

On March 27, 2020, H.R. 748 (the “CARES Act”) was passed in response to the COVID-19 pandemic. The following is a comparison of the Paycheck Protection Program, an expansion of the existing Small Business Administration (the “SBA”) Section 7(a) loan program and the SBA Economic Injury Disaster Loan (EIDL). Interested businesses may apply to *both* programs and should contact their accountants, financial advisors and attorneys, as applicable. Additionally, Harris Beach PLLC would be happy to assist with the application process with respect to the CARES Act loan programs.

Paycheck Protection Program

Eligibility - The following types of businesses and entities are eligible:

- Businesses and entities operational on February 15, 2020.
- Small business concerns, as well as any business concern, certain nonprofit organizations (501(c)(3) and 501(c)(19) only), or Tribal business concern, in each case, if such businesses employ 500 or less employees or if such business meets the applicable SBA size standard.
- Sole proprietors, independent contractors and eligible self-employed individuals.
- Waiver of affiliation rules for businesses with less than 500 employees and assigned NAICS code beginning with 72, franchise identifier, or businesses receiving funding from small business investment companies.¹

Amount – Up to the lesser of (a) \$10 million or (b) 2.5 times average monthly payroll costs.

Permitted Uses² – Payroll costs, group health care benefit costs, rent, utilities, mortgage obligations (other than principal) and any other interest on previously incurred debt.

Lenders – All current SBA 7(a) lenders. [Click here for sample application.](#)

Economic Injury Disaster Loan (EIDL)

Eligibility – The eligibility of a “small business” to receive a loan is based on the industry of the business, the revenue generated by the business and/or the number of employees working for the business. For guidance, please visit [SBA size standards](#). In addition, eligibility has been expanded to include:

- Businesses with not more than 500 employees.
- Tribal businesses.
- Cooperatives with not more than 500 employees.
- ESOPS with not more than 500 employees.
- Any individual operating as a sole proprietor.
- An independent contractor during January 31, 2020 to December 31, 2020.

Amount – Up to \$2 million. If a business is a major source of employment, SBA has the authority to waive the \$2 million statutory limit.

Grant – Applicants can request an advance on the loan in the amount of \$10,000. Applicants will not have to pay back the grant even if the applicant is subsequently denied the loan.

Permitted Uses – Fixed debts, payroll, paid sick leave, making rent or mortgage payments, meeting increased costs to obtain materials and accounts payable and other bills that that cannot be paid because of the disaster’s impact. The loans are not intended to replace lost sales or profits or for expansion.

Lenders – The SBA, [click here for the application.](#)³

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1 For businesses benefitting from the waiver, the employee and loan amount maximums are determined at each operating company and not aggregated at the holding company level.

2 Loan proceeds may not be used for the following: (i) employee/owner compensation over \$100,000; (ii) taxes imposed or withheld under Chapters 21, 22 and 24 of the Internal Revenue Code; (iii) employees whose principal residence is outside of the U.S. and (iv) qualified sick and family leave for which credit is allowed under the Families First Coronavirus Response Act.

3 Although applicants were initially encouraged to apply online, with the overwhelming number of entities applying, the SBA is now encouraging paper filings. Completed applications should be mailed to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

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Paycheck Protection Program

Loan Forgiveness – Subject to certain adjustments, indebtedness will be forgiven, up to the principal amount of the loan, in an amount equal to the sum of payments made during the 8-week period after incurrence of the loan for payroll, utilities, rent and mortgage obligations (other than principal) (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll). Amounts forgiven will not be included in gross income for tax purposes.

Loan Forgiveness Documentation – (i) verification of the number of employees and pay rates; (ii) verification of payments on covered mortgage obligations, lease obligations and utilities; and (iii) certification that the documentation provided is true and that the amount forgiven was used in accordance with the program guidelines.

Loan Term, Interest Rate and Fees – For any amounts not forgiven, 2 year term and 1% interest rate. Zero loan fees and zero prepayment penalties. All payments are deferred for 6 months; however, interest will continue to accrue over this period.

Security for the Loan – Until June 30, 2020, no collateral or personal guarantee requirement.

Timing – Loans are available through June 30, 2020. Starting April 3, 2020, small businesses and sole proprietorships can apply. Starting April 10, 2020, independent contractors and self-employed individuals can apply.

Tax Benefit Coordination – Employers receiving loans will not be eligible for the Employee Retention Credit under the Act. Employers whose loans are forgiven will be ineligible to defer payment of payroll taxes on wages as permitted by the Act. For more specifics on the various [CARES Act tax considerations](#), please read this Harris Beach legal alert.

For more information – Please visit [Fast Facts on the Paycheck Protection Program](#)

Economic Injury Disaster Loan (EIDL)

Loan Term, Interest Rate and Fees – Up to 30 years. The maximum interest rate is 3.75% per annum for small businesses and 2.75% for non-profits.

Security for the Loan – Any personal guarantee waived on loans below \$200,000. For loan amounts over \$200,000, the SBA may require personal guarantees.

Timing – Loans are available through December 31, 2020.

For more information – Please visit [Emergency Loans Available to Small Businesses Under the CARES Act](#)

Other Helpful Links and Resources:

[Harris Beach Economic Development Handbook](#)

[Harris Beach COVID-19 Response](#)

[SBA Loan Resources](#)

[SBA Guide for Borrowers](#)

[Senate Small Business Committee](#)

[NADCO Section-by-Section Resource](#)

[US Senate Committee on Small Business & Entrepreneurship](#)