

Businesses Look to EIDL Loans for Additional Pandemic Relief – Here’s What You Need to Know

For most business owners, the initial focus after the governmental response to the COVID-19 pandemic centered on the Paycheck Protection Program (“PPP”) forgivable loans. Other disaster relief programs offered by the Small Business Administration (“SBA”) were either overloaded or underfunded, or both.

Now that PPP loans have, for the most part, run their course, many business owners are reexamining the SBA’s Economic Injury Disaster Loans (“EIDL”) or are planning for the use of EIDL loans already obtained.

Unlike the PPP loans, EIDL loans are not forgivable. The loans, however, can offer favorable terms for borrowers still in need of working capital to overcome the economic impact of the pandemic.

Businesses that already received PPP loans can still apply for EIDL loans, but EIDL loans will not be funded for expenses already covered by a PPP loan.

For now (early July), EIDL funding has been replenished and the SBA has re-opened its EIDL application portal for all eligible businesses. The SBA has cautioned that the EIDL funding may lapse at some point, although future congressional actions in response to the pandemic cannot be reliably predicted.

What is an EIDL Loan?

The SBA offers two main types of loans to respond to disasters. The first type, to address property damage, has little impact in response to the pandemic since it is not a disaster that damages property. The second type, to address economic injury, is the EIDL. The extent of the economic injury resulting from the COVID-19 outbreak has put the EIDL in the spotlight.

Although disaster loans are usually limited to specific geographic locations, because the entire nation is considered to be impacted by the pandemic, and is therefore part of the disaster declaration, EIDL loans in response to COVID-19 are available to any eligible business regardless of location.

Who is Eligible for an EIDL Loan?

The EIDL program is open to eligible small businesses, private nonprofit organizations and certain agricultural enterprises.

Business applicants must meet the criteria of a “small business concern” under the SBA guidance. For the most part, these are the same size guidelines used for PPP eligibility although certain “chain” and “franchise” restaurants and hospitality businesses that obtained special PPP eligibility will not be eligible. In general, the business must be independent and have fewer than 500 employees when combined with affiliates. Some businesses may qualify despite having more than 500 employees.

Certain types of businesses¹ may be excluded, as well as persons delinquent on federal loans or convicted of some crimes.

What are the Terms of an EIDL Loan?

For loans in response to the COVID-19 pandemic, loans can extend up to 30 years at an interest rate for businesses of 3.75% and a rate of 2.75% for private nonprofits. Fees are waived.

There is also a deferral of principal and interest payments for all of 2020.

Loans over \$200,000 may require personal guarantees and some loans may require collateral. The SBA will determine such terms.

Again, unlike the PPP loans, EIDL loans are not forgivable but must be repaid.

How Can EIDL Loans be Used?

Loan proceeds are limited by the scope of the EIDL as a “disaster loan” intended to mitigate the “economic impact” of the pandemic.

Accordingly, the use of loan proceeds is intended to be for “working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury.”² Moreover, the loan is intended to be limited to cover expenses that the business could have paid “had the disaster not occurred.”

In general, EIDL loans may be used to pay fixed debts, payroll, accounts payable and other bills for which funds may be lacking because of the disaster’s impact.

Loan proceeds cannot be used for a number of purposes, including:

- Payment of any dividends or bonuses;
- Disbursements to owners, partners, officers, directors, or stockholders, except when directly related to performance of services;
- Repayment of loans from an owner, except when the funds were injected on an interim basis as a result of the disaster and non-repayment would cause undue hardship;
- Expansion of facilities or acquisition of fixed assets;
- Repair or replacement of physical damages;
- Refinancing long term debt;

¹ Passive investment entities are not eligible, as well as churches, lobbying organizations, pawn shops, strip clubs and life insurance companies, among others. Although the SBA has waived eligibility restrictions for the PPP on otherwise-eligible gambling businesses, it has not yet done so for the EIDL program. Thus, entities making more than one-half of their revenue from gambling appear to be ineligible.

² 13 C.F.R. §123.303(a).

- Paying down (including regular installment payments) or paying off loans provided, or owned by a Federal agency (including SBA) or a Small Business Investment Company;
- Payment of any part of a direct Federal debt, (including SBA loans) except IRS obligations.³

What Happens if Loan Proceeds Are Not Used as Intended?

If a business wrongfully misapplies the proceeds of an EIDL loan, it will be liable to the SBA for one and one-half times the proceeds disbursed. Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. Failure to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check also is considered a wrongful misapplication of the proceeds.

If misappropriation is alleged, the borrower will be given at least 30 days to submit to the SBA evidence that it has not misapplied the loan proceeds or that it has corrected any such misapplication.

Willful misapplication could result in criminal sanctions or additional civil administrative actions.

What if Needs Increase?

The SBA will consider a request for an increase in the loan amount if the borrower can show that the increase is essential for the business to continue and is based on events which were beyond the borrower's control occurring after the SBA approved the original loan.

A request for an increase in the loan amount must be related to the same disaster for which the SBA economic injury disaster loan was originally made.

If you have more questions about the EIDL program, please contact Vandenack Weaver at 402-504-1300 or at info@vwattys.com.

³ 13 C.F.R. §123.303(b).