

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

*The original article has been updated to reflect changes as of April 27, 2020.

On April 16, 2020, both SBA loan programs exhausted the funds appropriated to them. A supplemental Paycheck Protection Program and Health Care Enhancement Act increased funding for both SBA loan programs and was signed into law on April 24, 2020. The SBA has resumed accepting paycheck protection program applications from participating lenders on Monday, April 27, 2020, at 10:30am EDT.

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 has provided and will provide 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 include¹: <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) or 501(c)(19) (veteran) entity, sole proprietors, self-employed individuals - Tribal businesses - Agricultural enterprises (farmers) with less than 500 employees - A small business concern if it meets both tests in SBA's "alternative size standard"

¹ SBA has provided additional guidance that hedge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan.

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	<p>as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 MM; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full years before the date of the application is not more than \$5 MM.</p> <ul style="list-style-type: none"> - 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). - Legal gambling entities, the size and affiliation rules still apply. - Hospitals that receive less than 50% of its funding from state or local government sources, excepting Medicaid, so long as other eligibility criteria is met.
<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, and had employees for whom it paid salaries and payroll taxes or paid independent contractors.</p> <p>Borrowers must certify that current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.²</p> <p>Any borrower that applied for a PPP loan prior to April 24, 2020, and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.³ See SBA Part Nine for information on the safe harbor PPP loan certification repayment.</p>

² Additional guidance has added heightened scrutiny to the certification. This certification must be made in good faith, taking into account applicant's current business activity and ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.

³ The Administrator, in consultation with the Secretary, determined that this safe harbor is necessary and appropriate to ensure that borrowers promptly repay PPP loan funds that the borrower obtained based on a misunderstanding or misapplication of the required certification standard.

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ARE THERE CREDIT UNDERWRITING REQUIREMENTS?	
Experian Credit Score.	The sole underwriting requirement is whether the company was (i) a going concern, operational, and (ii) had employees for which it paid salaries, payroll taxes and, or paid independent contractors before February 15, 2020.
ARE THERE AFFILIATION LIMITATIONS?	
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.	The SBA's current affiliation rules apply <i>but are waived for</i> : <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. • Most faith based entities and organizations, so long as the affiliation is based upon a faith based doctrine.
HOW TO OBTAIN?	
Borrowers apply directly with the SBA using their newly created disaster loan portal. https://www.sba.gov/funding-programs/disaster-assistance The funding for this program has been exhausted and applications are no longer being taken at this time.	Borrowers apply with any SBA 7(a) certified lender.
WHAT ARE THE PERMITTED USES OF THE LOAN PROCEEDS?	
Loan proceeds may be used for: <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 	Loan proceeds may be used for: <ul style="list-style-type: none"> • 75% of Loan Proceeds must be used for Payroll Costs (<i>subject to limitations, see below</i>) • 25% of Loan Proceeds may be used for: <ul style="list-style-type: none"> ○ Mortgage interest (no principal) ○ Rent payments

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<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>	<ul style="list-style-type: none"> ○ Utilities (electric, gas, water, transportation, telephone and internet) ○ Interest payments on pre-existing debt (no principal) <p>These funds should not be used to “enrich” the business’s circumstances.</p> <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 ● Retiree benefits ● State and local payroll taxes (employer Federal taxes are not included) ● Bonuses paid in the normal course of business (<i>i.e. should not be used to meet the 75% use of proceeds requirement</i>) <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> <p>*Note that loan forgiveness rules are still in progress. See SBA Part Six.</p>
CAN YOU OBTAIN A LOAN ADVANCE?	
<p>Borrowers can apply for an advance in an amount equal to \$1,000 per employee and up to \$10,000 in loan funds. This advance does not need to be repaid.</p>	<p>No loan advances currently available.</p>
<p>An applicant must self-certify that it is an eligible entity prior to receiving such advance. If the</p>	

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<p>applicant is denied a disaster loan, the advance does not have to be repaid.</p>	
WHAT IS THE TIMELINE FOR FUNDING?	
<p>Application Deadline: December 21, 2020. Loan Advance Funding: 3 days from submission of application and certification. – Note there are delays in such funding. Loan Approval: 21-30 days from submitting complete application. Loan Funding: 3-4 days after approval.</p>	<p>Application Deadline: February 15, 2020 through June 30, 2020. Process Application: up to 48 hours. Loan Approval: SBA has yet to set timeline. Funding: SBA has yet to set timeline. 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>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>Loan Amount: Lesser of \$10 million or 2.5x average monthly payroll costs based upon the trailing 12 month period Payroll Costs ending prior to the date of the loan.⁴</p> <p>Personal Guaranty: None required.</p> <p>Interest Rate: 1%.</p> <p>Term: 2 years.</p> <p>Deferrals: All principal and interest payments are deferred for 6 months.</p> <p>Collateral: None required.</p>

⁴ For seasonal businesses, the period will be the average of any consecutive 12-week period between May 1, 2019 through September 15, 2019, in lieu of the 12-month period.

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IS THE LOAN ELIGIBLE FOR SBA FORGIVENESS?	
<p>Loan forgiveness is not currently provided, except any advanced funds in an amount equal to \$1,000 per employee and 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 (56 days) commencing with the date borrower receives its first disbursement of loan proceeds are eligible for forgiveness so long as 75% of the loan proceeds are used for payroll costs.</p> <p>*Interest that accrues on the forgiven portion of the loan proceeds within the 6-month deferral loan payment period is eligible for forgiveness.</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 costs incurred and payments made during the 8-week period on the following expenses, as proportioned below:</p> <ul style="list-style-type: none"> • 75% or more of the loan proceeds must be used on Payroll Costs (note definition above, including limit on wages/salaries above \$100k on an annualized basis) • The remaining 25% or less of loan proceeds must be used on: <ul style="list-style-type: none"> ○ Interest payments on mortgages in existence prior to February 15, 2020 (no principal payments) ○ Interest payment on auto loan for a vehicle used to perform the company’s business prior to February 15, 2020 (no principal payments) ○ Rent payments on leases in existence prior to February 15, 2020 ○ Utility (electric, gas, water, gas for business vehicle, transportation, telephone and internet) payments where service was in place prior to February 15, 2020

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	<ul style="list-style-type: none"> o Interest on preexisting debt (not principal) (this is not a forgivable use of loan proceeds) <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>
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). If the Disaster loan proceeds are used for payroll costs, it will need to be refinanced by the PPP.