury Disaster Loan program ("EIDL") is a Small Business Administration loan program that has been adapted to address the COVID-19 crisis. Though its initial funding was quickly exhausted, Congress recapitalized the program with \$60 Billion on April 23, 2020, \$10 Billion of which is reserved for emergency grants that do not have to be repaid. President Donald Trump signed the bill on April 24, 2020 and funding is expected to be available April 27, 2020.²

This document provides an introduction to the EIDL program by answering the following four questions.

1. What is the EIDL program?
2. What is the Emergency Grant?
3. Who is eligible for an EIDL?
4. How does the EIDL interact with the PPP?

1. What is the EIDL program?

The EIDL is often discussed in tandem with the Paycheck Protection Program ("PPP"). The PPP and EIDL programs differ in meaningful ways. Unlike the PPP, the EIDL is not a forgivable loan program, though EIDL applicants can request an emergency grant of up to \$10,000 that does not have to be repaid.³ The EIDL also has more flexible eligibility and use requirements than the PPP however, in part because the EIDL is not forgivable. EIDL loans are available using an SBA online application, whereas PPP loans are available at financial institutions. Both can be very effective tools that can be used in tandem in interesting ways.

Applicants are eligible for up to \$2,000,000 with a maximum loan term of 30 years.⁴ Applicants do not need collateral for loans up to \$25,000 and the interest rates are incredibly low at 3.75% for businesses and 2.75% for nonprofits.⁵ The loan proceeds can be used for nearly all payroll and operating expenses that could have been met, but for the current crisis. One attractive characteristic of the EIDL, is that payments of principal and interest can be deferred for 12 months.⁶

¹ This document was drafted by Jonathan Murphy, an attorney with Fortif Law Partners, LLC in Birmingham, Alabama.

² See SBA Notice: Additional EIDL Funding Resumes April 27, 2020 (last visited April 26, 2020) <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>.

³ See CARES Act Section 1110(e)(5).

⁴ See SBA Disaster Assistance in Response to the Coronavirus (last visited April 26, 2020) <https://www.sba.gov/disaster-assistance/coronavirus-covid-19#section-header-5>; see also SBA's Economic Injury Disaster Loan Presentation (last visited April 26, 2020) https://www.sba.gov/sites/default/files/resource_files/Coronavirus_Presentation_-_Long_Version.pdf.

⁵ See *id.*

⁶ See 15 U.S.C. §636(b)(3)(G)(ii).

2. What is the Emergency Grant?

After applying for an EIDL, applicants can request an emergency grant that they do not have to repay, even if they are not awarded the loan or if they ultimately decide to reject the loan. The SBA is awarding \$1,000 per employee up to \$10,000 under the emergency grant. The emergency grant was initially intended to be delivered within three days of applying but delivery will likely take at least a week. The CARES Act specifies that emergency grant funds should be used as follows:

- to provide sick leave to employees unable to work due to COVID-19;
- to maintain payroll and retain employees;
- to meet increased costs due to interrupted supply chains;
- to make rent or mortgage payments; and
- to repay obligations that cannot be met due to losses in revenue.⁷

3. Who is eligible for an EIDL?

There are effectively three eligible categories: Small business concerns; businesses subject to the 500 employee or less limitation or SBA size standards; and nonprofits.⁸ In order to qualify for an EIDL, they must be located within a declared disaster area; and have suffered, or be likely to suffer, substantial economic injury as a result of the disaster.⁹

Small business concerns are entities that are:

- organized for profit
- independently owned and operated;
- not be dominant in its field of operation;
- located in the United States;
- operate primarily in the United States or contribute significantly to the United States economy; and satisfy:
 - SBA industry size standards; or
 - SBA “alternative size standard”¹⁰

Business concerns that are not small business concerns, cooperatives, ESOPs, tribal small business concerns, and agricultural enterprises are eligible only if they have 500 or less employees or satisfy the SBA employee-count size standards for their industry.¹¹

⁷ See CARES Act Section 1110(e)(4).

⁸ See CARES Act Section 1110(b).

⁹ See SBA Standard Operating Procedure: Disaster Assistance Program at 45 (May 13, 2011) <https://www.sba.gov/sites/default/files/SOP%2050%2030%207.pdf>.

¹⁰ See 15 USC §632, 636; see *also* 13 C.F.R. §121.105; see *also* Paycheck Protection Program Loans FAQs, at Question 34 (April 24, 2020).

¹¹ See CARES Act Section 1110(b).

Nonprofits, exempt under 501(c),(d), and (e) (excluding those primarily engaged in lobbying and political activities),¹² are eligible for the EIDL regardless of their employee-count.¹³ This distinguishes the EIDL significantly from the PPP.

When counting employees for purposes of SBA loans, an organization must:

- Include the average number of employees for each pay period for the preceding 12 months;
- Count all FTE, PTE, and temporary employees (but not independent contractors); and
- Aggregate employees of affiliates.¹⁴

Unlike the PPP the EIDL does not appear to provide any “affiliation” exemptions beyond those applicable to faith-based organizations affiliated on the basis of shared religious beliefs.¹⁵

4. How does the EIDL interact with the PPP?

Organizations can receive EIDL and PPP loans but may not use the proceeds of one for the same purposes as the other.¹⁶ This is a significant point that must be monitored carefully by organizations that receive both an EIDL and PPP loan. One important point to note is that EIDL loans made between February 15, 2020 and April 3, 2020 can be refinanced into PPP loans that can subsequently be forgiven.¹⁷ Emergency Grants cannot be refinanced into PPP loans, however.¹⁸ If an organization receives both but elects not to refinance its EIDL into a PPP loan, it must be sure to segregate the accounts and keep separate records of expenditures to demonstrate that it is not using the loans for the same purposes. If it fails to keep the EIDL and PPP loan uses separate, it will have to reduce its PPP forgiveness by the overlap.

If an organization is interested in applying for an EIDL, it should consult its local SBDC office, accountant, payroll provider, and attorney to determine if it should apply for an EIDL and Emergency Grant.

¹² See SBA Applying for SBA Disaster Loans (last visited April 26, 2020) https://www.sba.gov/sites/default/files/articles/EIDL_Information_and_Documentation_-_3-30-2020_FINAL_2_pm.pdf; see also SBA Standard Operating Procedure: Disaster Assistance Program at 45 (May 13, 2011) <https://www.sba.gov/sites/default/files/SOP%2050%2030%207.pdf>.

¹³ See *id.* at 45 (May 13, 2011) <https://www.sba.gov/sites/default/files/SOP%2050%2030%207.pdf>; see also CARES Act Section 1110(a), (b).

¹⁴ See 13 CFR §121.106.

¹⁵ See CARES Act Section 1102(a)(2)(36)(Q); see also SBA FAQ Regarding Participation of Faith-based Organizations in the PPP and EIDL Program (last visited April 26, 2020) <https://www.sba.gov/sites/default/files/2020-04/SBA%20Faith-Based%20FAQ%20Final.pdf>.

¹⁶ See *id.*

¹⁷ See CARES Act Section 1102(a)(2)(36)(F)(iv); see also SBA Final Interim Rule at 16 (April 2, 2020) https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf; see also SBA Interim Final Rule (April 14, 2020) <https://home.treasury.gov/system/files/136/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>.

¹⁸ See SBA Final Interim Rule at 16 (April 2, 2020) https://www.sba.gov/sites/default/files/2020-04/PPP--IFRN%20FINAL_0.pdf.