

**U.S. SMALL BUSINESS ASSOCIATION RELIEF
Summary of EIDL Loan Program and Payroll Protection Program^{1,2}**

	Economic Injury Disaster Loan (EIDL) Program	Payroll Protection Program
Originating Statute	Section 7(b)(2) of the Small Business Act (as modified by Section 1110 of the CARES Act)	Subsection (36) of Section 7(a) of the Small Business Act (the “SBA”) entitled the “Payroll Protection Program” (added by Section 1102 of the CARES Act)
Eligibility	<p>Borrower must be a “small business concern”³ or an “eligible entity”, which includes a business with no more than 500 employees⁴.</p> <p>It appears that the broad “affiliation” rules traditionally used for SBA loans will apply to the 500-employee test, likely rendering most portfolio companies of a private equity sponsor ineligible (assuming the private equity sponsor has multiple investments within the same industry). (Section 1110(a) of CARES Act)</p>	<p>Borrower must be a “small business concern” or a business with no more than 500 employees (or a greater number of employees as is used in the “small business concern” test otherwise be applicable to the borrower).</p> <p>It appears that the broad “affiliation” rules traditionally used for SBA loans will apply to the 500-employee test, likely rendering most portfolio companies of a private equity sponsor ineligible (assuming the private equity sponsor has multiple investments within the same industry).</p> <p>However, as applied to accommodation and food services (NAICS code 72⁵), (a) the affiliation rules are explicitly waived and (b) the 500-employee limitation applies on a per physical location basis. The affiliation rules are also waived for certain franchises. (Section 36(D) of SBA)</p>
Lender	Borrowers should apply directly with the U.S. Small Business Administration (the “Administrator”) through disasterloan.sba.gov/ELA	Traditional SBA lenders plus other FDIC-insured lenders and credit unions approved by the Treasury Secretary (Section 1109 of CARES Act)
Timing	Must be originated by Dec. 31, 2020	Must be originated by June 30, 2020
Use of Proceeds	Based on permitted uses under traditional disaster loans (including to pay fixed debts, payroll, accounts payable and other obligations that can’t be paid because of the disaster’s impact)	<p>Includes (a) “payroll costs”⁶, (b) costs related to the continuation of group benefits, (c) mortgage interest payments, (d) rent, (e) utilities and (f) interest on any other debt obligations incurred prior to Feb. 15, 2020. (Section 32(F) of SBA)</p> <p>EIDL loans can be refinanced under this program. (Section 36(F) of SBA)</p>

¹ Unless otherwise noted, section references are to the CARES Act, based on the version of the bill made available the evening of March 25, 2020. We will update this summary based on the final CARES Act and related regulations as they become available. The information provided herein is intended to be a summary only and reference should be made to the language of the actual statutes and regulations.

² In addition to the EIDL Loan Program and Payroll Protection Program, there may be other loans available through the U.S. Small Business Administration, including SBA Express Loans which were increased from \$350,000 to \$1 million under Section 1102(c) of CARES Act.

³ The “small business concern” test is based on industry-specific maximum annual revenue and/or employees. The test applies both to the individual company and to its affiliates (using a very broad affiliate test). A complete discussion of the “small business concern” test and affiliation rules can be found here: <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=7780ee089107f59ef3f78b938e2282b7&r=PART&n=13y1.0.1.1.17>

⁴ For purposes of SBA loans, all individuals employed on a full-time, part-time, or other basis counted as employees.

⁵ A complete list of industries classified under NAICS code 72 can be found here: <https://www.naics.com/six-digit-naics/?code=72>

⁶ Payroll costs include: (a) employee compensation, including (i) salary, wage, (ii) tips, (iii) vacation, parental, family medical or sick leave, (iv) allowance for dismissal or separation, (v) payments for the maintenance of health care benefits (including insurance premiums), (vi) payment of retirement benefits, and (vii) payroll taxes, and (b) payments of a sole proprietor or independent contractor, in an amount not more than \$100,000 per year (as prorated for the covered period); specifically excludes (w) payments to an individual employee exceeding \$100,000 (as prorated for the covered period), (x) taxes imposed or withheld under chapters 21, 22 or 24 of the Code, (y) compensation to employees whose principal residence is outside of the US and (z) qualified sick and family leave for which a credit is allowed under the Families First Coronavirus Response Act.

BARACK FERRAZZANO

Barack Ferrazzano Kirschbaum & Nagelberg LLP

As of March 26, 2020

	Economic Injury Disaster Loan (EIDL) Program	Payroll Protection Program
Maximum Loan Size	\$2 million (<i>not changed by CARES Act</i>)	The lesser of (a) \$10 million and (b) (i) 250% of average monthly payroll costs for TTM period ⁷ plus (ii) the amount of any EIDL loan refinanced (Section 36(E) of SBA)
Interest Rate	3.75% (<i>not changed by CARES Act</i>)	Not to exceed 4% (Section 36(L) of SBA)
Loan Deferral	No (<i>not changed by CARES Act</i>)	Lenders required to provide complete payment deferment relief, including payment of principal, interest and fees, for a period no less than 6 months and no more than 1 year (Section 36(M) of SBA)
Loan Forgiveness	No (<i>not changed by CARES Act</i>)	Upon borrower's submission of a separate application and supporting documentation, portions of the loan used to fund the following costs incurred and paid during the 8-week period following the date of loan origination (the "covered period") shall be eligible for forgiveness: (a) payroll costs ⁸ (including lost tips), (b) mortgage interest payments, (c) rental payments and (d) utility payments. The forgiveness amounts are reduced for businesses that lay off employees or reduce wages during the covered period (subject to reinstatement for re-hires prior to June 30, 2020). Amounts forgiven will not be included in borrower's taxable income. (Section 1105 of CARES Act)
Maturity	Maximum of 30 years (determined on a case-by-case basis based on ability to repay) (<i>not changed by CARES Act</i>)	Maximum maturity of 10 years (Section 36(K) of SBA)
Underwriting Criteria	The Administrator may rely solely on a borrower's credit score or any other appropriate method. (Section 1110(d) of CARES Act)	SBA delegates authority to lender. Lenders are instructed only to consider whether the borrower (a) was in operation prior to Feb. 15, 2020 and (b) had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors. (Section 36(F) of SBA)
Emergency Advances	Eligible borrowers can request that the Administrator provide an emergency advance (up to \$10,000) within 3 days following application submission. These advances are not repayable even if loan is denied. (Section 1110(e) of CARES Act)	Not available
Prepayment Penalty	None (<i>not changed by CARES Act</i>)	None (Section 36(R) of SBA)
Collateral Required	Yes, for loans over \$25,000. However, loans will not be denied if collateral is not available. Personal guarantee requirement waived for loans below \$200,000. (Section 1110(c) of CARES Act)	No collateral or personal guarantee required (Section 36(J) of SBA)

⁷ For "seasonal employers", average monthly payroll costs are based on period commencing Feb. 15, 2019 or March 1, 2019 and ending June 30, 2019.

⁸ As defined in footnote 6.