



Saving Our Small Businesses: CARES Act Expands Economic Injury Disaster Loan Program to Provide Additional Financial Relief to Small Businesses

By: Michael R. Wilson, Marisa Murillo, and Natalie M. Jersak

On Wednesday, March 25, 2020, the Senate passed the Coronavirus Aid, Relief and Economic Security Act or the "CARES Act", which is expected to be approved by the House of Representatives as soon as Friday, March 27th. As reported in our QuickStudy [Saving Our Small Businesses: Congress Reaches Agreement on New Forgivable Paycheck Protection Loans to Small Businesses](#), the CARES Act provides substantial relief to small businesses with the establishment of the Paycheck Protection Program, appropriating \$349 billion worth of 7(a) loans to be approved and issued by lenders authorized by the Small Business Administration ("SBA") and the Treasury.

The Paycheck Protection Program is not the only option available to small businesses seeking financial relief from the effects of COVID-19. The Economic Injury Disaster Loan ("EIDLs") program operated by the SBA is an alternative program that should also be considered when small businesses are assessing their borrowing options. We first reported on the availability of EIDLs for businesses impacted by COVID-19 in our QuickStudy [Saving Our Small Businesses: SBA Disaster Assistance Loans for Small Businesses Impacted by COVID-19](#). This QuickStudy is intended to supplement this initial report with the expansions made to the EIDL program under the CARES Act. Interested parties should refer to our previous QuickStudy for a more general overview of the EIDL program and the standard loan terms associated therewith.

During the "Covered Period" beginning January 31, 2020 through December 31, 2020, in addition to small business concerns, private nonprofit organizations, and small agricultural cooperatives previously eligible to receive EIDLs under the program, any (1) business, (2) cooperative, (3) ESOP or (4) tribal small business concern with 500 employees or less are able to obtain EIDLs under Section 7(b)(2) of the Small Business Act (the "Act").¹ The total amount appropriated to the expanded EIDL program under the CARES Act is \$10 billion.²

EIDLs issued during the Covered Period for COVID-19-related purposes are afforded certain special treatments to make aid more widely available and easier to administer, similar to those made under the Paycheck Protection Program. Namely, the CARES Act waives the requirements (1) that an applicant has been in business for at least one year prior to the disaster³, (2) that the applicant is unable to obtain credit elsewhere, and (3) that, for advances and loans of \$200,000 or less, personal guarantees must be made.⁴

Additionally, the SBA has the authority to approve an application based solely on the credit score of an applicant **without** submission of the applicant's tax return, or through "alternative appropriate methods to determine an applicant's ability to pay."⁵

1 *Id.* at § 1110(b).

2 *Id.* at §1110(e).

3 This waiver does not apply to businesses not in operation on January 31, 2020. See *id.* at § 1110(c).

4 *Id.*

5 *Id.* at § 1110(d).



Applicants under particularly dire and immediate financial hardship can also take advantage of the “emergency grants” authorized pursuant to the CARES Act.⁶ Eligible entities can request an advance on their EIDL in an amount not greater than \$10,000 to be received by the applicant within three (3) days upon the SBA’s receipt of the application/request.⁷ Applicants wishing to obtain an advance will need to submit a self-certification that it is an entity eligible to receive the EIDL under penalty of perjury.⁸ Advances provided may be used for any allowable purpose under Section 7(b)(2) of the Act, including providing paid sick leave related to COVID-19, maintaining payroll, meeting increased costs to obtain materials due to supply chain interruptions, making mortgage and rent payments, and repaying outstanding obligations.⁹

Applicants will not be required to repay any portion of the \$10,000 emergency grant made under the CARES Act EIDL program, even if the applicant is **not** approved for an EIDL with the SBA.

If the applicant receives an advance under the EIDL program and is subsequently transferred into, or approved for, a loan under the Paycheck Protection Program, the advance amount will be reduced from the forgiveness amount available to the borrower under the **Paycheck Protection Program** for payroll costs made pursuant to Section 7(a) of the Act.¹⁰

Your regular Locke Lord contact and the authors of this article would also be happy to help you navigate these new SBA programs. Small businesses seeking an EIDL can apply online at the SBA website [here](#). In-person applications at a disaster center or by mail are also accepted, although we do not know if the states will have sufficient resources to attend to in-person requests.¹¹

Questions related to the program can also be directed to the SBA disaster assistance customer service center at 1-800-659 (TTY: 1-800-877-8339) or disastercustomerservice@sba.gov.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

Michael R. Wilson | 312-201-2522 | michael.wilson@lockelord.com

Marisa Murillo | 312-443-0294 | marisa.murillo@lockelord.com

Natalie M. Jersak | 617-239-0336 | natalie.jersak@lockelord.com

Please visit our **COVID-19 Resource Center** often for up-to-date information to help you stay informed of the legal issues related to COVID-19.

⁶ *Id.* at § 1110(e).

⁷ *See id.*

⁸ *Id.*

⁹ *See id.*

¹⁰ *See id.*

¹¹ *Three Step Process: Disaster Loans*, U.S. SMALL BUSINESS ADMINISTRATION, https://disasterloan.sba.gov/ela/Documents/Three_Step_Process_SBA_Disaster_Loans.pdf (last visited: March 26, 2020).



Practical Wisdom, Trusted Advice.

www.lockelord.com

Atlanta | Austin | Boston | Brussels | Chicago | Cincinnati | Dallas | Hartford | Hong Kong | Houston | London | Los Angeles
Miami | New Orleans | New York | Princeton | Providence | San Francisco | Stamford | Washington DC | West Palm Beach