
No PPP Loan? Alternative Ways for Employers to Obtain COVID-19 Relief

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In response to the COVID-19 crisis, Congress created the Paycheck Protection Program (“PPP”) to provide relief to small businesses that were shut down or otherwise negatively affected by the pandemic. After the initial allotment of \$350 billion was exhausted in just two weeks, Congress approved an additional \$350 billion to keep the program funded.

However, as [we have previously discussed](#), the PPP loan may not be the optimal solution for many businesses, especially if the business was shut down by a government order, or if the business anticipates not being at full operation for a period longer than 8 weeks and has substantial operating expenses beyond payroll, rent, mortgage interest and utilities.

If a business does not qualify for or does not otherwise obtain a PPP loan, employers have other means to obtain payroll relief.

Employee Retention Tax Credit (ERTC) (Section 2301)

The ERTC provides a refundable payroll tax credit for 50% of wages paid from March 13, 2020 through December 31, 2020, for a maximum credit of \$5,000 per employee.

Eligibility:

An employer is eligible if either of the following applies:

- Business operations were fully or partially suspended during a calendar quarter by a government shut-down order; or
- The business’ gross receipts declined by more than 50% during any calendar quarter compared to the same quarter in 2019.

Qualified Wages:

For businesses that averaged *100 or fewer full-time employees* in 2019, all employee wages qualify for the credit, regardless of whether the employer is open for business or subject to a shut-down order.

For businesses that averaged *more than 100 full-time employees* in 2019, the only wages that qualify are those paid to employees who are not providing services due to a COVID-19 related shutdown or slowdown.

Qualified Wages do not include wages used in the computation of sick leave or FMLA credits.

Employers are not eligible for the credit if the employer receives PPP loan under the CARES Act.

Employers claiming the credit should prepare contemporaneous documentation explaining why they qualify. This credit may be claimed in addition to the deferral of social security taxes.

Delay Payment of Employer Payroll Taxes (Section 2302)

This provision allows employers and self-employed individuals to delay payment of the employer’s entire share of Social Security Tax (6.2% rate) for taxes on wages due between March 27, 2020 and January 1, 2021.

- The deadline for paying the first 50% of the deferred taxes is December 31, 2021.
- The deadline for paying the remaining 50% of the taxes is delayed until December 31, 2022.
- This tax deferral is available regardless of the number of employees.
- An employer receiving the PPP loan that is forgiven is not eligible for the payroll tax referral, for periods after the loan is forgiven.
- This deferral may be claimed in addition to the retention credit.

SBA Economic Injury Disaster Loan

If a business did not obtain or qualify for a PPP loan, take a second look at the SBA Economic Injury Disaster Loan (“EIDL”). This government-backed loan may be better suited for businesses needing immediate money; or have significant operating expenses beyond payroll, rent, mortgage interest, and utilities, and anticipate a longer period than 8 weeks to return to full operations.

Advantages of the EIDL include:

- A \$10,000 emergency advance.
- A broader range of operating expenses that can be permissibly financed.
- The loan’s term can be as long as 30 years, though each loan’s term is determined on a case by case basis. The PPP loan is 2 years long.

SBA EIDL SUMMARY

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| Eligibility | <p>Applicants will need to certify that they have been negatively impacted by COVID-19. There is no set dollar amount or percentage loss in its financial condition that an applicant must report in order to qualify. An applicant defines its loss in comparison to its 2019 condition.</p> <p>Small business, non-profits with 500 or less employees, or those that meet the specific SBA’s industry sizing (even if more than 500 employees). Faith-based organizations are eligible.</p> |
| Interest/Loan Maturity | <p>3.75% for business, 2.75% for non-profits.</p> <p>Terms can be up to 30 years. Specific term is determined on a case by case basis. The first payment can be deferred for 12 months.</p> |
| Amount | <p>Up to \$2 million.</p> <p>Emergency EIDL Advance amounts are capped at \$10,000 and the exact amount will be determined by the number of employees of a business as of January 31, 2020 at \$1,000 per employee up to a maximum of \$10,000.</p> |
| Permitted Use | <p>Payroll; Accounts payable; Fixed Debts (Rent or Mortgage, etc.); Additional costs associated with disruption in supply chains; and other bills that could have been paid had the disaster not occurred.</p> |

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| Forgiveness/Special Feature | Not forgivable. However, EIDL advance of \$10,000 is available. |
| Credit Criteria | SBA will review credit history, repayment means; and other eligibility criteria. |
| Guarantee/Collateral | No collateral needed for loans under \$25,000. Loans over \$25,000 require collateral (such as real estate when available). All personal guarantees waived for loans not more than \$200,000. For loans more than \$200,000, guarantees will most likely be required from all principals. |
| Timing | Applicants must complete and submit applications by December 31, 2020. Applications are processed on a first come first served basis. |

Apply for the EIDL here: <https://covid19relief.sba.gov/#/>

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