



# What You Need to Know About Newly-Available Business Loans

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# Economic Injury Disaster Loans

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- Under the Coronavirus Preparedness and Response Supplemental Appropriations Act, which was enacted on March 6, 2020, businesses injured by the coronavirus pandemic may be eligible for Economic Injury Disaster Loans (“EIDL”) funded by the Small Business Administration (“SBA”).
- EIDL also known as working capital loans.
- Apply for EIDLs directly on the SBA website.
- Under the CARES Act, EIDLs are now available in all states.

# EIDL: Eligibility

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- Any “Small Business” and most non-profit organizations, except those excluded types of business to be discussed, in all 50 states can apply for an EIDL.
- Types of businesses include (but not limited to):
  - Manufacturers, wholesalers, restaurants, hotels, recreational facilities, owners of rental property, sports vendors, retailers, souvenir shops, travel agencies, charter boats.
- Eligibility for EIDLs are based on the size (must be a small business), type of business and its financial resources.

# EIDL: Relief Offered

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- EIDLs provide small businesses and private, non-profit organizations with low interest rate loans of up to \$2 million.
- These loans may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster's impact.
- In the 'description of your business' section of the application, put your desired loan amount. The SBA may use that number in its consideration!
- The interest rate is 3.75% for small businesses without credit available elsewhere; however businesses with credit available elsewhere are not eligible.
- The interest rate is 2.75% for non-profit organizations, with the same terms and restrictions.
- Loan term can be up to 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.
- The SBA look as far back as January 31, 2020 for disruption to the business.

# EIDL: Considerations

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- The SBA will determine the amount of the loan based on the financial information provided for in the application.
- Typically, the SBA will consider the credit score of the Company, however, due to the unusual circumstances, a company's credit will not be a major determinative factor in the SBA's process.
- SBA must determine that the business can repay the EIDL.
- The business must be physically located in a declared county (which is now everywhere) and suffered working capital losses due to the declared disaster, and not because of a downturn in the economy or other reasons.

# EIDL: Collateral

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- EIDLs over \$25,000 require collateral.
- SBA will opt to take business assets first, but where necessary, will also take personal assets of the business owners. SBA takes real estate as collateral when it is available, which may include personal home property.
- SBA will not decline a loan for lack of collateral, but requires borrowers to pledge what is available, such as personal assets.

# EIDL: Other Features

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- No personal guarantees are required if the loan amount is \$200,000 or less.
- Businesses must have been in operation on January 31, 2020.
- CARES Act removed the condition that the business be unable to find credit elsewhere.
- EIDLs can be granted based on credit scores (tax returns will no longer be required).

# EIDL: Emergency Advancements

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- Emergency advances of up to \$10,000 are available to small businesses and private nonprofits harmed by COVID-19 within three days after applying for an EIDL. To access the advance, a business or nonprofit must first apply for an EIDL, and then request the advance.
- The advance does not need to be repaid, and may be used to keep employees on payroll, to pay for sick leave, to meet increased production costs due to supply chain disruptions, or to pay business obligations, including debts, rent and mortgage payments.

# Coronavirus Aid Relief and Economic Security Act (“CARES Act”)

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- Enacted on March 27, 2020.
- Provides significant relief to businesses affected by the COVID-19 crisis.
- The CARES Act created the “Paycheck Protection Program” loan program, provides tax relief to affected businesses, and provides for additional unemployment benefits for individuals who are affected by the pandemic.
- Additional Treasury Regulations were released March 31, 2020.

# CARES ACT: PPP LOANS

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- PPP loans will be available to businesses that employ up to 500 employees (although there are some exceptions under which some businesses that employ more than 500 employees will be eligible).
- The PPP loans will be made by private lenders under the auspices of the SBA.
- April 3: Small Businesses and Sole Proprietorship; April 10: Independent Contractors and Self Employed Individuals
- Unlike other SBA loans, PPP loans may also be made to nonprofit organizations, veterans' organization and Tribal businesses.
- Sole proprietors, independent contractors and eligible self-employed individuals may also receive PPP loans.

# PPP Loans: Relief Provided

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- Loans under the PPP are available to eligible businesses to pay operational costs such as:
  - Payroll for employees who make less than \$100,000 per year;
  - Rent
  - Mortgage interest payments;
  - Healthcare benefits; and
  - Utilities.
- Actual loan amount is tied to average monthly payroll costs. 2.5 times the small business' total monthly payroll costs for 2019 in addition to any outstanding SBA Disaster Loan option made between 1/31/2020 and the date of refinance. Documentation of tax filings to support the calculated loan amount to be provided. We believe this may include payroll tax returns, income tax returns, W-2, 1099s, etc.
- The maximum loan amount is \$10 million.

# PPP Loans: Possible Forgiveness

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- PPP loans may be forgiven to the extent businesses retain their employees who make less than \$100,000 annually.
- The loan forgiveness amount is equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payment on any mortgage existing prior to February 15, 2020, 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. **75% OF THE LOAN MUST BE SPENT ON PAYROLL.**
- The amount of calculated loan forgiveness will be reduced if there is a reduction in the number of employees, or a reduction of greater than 25% in wages paid to employees, during the 8-week covered period when compared to other periods in either 2019 or 2020. However, if not later than June 30, 2020, a borrower rehires employees that were terminated between February 15, 2020 and April 26, 2020 and reverses reductions in salary and wages between February 15, 2020 and April 26, 2020, these terminations and reductions will not be factored into determining a reduction in the forgiveness amount.

# CARES Act: Effect on Non-Disaster SBA Loans

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- In addition, the CARES Act provides relief to small businesses that had obtained non-disaster SBA loans (e.g., 7(a), 504, and microloans).
- Under the CARES Act, the SBA will make all loan payments on these SBA loans, including principal, interest and fees, for six months.
- This relief will also be available to new borrowers who take out loans within six months of the enactment of the CARES Act.

## Other Key Features

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- If you have any outstanding loans, check the terms of your loan documents to make sure that obtaining any loan is not prohibited under those documents.
- Portions of loans not forgiven are payable over a maximum of 10 years at a maximum rate of interest of 4%.
- NO Prepayment penalties; No collateral required; no personal guaranty requirements;
- There are no borrower or lender fees
- Canceled loan amount shall be excluded from gross income

# CARES Act: Payroll Tax Relief

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- Tax Credit available to employers, including nonprofits, who carried on a trade or business during 2020, but whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings.
- The credit is also provided to employers who have experienced a greater than 50% reduction in quarterly receipts, measured on a year-over-year basis.
- Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship are eligible for the credit.
- For employers with one hundred or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed.
- Employers with greater than 100 employees are eligible to receive the credit if they continue to pay employees that are not providing services.

# Payroll Tax Credit

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- Eligible employers may receive a refundable tax credit against their share of payroll taxes for applicable employment taxes.
- For each calendar quarter during the applicable period, the employer can receive a credit in an amount equal to 50% of qualified wages (inclusive of health insurance) up to \$10,000 per employee per quarter ending on December 31, 2020.
- The credit is treated as a refund if it exceeds the employer's applicable employment taxes for a given quarter.

# Payroll Tax Credit

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- Employers may be eligible for this tax credit in two circumstances:
  - If business operations were partially or fully suspended due to a mandatory government shut-down related to COVID-19; or
  - If the business remained open during any quarter in 2020 but gross receipts for that quarter were less than 50% of what they were for the same quarter in 2019. The business will then be entitled to a credit for each quarter, until the business has a quarter where gross receipts exceed 80% of what they were for the same quarter in the previous year.
  - For purposes of this credit, qualified wages do not include wages paid under the Families First Coronavirus Response Act for sick leave or family medical leave, which are already subject to certain tax credits.

# Payroll Tax Deferral

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- Payment due date of certain payroll taxes and 50% of self-employment taxes for the period between the enactment of the CARES Act and December 31, 2020 are deferred.
- Half of those taxes will be due on December 31, 2021, and the other half will be due on December 31, 2022.
- Payroll taxes that can be deferred include the employer portion of FICA (Social Security) taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

# Borrower Beware!

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- If a business obtains a PPP loan (even one that is not ultimately forgiven), then that business will be unable to take advantage of the payroll tax credit.
- If the business obtains a PPP loan that is forgiven, then that business cannot take advantage of the payroll tax deferment.

# Unemployment Insurance

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- The CARES Act expands eligibility for unemployment insurance for workers who are displaced due to COVID-19 in a number of ways.
- Pandemic Unemployment Assistance program provides up to 39 weeks of combined federal and state unemployment assistance between January 27, 2020, and December 31, 2020, to individuals, including independent contractors, who are otherwise not eligible for, or have exhausted, other state or federal benefits.
- Federal Pandemic Unemployment Compensation provides an additional weekly \$600 federally funded payment for up to four months to individuals already collecting state unemployment insurance payments.
- CARES Act provides federal funding to states to cover the cost of the first week of unemployment benefits for states that choose to waive the typical one-week waiting period.
- Federal funds are available to states to fully fund work share programs, under which employees receive partial unemployment benefits if work hours are reduced but not eliminated by their employer.

# Certain CARES Act Provisions Concerning Individuals

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- Provides a \$1,200 (\$2,400 in the case of a joint return) payment to eligible individuals, with an additional \$500 tax credit per qualifying child. This payment is subject to a phase-out such that taxpayers with adjusted gross income in excess of \$99,000 (\$198,000 for married taxpayers filing a joint return) would not receive it.
- Increases the deductibility of certain charitable contributions made in cash during 2020 by taxpayers who itemize deductions, by suspending the 50% of adjusted gross income limitation.
- For distributions to individuals directly affected by coronavirus, waives the 10% withdrawal penalty tax on early distributions from eligible retirement plans (up to \$100,000), and permits these distributions to be recontributed to retirement plans over a three-year period.
- Allows certain defined contribution plans and IRAs to suspend required minimum distributions in 2020 with respect to certain eligible participants. This allows participants not to be forced to receive distributions based on current depressed asset valuations.

# Business Interruption Insurance

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- It is still unclear if, and how, businesses will be compensated for the loss of income during the period of restoration under business interruption (“BI”) insurance policies
- Both state and federal government officials would like to see insurance companies treat COVID-19 as an insurable event.
- Insurers disagree with the notion that BI insurance was meant to cover events like the Covid-19 pandemic
- Members of the House of Representatives have sent the four largest insurance trade organizations a letter to encourage insurers to provide business interruption coverage under existing commercial property policies for companies’ losses due to closures tied Covid-19

## March 16, 2020: New Jersey Introduces Bill A3844

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- New Jersey legislature introduced bill A3844, which would force insurance companies to pay COVID-19 related business interruption (BI) insurance claims even when “viruses” are specifically excluded from BI policies.
- The bill would apply to BI policies held by New Jersey businesses with fewer than 100 full-time employees, provided that the policies were issued and effective as of March 9, when Governor Phil Murphy declared a state of emergency.
- Bill is currently being held from a floor vote in New Jersey’s General Assembly due to ongoing negotiations with representatives of the insurance industry.

# New York Bill A-10226

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- On March 27th, 2020, the New York State Assembly introduced bill A-10226 “requiring certain perils be covered under business interruption insurance during the coronavirus disease 2019 (COVID-19) pandemic.” Similar to the New Jersey bill, the New York bill, would require every property policy providing BI and loss of use coverage to include among the policy’s covered perils coverage for BI during the COVID-19 declared state emergency.
- Coverage required by the bill include any loss of business or BI for the duration of the declared state of emergency, subject to the applicable policy limits, and would only apply to employers a maximum of 100 eligible employees (i.e. full time employees who work 25 or more hours per week).
- The New York bill does not expressly mention any “Virus” exclusion or a lack of physical damage to property.

# Be Prepared: Documenting Losses and Expenses

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- Whether recovery is provided via insurance or by state or federal law, businesses should be prepared and set up internal accounting systems to track financial documents that illustrate losses and expenses associated with COVID-19, such as:
  - Monthly profit and loss statements, and bank statements
  - Invoices and purchase orders
  - Historical and current annual financial statements
  - Budgets, forecasts, or projections done prior to and after the event
  - General ledger accounts established to account for any expenses related to the loss such as additional payroll, shipping, temporary facilities, etc.
  - Payroll records
  - Federal and state annual tax returns
  - Documentation to support extra expenses including invoices, receipts, time sheets, advertising costs, etc.

# New York City Assistance

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- NYC EMPLOYEE RETENTION GRANT PROGRAM
- NYC SMALL BUSINESS CONTINUITY LOAN FUND
- NYC COVID-19 RESPONSE AND IMPACT FUND

# NYC EMPLOYEE RETENTION GRANT PROGRAM

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- Businesses, including non-profits, within the five boroughs of New York City, that have been in business at least 6 months, employ between 1 and 4 employees across all locations, have no outstanding tax liens or legal judgments and can demonstrate at least a 25% decrease in revenue as a result of the COVID-19 outbreak.
- A grant covering up to 40% of payroll for two months, up to a maximum of \$27,000.
- The City will compare average revenue for two months in 2020 after the COVID-19 impact to both (i) average revenue for the same two-month period in 2019; and (ii) average monthly revenue based on total 2019 revenue. If either calculation shows at least a 25% decrease in revenue, the business may be eligible for this grant.
- Documentation: Financial documents can include point-of-sales reports, bank statements, quarterly sales tax filings, 2019 tax returns, or CPA-certified profit & loss statements. To determine the grant amount, the most recent two months of payroll will need to be uploaded ad a signed Participation Affidavit verifying eligibility, and bank account information.

# NYC COVID-19 RESPONSE AND IMPACT FUND

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- New York City based non-profits that are trying to meet the new and urgent needs of the city. Priority will be given to non-profits addressing essential healthcare and food insecurity as well as arts and culture. The organization must be a 501(c)(3) non-profit with annual non-governmental income of \$20 million or less, that receives New York City or New York State government funding, and equitably delivers effective programs and services for New York City residents. The loans are geared toward non-profits with an annual revenue of at least \$750,000.
- Interest-free loans that will range in amounts from \$100,000 up to \$3 million. The loans will be unsecured and will have terms of either 12, 24, or 36 months. Financial and cash flow planning coaching will also be available to the non-profits that receive these loans. There has also been an indication that there will be grants available for non-profits but there have not been any further details provided at this time.

# NYC SMALL BUSINESS CONTINUITY LOAN FUND

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- Businesses within the five boroughs of New York City, that employ between 1 and 99 employees across all locations, have no outstanding tax liens or legal judgments, can demonstrate at least a 25% decrease in revenue as a result of the COVID-19 outbreak, and can demonstrate the ability to repay the loan.
- A zero interest loan up to \$75,000 to help retain employees and ensure business continuity.
- There are no details provided as to how the revenue loss calculation will be made.
- Financial documents can include point-of-sales reports, bank statements, quarterly sales tax filings, 2019 tax returns, or CPA-certified profit & loss statements.

# Thank You!

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