

**THIS CHECKLIST WILL BE UPDATED BY THE PROSKAUER CORONAVIRUS TASKFORCE AS RULES, REGULATIONS, AND PROCEDURES ARE PROMULGATED BY THE U.S. SMALL BUSINESS ADMINISTRATION (SBA) TO IMPLEMENT THE PAYCHECK PROTECTION PROGRAM.**

### U.S. SMALL BUSINESS ADMINISTRATION (SBA) PAYCHECK PROTECTION PROGRAM

Under § 36(a) of the Small Business Act (Paycheck Protection Program) as set forth in § 1102 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act):

#### **OVERVIEW OF PAYCHECK PROTECTION PROGRAM 7(A) LOANS**

1. **Interest Rate:** Maximum interest rate is 4.0% per annum.
2. **Maximum Loan Amount:** Maximum loan is equal to the lesser of (i) 2.5x TTM average monthly payroll costs<sup>1</sup> (plus any outstanding amount under a pre-existing economic injury disaster loan made on or after January 31, 2020 and before the CARES Act SBA loans are available); and (ii) \$10 million.
3. **Payment Deferral:** Payment of principal, interest and any fees to be delayed at least 6 and up to 12 months.
4. **Collateral/Personal Guarantee:** No collateral or personal guarantees required (unlike standard 7(a) loans).
5. **Credit Elsewhere:** An applicant need not demonstrate that it is unable to obtain credit elsewhere.
6. **Loan Forgiveness:** A loan will be eligible for forgiveness in an amount not to exceed the sum of permitted payroll costs, interest payments on mortgages existing before 2/15/20, rent with respect to leases in place before 2/15/20, and payments for utilities for which service began before 2/15/20, in each case incurred or paid within 8 weeks from loan origination. The loan forgiveness amount is capped at the principal and will be reduced for reductions of employees or their compensation which are not restored by 6/30/20. Amounts forgiven are not taxable income to the borrower. Proceeds remaining are subject to a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness.
7. **Other Economic Considerations:** Loans are non-recourse obligations provided that the loan proceeds are used for permitted purposes. No yearly or guarantee SBA fees will be charged.
8. **CARES Act Employee Retention Tax Credit:** Note that borrowers under the Paycheck Protection Program are ineligible for the Employee Retention Tax Credit made available under the CARES Act.

**Location:** Applicant must be located and operated in the U.S.

**Eligible Business:**

- **Industry:** Applicant must be in an eligible industry. **Other than additional eligible categories (including non-profits, sole proprietorships and independent contractors), the scope of ineligible industries under [13 C.F.R. § 120.110](#) appears to remain in effect under the CARES Act. Ineligible businesses include (among others) those engaged in gambling, investment, lending or insurance.**
- **Size:** Applicants must either (i) qualify as a small business concern by meeting the SBA's existing size standards (which are based upon either (x) industry-specific employee headcount or average annual receipt thresholds or (y) an alternative size standard based upon maximum tangible net worth and average net income after Federal income taxes) or (ii) otherwise be a business concern having not more than 500 employees, unless [existing SBA size standards](#) for the covered industry allow for a greater number of employees. Size determinations take into account affiliate employees and receipts. Employees are those employed on a full-time, part-time or other basis.
  - **Accommodations & Food Services:** The CARES Act augments size standards for businesses assigned to the "accommodation and food services" sector (NAICS code beginning with 72). Such a business is eligible if it employs not more than 500 employees *per physical location*.
  - **Affiliation: The CARES Act appears only to ease affiliation rules ([13 CFR § 121.103](#)) – which are broad and encompass affirmative and negative control rights, as well as equity-based and contractual control rights – for specified industries.** These rules are waived for businesses in the accommodation and food

<sup>1</sup> "Payroll Costs" exclude (i) compensation above \$100,000 per annum for any person (*pro-rated* for the period 2/15/20 – 6/30/20); (ii) federal wage withholding taxes and certain federal employment taxes for the period 2/15/20 – 6/30/20; (iii) compensation for employees with a principal place of residence outside the U.S.; and (iv) qualified sick or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act. Note that certain adjustments are made to "Payroll Cost" calculations for seasonal workers.

service sector with a NAICS code beginning with 72, franchises assigned a franchise identifier code by the SBA, and businesses that receive assistance from an approved Small Business Investment Company.

- **Payroll:** Applicants must have been in operation on 2/15/20 and (i) had employees for whom salaries and payroll taxes were paid and/or (ii) paid independent contractors (as reported on a Form 1099–MISC).

**Use:** Paycheck Protection loans may be used during the covered period for: (i) payroll costs (as defined in the CARES Act); (ii) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; (iii) employee salaries, commissions, or similar compensations; (iv) payments of interest on any mortgage (but not prepayment of or payment of principal); (v) rent (including under a lease agreement); (vi) utilities; or (vii) interest on any other debt obligations incurred before 2/15/20.

**Need:** Applicants must certify in good faith that the uncertainty of current economic conditions makes necessary the Paycheck Protection loan to support the ongoing operations of the eligible recipient and that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments.

**APPLICATION COMPONENTS:** A list of typical application requirements for the SBA’s 7(a) Loan Program is set forth below. In connection with the implementation of the Paycheck Protection Program the SBA may implement alternative procedures.<sup>2</sup>

	DOCUMENT	NOTES
1.	<a href="#">Form 1919 (Borrower Information Form)</a>	Each of the following should complete this form: <ul style="list-style-type: none"> <li>○ If a sole proprietorship, the sole proprietor;</li> <li>○ General partners and all limited partners owning 20% or more of the equity of a partnership;</li> <li>○ Owners of 20% or more of a corporation and each officer and director;</li> <li>○ Members owning 20% or more of an LLC and each officer, director, and managing member;</li> <li>○ Any person hired to manage day-to-day operations; and</li> <li>○ Any other person who is guaranteeing the loan, if required by the SBA.</li> </ul>
2.	<a href="#">Form 413 (Personal Finance Statement(s))</a>	○ Same as above for Form 1919.
3.	<a href="#">Form 912 (Statement(s) of Personal History)</a>	○ To be completed by each applicable person that answers “yes” to questions 18 or 19 (dealing with criminal history) on Form 1919.
4.	<b>Description of the History and Nature of the Business</b>	○ A brief history of the business and its challenges, including an explanation as to why the SBA loan is needed and how it will help the business.
5.	<b>Financial Statements and Income Tax Returns:</b>	
	<b>A. Current Income Statement (P&amp;L) and Balance Sheet</b>	○ Current within 180 days of application. Income statement and balance sheet should be dated as of the same date.
	<b>B. Current Debt Schedule</b>	○ Schedule should include (i) creditor name, (ii) current balance, (iii) original loan amount, (iv) average monthly payment, (v) initiation date and term, and (vi) interest rate.
	<b>C. FYE Income Statements and Balance Sheets</b>	○ To the extent available, for the most recent 3 fiscal year-end periods.
	<b>D. Fed. Income Tax Returns</b>	○ To the extent available, 3 years of <u>signed</u> federal income tax returns.

<sup>2</sup> Note that for standard 7(a) loans a list of collateral and past loan applications are typically required. We do not anticipate such materials will be required for Paycheck Protection loan applications.

	<b>E. Financial Statements and Cash Flow Projections</b>	<ul style="list-style-type: none"> <li>○ One year projected financial statements, including month-to-month cash flow projections and a written explanation as to how applicant expects to achieve projections.</li> </ul>
	<b>F. Credit Reports</b>	<ul style="list-style-type: none"> <li>○ Depending on the applicant, lenders may solicit a Personal Credit Report and/or a Business Credit Report. Applicants may want to run their own credit checks prior to applying.</li> </ul>
6.	<b>Organizational Documents</b>	<ul style="list-style-type: none"> <li>○ Certificate/Articles of Incorporation or Formation.</li> <li>○ Any “Doing-Business-As” (DBA) registrations.</li> <li>○ If a corporation, the corporate seal should be stamped on the SBA loan application form.</li> </ul>
7.	<b>Business License(s)</b>	<ul style="list-style-type: none"> <li>○ Any registrations or licenses to operate or do business in the jurisdictions or industries in which the business operates.</li> </ul>
8.	<b>Franchise, Dealership &amp; Licensee Agreements</b>	<ul style="list-style-type: none"> <li>○ (If applicable to the applicant) if listed on the Franchise Registry at <a href="http://www.franchiseregistry.com">www.franchiseregistry.com</a> and a Franchise Certificate is available, provide a fully completed Franchise Certification signed by an authorized agent for the franchise.</li> </ul>
9.	<b>Lease Agreements</b>	<ul style="list-style-type: none"> <li>○ Copy(ies) of leases for applicant’s leased real property.</li> </ul>
10.	<b>Resumes for Principals</b>	<ul style="list-style-type: none"> <li>○ Personal resumes for each principal (attesting to industry expertise) can be a useful additional component of the application.</li> </ul>

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**IDENTIFYING A LENDER:** 7(a) loans are made through third-party participating lenders who submit loan guarantee applications to the SBA (*i.e.*, the SBA is not a direct-lender). The SBA offers a lender-match platform [here](#) and a list of recent active lenders can be found [here](#). It would be prudent to begin sourcing a lender contemporaneously with compiling the above described documentation (as such lender may require materials less than or in addition to those listed above). **The process to be paired with lenders and the extent of SBA-review of Paycheck Protection loan applications is expected to be clarified in the coming days through SBA rules, regulations, and procedures to implement the Paycheck Protection Program.**

## U.S. SBA ECONOMIC INJURY DISASTER LOAN PROGRAM (15 U.S.C. 636(b)(2))

### OVERVIEW OF ECONOMIC INJURY DISASTER LOANS (EIDL) UNDER THE CARES ACT:

1. **Interest Rate:** 3.75% for businesses (2.75% for non-profit organizations).
2. **Maximum Loan:** EIDLs are for amounts up to \$2 million.
3. **Advances/Early Funds:**
  - a. EIDL applicants are eligible for an advance of up to \$10,000 to be paid within 3 days of the request while an EIDL application is pending. The applicant must self-certify under penalty of perjury that it is eligible for an EIDL in order to receive the grant. This advance does not need to be repaid, even if the EIDL is ultimately not approved.<sup>3</sup> Advances can be used to fund any activities that an EIDL could be applied toward.
  - b. The SBA also offers an [Express Bridge Loan Program](#) (of up to \$25,000) for borrowers who have an existing relationship with an SBA Express Lender.
4. **Collateral/Personal Guarantee:** The CARES Act removes any requirement during the covered period that applicants supply personal guarantees for loans less than \$200,000. Personal guarantees may still be required for loans in excess of such amount. Collateral may be required for EIDLs in excess of \$25,000.<sup>4</sup>
5. **Credit Elsewhere:** An applicant need not demonstrate that it is unable to obtain credit elsewhere.
6. **EIDL and Paycheck Protection Loans:** A borrower that has taken out an EIDL for expenditures other than those for which they would like to apply for a Paycheck Protection loan (*e.g.*, certain payroll costs) will continue to be eligible for an additional loan through the Paycheck Protection Program. A borrower that has taken out an EIDL for payroll costs or otherwise between January 31, 2020, and the date Paycheck Protection Loans are first made available will be able to refinance its EIDL through the Paycheck Protection Program (as long as doing so would not cause the new 7(a) loan to exceed the \$10 million cap).

- Location:** Must be located and operated in a declared disaster area (in the case of COVID-19, all 50 states, Puerto Rico, Guam, and North Mariana Islands).
- Eligible Business:**<sup>5</sup> Substantially similar size and industry requirements as the Paycheck Protection Program (*i.e.*, businesses with not more than 500 employees within eligible industries).
- Uses:** EIDLs can be used to fund working capital necessary to carry on the business and for expenditures necessary to alleviate the specific economic injury (*e.g.*, service existing debt, employee payroll, making rent or mortgage payments, accounts payable, and other operating expenses). EIDLs cannot be used to refinance debt existing prior to the disaster, repair physical damage, or pay dividends (other than reasonable remuneration to owners for services).
- Application:** EIDLs are processed directly through the SBA (rather than, at present, third-party lenders). Businesses can now apply directly online through a streamlined [COVID-19 Economic Injury Disaster Loan Application](#). The SBA estimates that the time for completing the entire application is two hours and ten minutes.
- Need:** The applicant has suffered substantial economic injury as a result of COVID-19.

<sup>3</sup> If an advance is delivered and the receiving applicant is later approved for a Paycheck Protection loan the advance amount is set off from the loan forgiveness amount for such Paycheck Protection loan. *See* § 1110(d)(6) of the CARES Act.

<sup>4</sup> Note, however, that the streamlined online application (which became available at the time of the writing of this checklist) indicates that if an applying business is owned by another business entity, such owning entity will be required to provide a guarantee.

<sup>5</sup> Under the CARES Act, during the covered period (until the end of 2020) the following are eligible to apply for EIDLs so long as such business was in operation on January 31, 2020: (1) small business concerns; (2) private nonprofit organizations; (3) small agricultural cooperatives; (4) any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor; and (5) any of the following with not more than 500 employees: any business, cooperative, ESOP (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) or a tribal small business concern (as described in section 31(b)(2)(C) of the Small Business Act). Businesses engaged in activities specified in [13 CFR §123.303](#) are ineligible.