



Does the CARES Act affect any other loans available to small businesses?

Yes. The maximum loan amount for an Express Loan is increased from \$350,000 to \$1 million.

The CARES Act also expands eligibility for borrowers applying for an Emergency Economic Injury Disaster Loan (EIDL) grant. Under the Act, emergency EIDLs are available for businesses or cooperatives with fewer than 500 employees, sole proprietors or independent contractors, or Employee Stock Ownership Plans (ESOPs) with fewer than 500 employees. Additionally, the Act waives requirements that (1) the borrower provide a personal guarantee for loans up to \$200,000, (2) that the eligible business be in operation for one year prior to the disaster, and (3) that the borrower be unable to obtain credit elsewhere. The SBA is also empowered to approve applicants for small-dollar loans solely on the basis of their credit score or "alternative appropriate methods to determine an applicant's ability to repay."

Most significantly for borrowers seeking an immediate influx of funds, borrowers may receive a \$10,000 emergency advance within three days after applying for an EIDL grant. If the application is denied, the applicant is not required to repay the \$10,000 advance. Emergency advance funds can be used for payroll costs, increased material costs, rent or mortgage payments, or for repaying obligations that cannot be met due to revenue losses.

Borrowers may apply for an EIDL grant in addition to a loan under the Paycheck Protection Program, provided the loans are not used for the same purpose. If a borrower received a loan under 7(b)(2) after January 31, 2020, the borrower may refinance the outstanding balance as part of a loan under the Program.

Is relief available for businesses with pre-existing SBA loans?

Yes. The SBA will pay the principal, interest, and associated fees on certain pre-existing SBA loans for 6 months.

Lender FAQs

Which lenders may process, close, disburse, or service loans made under the Paycheck Protection Program?

To participate in the Paycheck Protection Program, lenders must be either SBA Qualified Lenders—those already deemed qualified under section 7(a)—or Additional Lenders—those insured depository institutions, insured credit unions, and other lenders that the Administrator and Secretary of the Treasury determine are qualified pursuant to paragraph (36) (together, Program Lenders).

The Program permits the Administrator to delegate authority to Additional Lenders for purposes of making and approving covered loans to eligible borrowers during the covered period. Pursuant to the

Program's "Delegated Authority" provisions, the Administrator and Secretary of the Treasury shall designate as Additional Lenders those that have the "necessary qualifications to process, close, disburse and service loans" made with the guarantee of the SBA.

Specific criteria for Additional Lenders are not included in the Act. It contemplates that "the Department of the Treasury, in consultation with the Administrator, and the Chairman of the Farm Credit Administration shall establish criteria." A lender may not participate in the Program if doing so would affect its safety and soundness, as determined by the Secretary of the Treasury.

How much of the loan will the SBA guarantee under the Paycheck Protection Program?

The SBA will guarantee (through deferred participation) 100 percent of any covered loan made under the Program during the covered period. This is a substantial increase from the 75 percent guarantee against traditional SBA loans made under section 7(a).

What due diligence must Program lenders conduct prior to extending loans under the Program?

Prior to the extension of any loan under the Program, the Program Lender must evaluate the eligibility of each borrower that applies for a covered loan. Under the Program, a Program Lender must consider whether the applicant:

- Was in operation on February 15, 2020; and
- Had employees for whom the borrower paid salaries and payroll taxes, or paid independent contractors, as reported on a Form 1099-MISC.

What are the terms and conditions of Program loans?

Unless otherwise provided the terms and conditions for a covered loan will be the same as the related terms and conditions for traditional SBA 7(a) loans. The Secretary of the Treasury may issue regulations and guidance regarding loan terms.⁵ As discussed above, if a borrower on a covered loan applies for the loan to be forgiven, any remaining balance will have a maximum maturity of 10 years from the borrower's application for such forgiveness. The maximum interest rate for covered loans is 4%.

What capital, reserves, and fees incentives are there for depository institutions to participate in the Program?

Covered loans on an institution's balance sheet will be risk rated at 0%, meaning there is no requirement to hold capital against these assets. Effectively, covered loans will be treated as being as low risk as U.S. Treasuries. Also, if a covered loan is modified due to COVID-19-related difficulties, the financial institution will not be required to report the modification as a troubled debt restructuring until such time as the federal banking agencies determine it is appropriate. (The federal banking agencies have issued separate guidance regarding similar treatment for modifications of other loans due to COVID-19.)⁶

Program Lenders, including banks, will be reimbursed for covered loan processing fees. The reimbursement rate is based on the disbursed loan balance: 5% for covered loans up to \$350,000, 3% for covered loans greater than \$350,000 and less than \$2 million, and 1% for all other covered loans.

Additionally, the SBA will coordinate with the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and state bank regulators "to encourage those entities to not require lenders to increase their reserves" due to receiving payments from the SBA on covered loans.

Can a lender sell these loans on the secondary market?

Covered loans may be sold on the secondary market. If a covered loan is sold on the secondary market, and an investor declines to approve a deferral request by a lender, the SBA will purchase the loan so that the impacted borrower may receive a deferral period of 6 months to a year (including payment of principal, interest, and fees).

What documents must a lender require to offer a borrower loan forgiveness?

As discussed above, loan forgiveness is available for 8 weeks of payroll costs, mortgage interest or rent payments, and utility payments. To be eligible to receive loan forgiveness, a borrower must submit a complete application to the lender containing the following required documents:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for pre- and post-covered periods, including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings;
- Documentation such as cancelled checks verifying mortgage interest, lease, and utility payments;
- Certification from a representative of the recipient that (a) the documentation presented is true and correct, and (b) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation or make covered utility payments; and
- Any other documentation the SBA deems necessary.

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