



SBA Disaster Loans in Response to COVID-19

Pursuant to recent congressional coronavirus appropriations, the US Small Business Administration (SBA) is issuing \$50 billion in Economic Injury Disaster Loans to small businesses.

1. Is my business eligible?

- a. *SBA Disaster Area* - Your business must be physically located in an SBA declared Disaster Area. It is expected that all 50 states will be declared a disaster area shortly, but a current list can be found [here](#).
- b. *No Credit Elsewhere* - Your business is eligible if the SBA determines that your business cannot obtain credit elsewhere and that the business losses are not covered by insurance.
- c. *Small Business* - Your business is eligible if it is considered a small business. Eligibility determinations are based on the size standard for the Primary Industry of your business based on your NAICS code. The size standards can be found [here](#).
 - (i) Some determinations are based on total number of employees, other businesses are based on total revenue.
 - (ii) Business sizes are aggregated.
 - (a) The size of the loan applicant combined with all of its business affiliates must not exceed the size standard for the Primary Industry (i.e., the total revenue or total employees for the applicant and all of its affiliated businesses combined cannot exceed the threshold for the Primary Industry).
 - (b) The Primary Industry is the industry associated with the NAICS code of the largest business in the affiliate group. For example, if Owner owns a clothing store with \$250,000 in revenue and a farm with \$750,000 in revenue, the Primary Industry is Farming, and the aggregated revenue amount is \$1M.
 - (c) Affiliates are defined as an entity in which the applicant or its Principals (see Section 2(d) below) own 50 percent or more.
 - (d) There is no size cap for non-profits.



2. Loan Details

- a. *Amount* - The size of the loan will be determined by the SBA based on the applicant's financial information.
 - (i) The maximum loan amount is \$2 million.
 - (ii) The \$2 million maximum amount can be waived if your business is designated a Major Source of Employment ("MSE"). If the SBA determines that the applicant will go out of business as a result of the disaster resulting in job loss, the loan amount may be increased if:
 - (a) Employed 10% or more of the workforce in a geographic area no larger than a county;
 - (b) Employed 5% or more of the workforce in one industry within the disaster area; or
 - (c) Employed no fewer than 250 employees in the disaster area.
- b. *Interest Rate* - Economic Injury Disaster Loans are authorized only at the "No Credit Elsewhere" ("NCE") interest rate. The NCE interest rate for the COVID-19 disaster is 3.75% for for-profit businesses and 2.75% for non-profit businesses.
- c. *Payment Term* - The SBA determines the term on a case-by-case basis based on the ability to pay, with a maximum term of 30 years.
- d. *Collateral and Guaranty* - Disaster loans with a principal amount above \$5,000 per loan or \$14,000 in the aggregate must be secured. Generally, all Principals must guaranty the loan with limited exceptions. A Principal means any of the following, to the extent any of the following own 20 percent or more of the applicant:
 - (i) For sole proprietorships, the proprietor;
 - (ii) For General Partnerships, all general partners;
 - (iii) For Limited Partnerships, all general partners and any limited partner who owns 20 percent or more of the partnership;
 - (iv) For Limited Liability Entities, the Manager/Managing Member(s) and any member who owns 20 percent or more of the entity; and
 - (v) For corporations, any individual or legal entity who owns 20 percent or more of the voting stock.
- e. *Large Loans* - For loans over \$1,000,000 the following terms are required to be in the loan documents. For loans under \$1,000,000 the SBA loan officer can choose whether to include these terms:
 - (i) Net Earnings - Net Earnings Clauses (NEC) must be used in loan authorizations as follows:

- (a) The clause must be included for all large loans with an initial maturity of 15 years or longer unless waived by the loan officer.
 - (b) The NEC may be required on any loan at the discretion of the loan officer.
 - (c) The percentage of net earnings to be applied to the loan balance must be between 5% and 10% at the SBA loan officer's discretion.
 - (d) The NEC payment will not begin before 5 years after the first payment due date. Once payment begins it will be due no later than 90 days following the close of the Borrower's fiscal year, but may be paid quarterly or spread over 12 months if a financial hardship can be demonstrated.
- (ii) Distribution and Compensation - A Distribution and Compensation Clause must be used in the loan agreement to include a limit on direct and indirect compensation (of all types) to the owners and officers of the business. However, a sub-chapter S corporation, partnership (limited or general), or a limited liability entity (LLE) may make distributions to shareholders, partners, or members, respectively, for the payment of tax liability attributable to earnings. Additionally, other transfers such as a lease payment to an owner of the company who also owns the building used by the company must also be limited.
 - (iii) IPO Clause - An IPO clause must be used in the loan agreement to give the SBA the option to require payment in full on the loan in the event that the borrower sells additional securities. This clause will be invoked for a private placement or public offering of securities (common or preferred stock or long-term debt with an equity feature).
- f. *Purpose* - These loans can be used to pay fixed debt, payroll, accounts payable, and other bills that cannot be paid due to the Coronavirus crisis. These loans cannot be used to refinance existing debt.

Please contact Matt Delguyd or Logan Bryant at the following contact information if you have any questions.

Matt Delguyd | Partner

Commercial Finance and Banking



Office: 216-363-4627

Mobile: 440-476-8923

mdelguyd@beneschlaw.com

Logan Bryant | Associate

Corporate and Securities



Office: 216-363-6217

Mobile: 330-635-8322

lbryant@beneschlaw.com