Comparison between SBA Economic Injury Disaster Loans (EIDL) and SBA Paycheck Protection Program Loans (PPP)

CAVEAT

- The CARES Act calls for regulatory guidance within 30 days of the enactment of the CARES Act on April 3, 2020, for the PPP loan forgiveness section (§1106).
- There are inconsistencies/ambiguities that may be the subject of a corrections bill or further regulatory guidance.

This is a summary document only and does not address all of the nuances of the PPP loan and EIDL programs. Particularly with respect to loan eligibility determinations, individual analyses of potential applicants are nuanced and fact-specific and may involve additional factors not addressed here. For example, many of the SBA's traditional eligibility requirements (such as industry carve-outs, bad-actor carve-outs, etc.) still apply and therefore require further review to confirm eligibility.

EIDL	PPP (as implemented by the SBA interim final rules (IFR))
How much is available (what is the maximum loan amount)?	
Up to $2 million, with an advance of up to $10,000 disbursed within days of SBA's receipt of the application (this advance does not need to be repaid). SBA's processing timeline for applications is delayed, and therefore payments may take a few weeks to process. The SBA determines the amount of the EIDL based on need as demonstrated by information provided in the EIDL application.	The lesser of (a) $10 million or (b) 2.5x the average monthly "payroll costs," measured over the 12 months preceding the loan origination date. Seasonal business may use the monthly average for the 12-week period beginning February 15, 2019 or March 1, 2019 – June 30, 2019 to calculate the average payroll. Businesses not in existence between February 15, 2019 and June 30, 2019 can use the monthly average for the period January 1, 2020 – February 29, 2020. • If you took out an EIDL loan between January 31, 2020 and April 3, 2020 to cover payroll costs, you will need to refinance this EIDL loan into a PPP loan, and you would add the outstanding loan amount to the "payroll" sum. • Payroll costs include salaries, commissions, tips, certain employee benefits (including health insurance and retirement benefits), state and local taxes, and the employee's share of FICA taxes. • Payroll costs exclude the employer's share of FICA taxes, the portion of cash compensation above $100,000 to employees earning over $100,000 in cash compensation on an annualized basis, compensation for non-US-based employees, and amounts paid to employees pursuant to qualified family leave under the Families First Coronavirus Response Act for which the employer is eligible for a tax credit. The IFR also excludes payments to independent contractors (who may be independently eligible for a PPP loan).

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Who Can Apply?	
Small businesses (as defined under the SBA size standards for industry NAICS codes based on average number of employees and/or average annual receipts), private non-profit organizations, or small agricultural cooperatives. Small business applicants must include their affiliates in determining eligibility under the size tests. In other words, employees and receipts of other businesses under common control will count toward the maximum number of permitted employees or receipts for eligibility purposes of an applicant. Agricultural enterprises are not eligible to apply for an EIDL. In addition, the following "eligible entities" can apply: • businesses, cooperatives, ESOPs or Tribal small business concerns with not more than 500 employees; • sole proprietorships (with or without employees); • independent contractors; • Faith-based organizations (per SBA guidance).	Small business qualifications similar to EIDL plus any business concern, nonprofits (including religious organizations), veterans organizations or Tribal business concerns, sole proprietors, independent contractors and eligible self-employed in each case with no more than 500 employees (or greater if the SBA size determination under the NAICS code is higher. The SBA's table of size standards is available here). Applicants generally must include their affiliates in determining eligibility under the size tests in the same manner as with EIDL. However, the PPP program includes the following changes: • Expanded eligibility for Restaurants, Hotels and other Hospitality businesses (NAICS codes starting with 72): number of employees is not more than 500 per physical location • Waiver of Affiliation Rules: the SBA requirement that generally compels the employee size count to include other entities in a control group is waived for: – NAICS code 72 businesses of not more than 500 employees. – Approved franchisees found on the SBA directory. (Here) – Any entity that receives financial assistance from an SBIC (a Small Business Investment Company licensed and regulated by the SBA). – Faith-based organizations (per SBA guidance).
Approved Fund Uses	
Working capital needs, including financial obligations and operating expenses which could have been met had the disaster not occurred, and the following: • paid sick leave to employees unable to work due to the direct effect of COVID-19; • maintaining payroll to retain employees during business disruptions and substantial slowdowns; • meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains; • rent; and • mortgage payments; and • repayment obligations that cannot be met due to revenue losses. Businesses that obtain both an EIDL and a PPP loan must use the EIDL and PPP funds for different purposes.	At least 75% of PPP loan proceeds must be used for payroll costs (as defined above). Other permissible uses include payment of group healthcare benefits, insurance premiums, and interest (but not principal) on mortgages or other debt incurred prior to February 15, 2020, rent and utility payments. PPP loan funds used for unauthorized purposes will be required to be repaid to SBA. Businesses that obtain both an EIDL and a PPP loan must use the EIDL and PPP funds for different purposes.

EIDL	PPP (as implemented by the SBA interim final rules (IFR))
Interest Rate (annual)	
3.75% for businesses, 2.75% for non-profits.	Set at 1% (not to exceed 4% under the CARES Act).
Loan Term	
Up to 30 years.	Set at 2 years (not to exceed 10 years under the CARES Act).
Waiver of Certain Collateral and Personal Guaranty Requirements	
Personal guarantee on advances and loans of not more than $200,000 are not required.	No collateral is required from either the business or its owners. No personal guaranty requirements.
Required Attestations	
The following borrower attestations are required: • Applicant is not engaged in any illegal activity (as defined by Federal guidelines) • No principal of the applicant with a 50% or greater ownership interest is more than 60 days delinquent on child support obligations • Applicant is not an agricultural enterprise (e.g. farm), other than an aquaculture enterprise, agricultural cooperative, or nursery • Applicant does not present live performances of a prurient sexual nature or derive directly or indirectly more than de minimis gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature • Applicant does not derive more than one-third of gross annual revenue from legal gambling activities • Applicant is not in the business of lobbying • Applicant cannot be a state, local, or municipal government entity and cannot be a member of Congress	The following borrower attestations are required: • Applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC. • Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant. • The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments. Not more than 25% of loan proceeds may be used for non-payroll costs. • Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender. • Not more than 25% of the amount of loan forgiveness (see below) will be for non-payroll costs. • During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under the PPP. • Information provided by applicant is true and accurate in all material respects (criminal liability may attach for false claims, etc.) • Tax documents used to support application are identical to those filed with the IRS.

EIDL	PPP (as implemented by the SBA interim final rules (IFR))
Loan Forgiveness	
None, although the up to $10,000 advance does not need to be repaid. If you obtain such an advance and also obtain a PPP loan, the advance will be deducted from the PPP loan forgiveness amount.	Yes – Loan forgiveness can be up to the full principal amount of the loan and any accrued interest. The actual amount of forgiveness is based on the total amount of payroll costs as well as mortgage interest payments (not interest payments on other debt), rent payments, and utility payments (in each case to the extent such contracts or services were in existence prior to February 15, 2020) for the eight-week period following disbursement of the loan (i.e., up to the principal PPP loan amount). Amounts exceeding 25% of non-payroll costs (defined above) are not eligible for loan forgiveness. Interest accrued on the forgiven portion is paid by the SBA. The amount forgiven may be reduced proportionately with reductions in full time employee equivalents (FTEs) or material (i.e. over 25%) reductions in wages for any employee (other than those earning more than $100,000 on an annualized basis). Reinstating such employees and/or wages to February 15, 2020, levels by June 30 may reduce the reduction in forgiveness, but further guidance is necessary on how this will be applied. Prepayment is permitted without penalty.
Due Date for First Loan Payment	
One year after the loan origination date (interest is accrued during the deferment).	Set at six months after the loan origination date (interest is accrued during the deferment) (deferment of up to one year may be available under the CARES Act).
Eligible Lenders	
SBA	An SBA 7(a) approved bank or other lending institution (underwritten by SBA). (Most active lenders here.) Any federally insured depository institution or credit union, provided it is not in a troubled condition or subject to an enforcement action based on unsafe or unsound lending practices. Any Farm credit system institutions that have an AML compliance program that satisfies the requirements of the Bank Secrecy Act. With the approval of the SBA, any other depository or non-depository financing provider that originates, maintains, and services business loans or commercial financial receivables and participation interests in amounts exceeding $50 million during a consecutive 12-month period in the past 36 months, or is a service provider to an insured depository institution, is subject to certain other conditions.
How to apply	
Application forms can be obtained and submitted through the SBA website, here.	Borrowers must submit applications to SBA approved lenders. Our strong recommendation is that interested businesses contact their existing lenders with whom they have relationships to find out if they are SBA lenders already and to introduce them to the right people internally at the bank.