

SBA Part Four: Comparison of the SBA Disaster Loan vs. Paycheck Protection Programs

The recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act made important changes to and expansions of SBA lending available to qualifying small businesses. This article provides a comparison of the SBA's disaster loan program and its new paycheck protection program ("PPP").

DISASTER LOAN PROGRAM	PAYCHECK PROTECTION PROGRAM
WHAT IS IT?	
<p>The existing SBA Disaster Loan program has been expanded as a result of the COVID-19 epidemic. As a rule of thumb it is viewed that all businesses have been affected by COVID-19.</p>	<p>The PPP is a new loan program included in the CARES Act that provides small businesses with eight weeks of cash-flow assistance through 100% SBA guaranteed loans.</p>
WHAT KINDS OF BUSINESSES QUALIFY?	
<ul style="list-style-type: none"> • Qualifying "Small Businesses" under the existing SBA criteria. • The CARES Act expanded the eligible businesses to include: <ul style="list-style-type: none"> - Landlords - Agriculture-related entities but not farmers - Private non-profit businesses, sole proprietors, self-employed individuals - Tribal businesses, cooperatives and ESOPs with fewer than 500 employees during Jan. 31, 2020 to Dec. 31, 2020. 	<ul style="list-style-type: none"> • Qualifying "Small Businesses" under the existing SBA criteria. • The CARES Act expanded the eligible businesses to include: <ul style="list-style-type: none"> - Any business that otherwise fails SBA's revenue tests but has 500 or fewer employees. - Non-profit 501(c)(3), sole proprietors, self-employed individuals - Tribal businesses, - Businesses with a NAICS code beginning with 72 that have 500 employees or less per location (e.g., franchise locations with 500 employees or less)
<p>Business must have been in operation on January 31, 2020. All states were declared eligible no later than March 23, 2020.</p>	<p>Business must have existed prior to February 15, 2020.</p>
ARE THERE CREDIT UNDERWRITING REQUIREMENTS?	
<p>Experian Credit Score.</p>	<p>The sole underwriting requirement is whether the company was (i) a going concern, operational, and (ii) had employees for which it paid salaries, payroll</p>

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	taxes and, or paid independent contractors before February 15, 2020.
ARE THERE AFFILIATION LIMITATIONS?	
<p>The SBA's current affiliation rules apply. All affiliated businesses will be aggregated to determine whether the business is a qualifying small business. Affiliation generally exists where there is overlapping majority ownership or control between two businesses.</p>	<p>The SBA's current affiliation rules apply <i>but are waived for</i>:</p> <ul style="list-style-type: none"> • Businesses with a NAICS code beginning with 72 (i.e., accommodations and food service) that have 500 employees or less. • Businesses found within the SBA's Franchise Directory. • Businesses that receive financial assistance from a licensed Small Business Investment Company.
HOW TO OBTAIN?	
<p>Borrowers apply directly with the SBA using their newly created disaster loan portal. https://www.sba.gov/funding-programs/disaster-assistance</p>	<p>Borrowers apply with any SBA 7(a) certified lender.</p>
WHAT ARE THE PERMITTED USES OF THE LOAN PROCEEDS?	
<p>Loan proceeds may be used for:</p> <ul style="list-style-type: none"> • Fixed debts (including short-term notes and balloon payments that are due within the next 12 months) • Payroll, accounts payable and other bills the borrower would have to pay that but for the disaster would have been paid <p>A borrower cannot pay off another long-term loan with these funds, but may use it to make monthly payments on that debt. Funds cannot be used for expansion of the Business or to refinance debt.</p> <p>Borrowers must maintain proof of how the loan proceeds were used for three years from the date of disbursement.</p>	<p>Loan proceeds may be used for:</p> <ul style="list-style-type: none"> • Payroll Costs (<i>subject to limitations, see below</i>) • Mortgage interest (no principal) • Rent payments • Utilities (electric, gas, water, transportation, telephone and internet) • Interest payments on pre-existing debt (no principal) <p>"Payroll Costs" include:</p> <ul style="list-style-type: none"> • Wages/salaries (up to \$100k/employee on an annualized basis; non-US employees excluded) • Paid leave • Separation/dismissal payments • Health care plan costs

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	<ul style="list-style-type: none"> • Retiree benefits • Payroll taxes <p>“Payroll costs” for an independent contractor or sole proprietor means: the sum of payments of any compensation or income, wages, commission, net earnings from self-employment or similar compensation not exceeding \$100,000 in a single year, as prorated for the period of Feb. 15, 2020 through June 30, 2020.</p>
CAN YOU OBTAIN A LOAN ADVANCE?	
Borrowers can apply for an advance of up to \$10,000 in loan funds. This advance does not need to be repaid.	No loan advances currently available.
An applicant must self-certify that it is an eligible entity prior to receiving such advance. If the applicant is denied a disaster loan, the advance does not have to be repaid.	
WHAT IS THE TIMELINE FOR FUNDING?	
<p>Application Deadline: December 21, 2020.</p> <p>Loan Advance Funding: 3 days from submission of application and certification.</p> <p>Loan Approval: 21-30 days from submitting complete application.</p> <p>Loan Funding: 3-4 days after approval.</p>	<p>Application Deadline: February 15, 2020 through June 30, 2020.</p> <p>Process Application: up to 48 hours.</p> <p>Loan Approval: SBA has yet to set timeline.</p> <p>Funding: SBA has yet to set timeline.</p> <p>Forgiveness Determination: within 60 days of forgiveness application.</p>
WHAT ARE THE LOAN TERMS?	
<p>Loan Amount: Determined by SBA based on credit worthiness of the borrower.</p> <p>Personal Guaranty: If the loan amount is over \$200,000, any person with a 20% or greater interest in the business must provide a personal guarantee.</p>	<p>Loan Amount: Lesser of \$10 million or 2.5x average monthly payroll costs based upon the trailing 12 months Payroll Costs.</p> <p>Personal Guaranty: None required.</p>

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<p>Interest Rate: 3.75% for profit company; 2.75% nonprofit company.</p> <p>Term: 30 years.</p> <p>Deferrals: Principal payments (not interest) will be deferred for 12 months from disbursement date.</p> <p>Collateral: None required; but SBA will require any collateral to be pledged.</p>	<p>Interest Rate: 1%.</p> <p>Term: 2 years.</p> <p>Deferrals: Payments are deferred for 6 months.</p> <p>Collateral: None required.</p>
IS THE LOAN ELIGIBLE FOR SBA FORGIVENESS?	
<p>Loan forgiveness is not currently provided, except any advanced funds up to \$10,000 will be forgiven and it is considered a grant (even if the disaster loan is not approved).</p>	<p>Principal balance used for Certain Purposes (<i>subject to limitations, see below</i>) during an 8-week period commencing with loan origination are eligible for forgiveness so long as 75% of the loan proceeds are used for payroll costs.</p> <p>Any portion of the loan not forgiven by December 31, 2020 will remain outstanding under the loan terms above.</p> <p>“Certain Purposes” are:</p> <ul style="list-style-type: none"> • Payroll Costs (note definition above, including limit on wages/salaries above \$100k on an annualized basis) • Interest payments on mortgages in existence prior to February 15, 2020 (no principal payments) • Rent payments on leases in existence prior to February 15, 2020 • Utility (electric, gas, water, transportation, telephone and internet) payments where service was in place prior to February 15, 2020 <p>Borrower’s must apply with their respective lenders for forgiveness of the loan. Documentation confirming the loan proceeds were used for the permitted uses outlined above will be required.</p>

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ARE THERE LOAN FEES?	
Fees have been waived.	Fees have been waived.
CAN THE FUNDS BE USED TO EXPAND BUSINESS?	
Borrowers cannot expand their business, buy assets, make repairs to real estate or refinance long-term debt with the loan proceeds.	Loan proceeds must be used for the purposes outlined above.
CAN ONE BUSINESS RECEIVE BOTH LOANS?	
Yes, but not to cover the same expense (i.e., can't double dip).	Yes, but not to cover the same expense (i.e., can't double dip).