

# SBA Modifies COVID-19 Economic Injury Disaster Loan Program

by Anthony J. Zeoli and Robert A. Sikorksi

## A FREEBORN & PETERS LLP CLIENT ALERT

With the rise of the Delta variant of COVID-19 and the end of economic assistance from programs such as the Paycheck Protection Program and the Restaurant Revitalization Fund, the negative economic effects caused by the pandemic are still being felt by many small businesses. In light of the hardships these businesses continue to face due to the pandemic, the U.S. Small Business Administration (the “SBA”) recently made changes to the COVID-19 Economic Injury Disaster (“COVID EIDL”) loan program to both make additional funding available to applicants and to loosen certain eligibility requirements.



The SBA recently released an updated [FAQ](#) covering the changes to the COVID EIDL loan program, and below is a summary of the more material rules. Applications for COVID EIDL loans are being accepted through December 31, 2021 (unless funds run out beforehand), so eligible applicants should move quickly in order to secure a low interest loan with favorable repayment terms.

**LOAN TERMS:** The following are the basic terms of the new COVID EIDL loans:

- **Loan Amount** -
  - The maximum loan amount has been raised from \$500,000 to \$2M per business (and the aggregate loan cap for entities within the same corporate group has been raised to \$10M<sup>1</sup>). Businesses that previously obtained an EIDL loan may apply to increase their loan amount under the new rules.
  - The actual loan amount per business will be based on the following:
    - for requested loans of \$500,000 or less, the actual loan amount will be an amount equal to the lesser of: (a) double the business’ 2019 gross revenue minus the 2019 cost of goods, or (ii) \$500,000 (whichever is less);<sup>2</sup> or
    - for requested loans of more than \$500,000, the actual loan amount will be determined by SBA (based on a cash flow analysis) subject to a maximum loan amount of \$2M.
- **Interest Rate** - The annual interest rate is fixed at 2.75% for private nonprofit organizations and 3.75% for all other businesses.

<sup>1</sup> Businesses are deemed to be part of a single corporate group if a common parent has a direct or indirect majority ownership interest in each business.

<sup>2</sup> If the business was not in operation on January 1, 2019 the SBA will calculate the maximum loan amount.

- **Loan Term; Automatic Deferment** - The term of the loan is 30 years; provided that all payments are automatically deferred for the first 2 years. There is also no prepayment penalty.
- **Use of Proceeds** - COVID EIDL loans can be used to fund any regular “operating expenses” of the business, including payment of expenditures and debts such as working capital, payroll, health care benefits, rent, maintenance, utilities, and fixed debt payments. Also, unlike under the previous rules, COVID EIDL loans can be used to pay/pre-pay any non-federal debt (including any other SBA loans) of the business, whether past or future, allowing borrowers the ability to essentially refinance certain of their existing debt. Notwithstanding the foregoing, COVID EIDL loans cannot be used to fund any expansion of the business, to start any new business or to pre-pay any federal debt (including any other SBA loans) of the business.<sup>3</sup>
- **Collateral** - Whether or not any collateral is required will depend on the total loan amount as follows:
  - for loans in an amount of \$25,000 or less, no collateral is required;
  - for loans in an amount between \$25,001 and \$500,000, the applicant’s business assets will secure the loan;<sup>4</sup> and
  - for loans in an amount greater than \$500,000, both the applicant’s business assets and any real property<sup>5</sup> it owns will secure the loan.
- **Personal Guaranty** - Whether or not any personal guaranty is required will depend on the total loan amount as follows:
  - for loans in an amount of \$200,000 or less, no guaranty is required; and
  - for loans in an amount of more than \$200,000<sup>6</sup> or less, a full personal guaranty is required from each of the following:
    - if the applicant is a sole proprietor, from the sole proprietor;
    - if the applicant is an independent contractor, from the contractor;
    - if the applicant is a partnership, from: (a) all general partners, and (b) all limited partners (if any) that own 20% (or more) of the outstanding equity;
    - if the applicant is a limited liability entity, from: (a) the managing member, and (b) all other members (if any) that own 20% (or more) of the outstanding equity; or
    - if a corporation (or any other entity type), from each person/entity that owns 20% (or more) of the outstanding voting equity.
- **Loan Advances** - If the applicant is located in a low-income community,<sup>7</sup> and:
  - has 300 (or fewer) employees, and suffered greater than 30% reduction in revenue, they may be eligible for a loan advance of up to \$10,000; and
  - has 10 (or fewer) employees, and suffered greater than 30% reduction in revenue, they may be eligible for an additional loan advance of \$5,000.

To apply for one or both of the above advances, the business must satisfy all of the general eligibility requirements for a COVID EIDL loan and must submit a separate application (after they have submitted the general COVID EIDL loan application) available [here](#).

<sup>3</sup> It should be noted that COVID EIDL loans can be used to pay regularly scheduled payments under federal debt (including any other SBA loans) of the business, just not to pre-pay any amounts owed thereunder.

<sup>4</sup> A UCC-1 financing statement will be filed on the applicant’s business assets (and the applicant will be responsible for the UCC-1 filing fee).

<sup>5</sup> A best available mortgage will be filed on the real estate owned by the applicant’s business.

<sup>6</sup> Except for loans made to a nonprofit organization or Employee Stock Ownership Plan (ESOP).

<sup>7</sup> Per the FAQ, an applicant may see if there is business “is located in an eligible low-income community” by going [here](#).

- **Non-Forgivable** – COVID EIDL loans are not forgivable. However, to the extent the business receives one or both of the above advances (which could be up to \$15,000), that amount does not need to be repaid.<sup>8</sup>

## ELIGIBILITY:

- **General Requirements** - To obtain a COVID EIDL loan, an applicant must be a business (including a sole-proprietorship) which satisfies the following criteria:
  - The business must: (a) have suffered a working capital loss due to the COVID-19 pandemic, (b) have been in operation on or before January 31, 2020 (“in operation” includes businesses that were in an organizing stage but had not yet opened for business as of January 31, 2020), and (c) be physically located in the United States or a designated territory.
  - The business must be either a: (a) sole-proprietorship, (b) a for-profit business, or (c) a private nonprofit organization that has an effective ruling letter from the IRS under 501(c), (d) or (e) of the IRS Code (or satisfactory evidence from the relevant State that it is a nonprofit organization under state law or it is a faith-based organization).
  - The business must meet the following citizenship requirements (as applicable):
    - for for-profit businesses (other than sole-proprietorships), the business must have an IRS-issued tax identification number and each owner, member, partner or shareholder owning at least 20% of the business must be a U.S. citizen, non-citizen national, or qualified alien with a valid social security number; or
    - for sole proprietorships, the individual must be a U.S. citizen, non-citizen national, or qualified alien with a valid social security number.
  - The business (together with its affiliates<sup>9</sup>) must have no more than 500 employees, unless:
    - the business:
      - (a) is assigned one of the following NAICS codes: educational services (61); arts, entertainment and recreation (71); accommodation and food services (72); support activities for mining; industry group (213); beverage manufacturers (3121); apparel manufacturing (315); clothing and clothing accessories stores (448); sporting good, hobby, book and music stores (451); air transportation (481); transit and ground passenger transportation (485); scenic and sightseeing transportation (487); publishing industries (except Internet) (511); motion picture and sound recording industries (512); broadcasting (except Internet) (515); rental and leasing services (532); or personal and laundry services (812);
      - (b) has 500 or less employees per physical location; and
      - (c) has 20 or less locations (including the locations of business’ affiliates); or
    - is otherwise deemed “small” under the [SBA Size Standards](#).
  - The business has a minimum credit score of 570 (for loans totaling \$500,000 or less) or 625 (for loans greater than \$500,000).<sup>10</sup>

<sup>8</sup> If the business has an outstanding PPP loan, the advance amounts may however be deducted from any potential forgivable amount with respect to the PPP loan.

<sup>9</sup> Generally speaking, the SBA considers “affiliates” as any entity in which the loan applicant: (i) owns at least 50% of the outstanding equity, (ii) has a right to at least 50% of profit distributions from such entity, or (iii) or any of the controlling officers of the loan applicant, has the authority to control the direction of such entity. That being said, navigating the SBA “affiliate” rules requires a fact based analysis and should not be treated lightly.

<sup>10</sup> It should be noted that this requirement is currently drafted only to apply to for-profit businesses.

- **Ineligible Businesses:** In addition to satisfying the above requirements, the applicant must not otherwise be deemed ineligible because any one or more of the following applies:
  - The applicant business is engaged in, or otherwise generates revenues from, any of the following types of ineligible businesses<sup>11</sup>:
    - gambling;
    - loan packaging;
    - multi-level sales distribution;
    - lending;
    - general investment;
    - real estate development or investment (other than rental properties);
    - pawn shops;
    - strip clubs or other pornography; and/or
    - illegal activities at any governmental level (including the sale of cannabis).
  - The applicant:
    - is a life insurance company;
    - is primarily engaged in political or lobbying activities;
    - is a publicly owned nonprofit organizations (other than tribal business concerns);
    - is owned by a member of Congress;
    - operates as a franchise and is not listed on [SBA's Franchise Directory](#);
    - or any 20% or more owner of the applicant, is currently suspended or debarred from contracting with the Federal government or receiving Federal grants or loans; and/or
    - received revenue or rental income in 2019 and did not file a 2019 federal tax return.
  - The applicant is an entity where an owner:
    - of 20% (or more) of the equity: (a) is currently incarcerated, (b) is subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction for any felony, (c) has (in the last 5 years), been convicted, plead guilty (or nolo contendere), or commenced parole/probation for any felony involving fraud, bribery, embezzlement, or a false statement in a loan application or an application for federal financial assistance, and/or (d) has (in the last year), been convicted of a felony committed during and in connection with a riot or civil disorder or other declared disaster; and/or
    - of 50% (or more) of the equity is more than 60 days delinquent on child support payments.
  - The applicant has filed for chapter 7 or Chapter 11 bankruptcy<sup>12</sup> and/or is permanently closed.
  - The applicant has had a change of ownership above 50% after January 31, 2020 (other than changes involving a close family member or partner, or the contract for sale existed prior to January 31, 2020).

#### HOW TO APPLY:

- **New Applicants** - For COVID EIDL loan applicants that have not previously obtained, or otherwise applied for, an EDIL loan, they should refer to the SBA "new loan" application instructions available [here](#).
- **Existing EIDL Borrowers** - For COVID EIDL loan applicants that have previously obtained an EDIL loan, they should refer to the SBA "increased loan" application instructions available [here](#).

<sup>11</sup> It should be noted that an applicant that engages in certain of these ineligible lines of business may still be eligible depending on the total amount of actual "gross annual revenue" earned from the ineligible line of business.

<sup>12</sup> It should be noted that businesses which are operating under an approved reorganization plan under Chapters 5, 11, 12 or 13, and who obtains approval of the loan by the court/trustee, will be eligible (subject to the satisfaction of all other eligibility requirements).

We will continue to follow this important loan program and offer updates as developments arise.

Please visit Freeborn's [COVID-19 webpage](#) for more information on other SBA resources.

If you have any questions, please contact Anthony Zeoli ([azeoli@freeborn.com](mailto:azeoli@freeborn.com); 312-360-6798), Robert Sikorski ([rsikorski@freeborn.com](mailto:rsikorski@freeborn.com); 312-360-6816), or another member of Freeborn's Corporate Practice Group.

---

## ABOUT THE AUTHORS



**Anthony J. Zeoli**

*Partner*

Chicago Office  
(312) 360-6798

[azeoli@freeborn.com](mailto:azeoli@freeborn.com)

Tony concentrates his practice in the areas of banking and commercial finance, securities, real estate, and general corporate law. Anthony is also an industry leader in the areas of crowdfunding, blockchain, securities based cryptocurrency/token offerings, peer-to-peer (P2P) lending, and Regulation A+ offerings. He also personally drafted the Illinois intrastate crowdfunding exemption, which was unanimously passed into law by the Illinois House of Representatives.



**Robert A. Sikorski**

*Attorney*

Chicago Office  
(312) 360-6798

[rsikorski@freeborn.com](mailto:rsikorski@freeborn.com)

Robert provides strategic and informed business legal advice to companies throughout their life cycles. He advises lenders, borrowers, lessors, and other stakeholders on protecting their property interests in aviation and railcar assets, including UCC, Surface Transportation Board, and Cape Town Convention filings. His experience includes U.S. and cross-border sale, purchase, financing and lease transactions involving aircraft and railcars.

## 130+ Attorneys. 5 Offices.

Freeborn & Peters LLP is a full-service law firm with international capabilities and offices in Chicago, Ill.; New York, Ny; Richmond, Va.; Springfield, Ill.; and Tampa, Fla. Freeborn is always looking ahead and seeking to find better ways to serve its clients. It takes a proactive approach to ensure its clients are more informed, prepared and able to achieve greater success – not just now, but also in the future. While the firm serves clients across a very broad range of sectors, it has also pioneered an interdisciplinary approach that serves the specific needs of targeted industries.

Freeborn's major achievements in litigation are reflective of the firm's significant growth over the last several years and its established reputation as a Litigation Powerhouse®. Freeborn has one of the largest litigation departments among full-service firms of its size – currently with more than 90 litigators, which represents about two-thirds of the firm's lawyers.

Freeborn is a firm that genuinely lives up to its core values of integrity, effectiveness, teamwork, caring and commitment, and embodies them through high standards of client service and responsive action. Its lawyers build close and lasting relationships with clients and are driven to help them achieve their legal and business objectives.

For more information visit: [www.freeborn.com](http://www.freeborn.com)

### CHICAGO

311 South Wacker Drive  
Suite 3000  
Chicago, IL 60606  
(312) 360-6000  
(312) 360-6520 fax

### NEW YORK

1155 Avenue of the  
Americas  
26th Floor  
New York, NY 10036  
(212) 218-8760  
(212) 218-8761 fax

### SPRINGFIELD

217 East Monroe Street  
Suite 202  
Springfield, IL 62701  
(217) 535-1060  
(217) 535-1069 fax

### RICHMOND

901 East Byrd Street  
Suite 950  
Richmond, VA 23219  
(804) 644-1300  
(804) 644-1354 fax

### TAMPA

1 Tampa City Center  
201 North Franklin Street  
Suite 3550  
Tampa, FL 33602  
(813) 488-2920

*Disclaimer: This publication is made available for educational purposes only, as well as to provide general information about the law, not specific legal advice. It does not establish an attorney/client relationship between you and Freeborn & Peters LLP, and should not be used as a substitute for competent legal advice from a licensed professional in your state.*

© 2021 Freeborn & Peters LLP. All rights reserved. Permission is granted to copy and forward all articles and text as long as proper attribution to Freeborn & Peters LLP is provided and this copyright statement is reproduced.