

CARE ACT Loan Information

WHAT LOANS ARE AVAILABLE UNDER THE CARES ACT?

7(a) Loans – Paycheck Protection Program: The purpose of this \$349 billion loan fund is to help businesses maintain their payroll levels, but the funds can also be used towards rent, utility, or mortgage interest obligations. 7(a) loans are fully guaranteed by the U.S. government through December 31, 2020, and are eligible to be forgiven (i.e., not required to be repaid) subject to restrictions. The maximum loan amount is the lesser of: (x) \$10 million and (y) 2.5x the average total monthly payroll costs incurred in the one-year period before the loan is made (adjusted for seasonal businesses).

Economic Injury Disaster Loans: \$10 billion in funding to expand the SBA's Economic Injury Disaster Loan (EIDL) program for those substantially impacted by Covid-19. EIDL loans can be used generally for working capital, operational costs including rent, utility, or mortgage obligations and payroll to offset the impact of Covid-19 on a business. Applicants may request an advance of up to \$10,000, to be provided within three days of SBA's receipt of an application. Loan amounts are determined by the SBA up to a general cap \$2 million. Applicants are not required to repay advance payments if they are later denied an EIDL loan. EIDL loans are not eligible for forgiveness.

WHO IS ELIGIBLE TO APPLY FOR LOANS UNDER THE CARES ACT?

7(a) Loans / Paycheck Protection Program: Single-location restaurants that employed 500 or fewer individuals (including full-time, part-time, or on other bases) and were operational on February 15, 2020 and paying payroll taxes are eligible to apply.

For restaurants that **have more than one location**, they are eligible if they employ 500 or fewer individuals **per physical location and** are assigned to [NAICS](#) Sector 72 (accommodation/food services). This includes eligible franchises and groups.

SBA is also waiving its existing rules for affiliation for franchises and groups and will consider each location a separate business for (a) franchises that are approved on the [SBA's Franchise Directory](#) or (b) those receiving funding through the Small Business Investment Company Program.

EIDLs Restaurants that employ 500 or fewer individuals that have suffered "substantial economic injury" from COVID-19 are eligible to apply. There is no waiver of affiliation rules for franchises or groups for EIDLs.

Note: If a business receives a 7(a) loan for employee salaries, payroll support, mortgage payments, and/or other debt obligations, it will not be able to receive an EIDL for the same purpose.

HOW CAN I SPEND ANY LOAN AMOUNTS I RECEIVE?

7(a) loan funds may be used for:

- Payroll costs (including payment of cash tip or equivalent)
- Continuation of health care benefits (including paid sick or medical leave, or insurance premiums)
- Employee salaries or commission (for those making less than \$100K as prorated for the covered period of February 15, 2020, to June 30, 2020, including anticipated bonuses)
 - Current advice is to exclude those making over \$100K
- Mortgage interest obligations
- Rent or utility payments
- Interest on other outstanding debt

Failure to use the loan funds for a permitted purpose may result in forfeiture of the right to obtain any future loan forgiveness and other penalties.

EIDL LOAN FUNDS MAY BE USED TO PAY FOR:

- Working capital necessary to carry the business concern until resumption of normal operations, including rent, mortgage obligations, etc.
- Expenditures necessary to alleviate the specific economic injury
- Payroll & sick leave to employees

THE LOAN CANNOT BE USED FOR:

- Borrowers can't sell, lease, license or transfer collateral without prior approval from the SBA.
- Collateral also can't be used primarily for personal, family or household purposes.
- Business owners also need SBA approval to reorganize, merge, consolidate or somehow change ownership or business structure.
- EIDL funds can also only be used as "working capital" related to economic injury after Jan. 31.
- They can't be used as capital for physical improvements.
- Payment of any dividends or bonuses
- Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services for the benefit of the applicant.
- Repayment of stockholder/principal loans, except when the funds were injected on an interim basis as a result of the disaster and non-repayment would cause undue hardship to the stockholder/principal.
- Expansion of facilities or acquisition of fixed assets.
- Refinancing long term debt.
- Paying down (including regular installment payments) or paying off loans provided or owned by another Federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act. Federal Deposit Insurance Corporation (FDIC) is not considered a federal agency for this purpose.
- Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations. (Note: There is an entire section that goes into more detail on paying federal debts. If you want to use EIDL proceeds that way, refer to page 75 of the SOP.)
- Pay any penalty resulting from noncompliance with a law, regulation, or order of a Federal, state, regional, or local agency.
- Contractor malfeasance; and Relocation

A few of the EIDL rules are in the grey area and we highly recommend our members to read the loan documents signed and consult with your accountants/attorney if they have any specific questions.

WILL MY LOAN BE ELIGIBLE TO BE FORGIVEN?

7(a) loan borrowers may be eligible for loan forgiveness (i.e., not required to be repaid) in an amount equal to the amount incurred / payments made during an eight-week period following the loan date for:

- (1) Payroll costs for individuals making less than \$100K as prorated for the covered period of February 15, 2020, to June 30, 2020, including anticipated bonuses (current advice is to exclude those making more than \$100K),
- (2) Interest payments on any mortgage incurred prior to February 15, 2020;
- (3) Payment of rent on any lease in force prior to February 15, 2020; and
- (4) Payment on any utility for which service began before February 15, 2020.

However, the amount forgiven would be reduced in proportion to any reduction in employees retained or reduction in employee pay. Adjustments to this formula are available for borrowers with seasonal employees.

If a borrower re-hires employees who were terminated earlier and/or the borrower eliminates a reduction in salaries it has made by June 30, 2020, it will not be penalized for previously reducing payroll or salaries/wages.

EIDL loans are not eligible for forgiveness at this time; however, businesses that have already applied for or received EIDLs due to economic injury due to COVID-19 can look to refinance their EIDL loans under the 7(a)-loan program to benefit from its loan forgiveness provisions.

WHAT UNEMPLOYMENT BENEFITS DOES THE CARES ACT OFFER FOR ANY EMPLOYEES I HAD TO LET GO?

Existing recipients

Nearly all individuals receiving traditional unemployment benefits will receive an increase of \$600 per week through July 31, 2020.

PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM

Provides assistance to individuals who have exhausted their unemployment benefits, are not traditionally eligible for unemployment, and are not eligible for the Pandemic Emergency Unemployment Compensation Program.

- Nearly any individual whose employment is adversely impacted by COVID-19 (other than those able to telework or receive paid leave) would be eligible for up to 39 weeks of benefits.
- Covers weeks of unemployment directly attributable to COVID, from January 27, 2020 to December 31, 2020.

Pandemic Emergency Unemployment Compensation Program

Would provide thirteen weeks of emergency UI to individuals who have exhausted all rights to regular UI benefits for a benefit year or have no rights to regular compensation through July 31, 2020. Individuals would have to be able, available, and actively seeking work in order to be eligible.

WHAT OTHER RESOURCES CAN I READ TO LEARN MORE?

Here are some further outside resources which provide further guidance and analysis on the CARES Act:

- [Coronavirus \(COVID-19\): Small Business Guidance & Loan Resources \(U.S. Small Business Administration\)](#)
- [FAQs: Small Business Loans Under the CARES Act \(Latham & Watkins LLP\)](#)
- [Coronavirus Legislative Update: The CARES Act Becomes Law \(Arnold & Porter LLP\)](#)
- [SBA Loans Under the CARES Act \(Foley & Lardner LLP\)](#)

Disclaimer: This page is for informational purposes only and does not constitute legal advice, please visit the external resources noted herein for more information on the CARES Act.