

CONGRESS EXPRESSES ADDITIONAL CARE(S) FOR SMALL BUSINESSES SUFFERING ECONOMIC INJURY

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Tags: [CARES Act](#), [COVID - 19](#), [COVID - Business](#), [Danielle Durban](#), [Michelle Schwerin](#)



[SBA's Disaster Assistance Loan in the Age of COVID-19: "Economic Injury Declaration" by SBA Required for Missouri](#)

In a blog post we published last week, we discussed the [U.S. Small Business Administration's](#) (the "SBA") issued revised criteria for states (or territories) seeking an "economic injury declaration" related to COVID-19, which were released on **Tuesday, March 17, 2020**. The SBA expected the revised criteria would allow small businesses easier access to the **Economic Injury Disaster Loan** ("7(b)(2) Loan" or "EIDL" or "SBA Disaster Loans") program.

On **Friday, March 27, 2020**, Congress followed suit, passing the [Coronavirus Aid, Relief, and Economic Security Act](#) (the "**CARES Act**"), with provisions further simplifying the application process for a **7(b)(2) Loan** and appropriating \$10 billion specifically to fund these SBA Disaster Loans.

SBA Disaster Loans, with CARES Act modifications as described below, are available through December 31, 2020.

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Economic Injury Disaster Loans Eligibility Requirements Relaxed

First, under the CARES Act **all states** have been deemed to suffer an "economic injury," such that 7(b)(2) Loans are available to *all* eligible businesses within every single state in the United States.

Section 1110(f)(7) of the CARES Act

Second, Section 1110 of the CARES Act relaxed requirements for businesses to qualify for the SBA Disaster Loan program:

Between January 31, 2020 and December 31, 2020, if a business falls within a list of enumerated entities, including an "**eligible entity**," "**small business concern**," or "**private nonprofit organization**," such business will be eligible for a 7(b)(2) Loan.

Each of the following entities now qualifies to participate in the 7(b)(2) loan program:

Eligible Entity

An "**eligible entity**" is defined as

- A business with **not more than 500 employees**;
- An individual who operates under a sole proprietorship or as an independent contractor between January 31 through December 31, 2020;
- A cooperative with not more than 500 employees;
- An ESOP with not more than 500 employees; or
- A tribal small business concern with not more than 500 employees.

Such eligible entities are not subject to the revenue limitations that previously would have disqualified many small businesses.

Small Business Concern

A "**small business concern**" is defined by statute as "one which is independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. §§ [632](#) and [636](#).

- The SBA further determines a "small business concern" by its size. The SBA published a "size standard", that sets a maximum size of a "small business concern" as measured by employees or average annual receipts as compared to its industry.
- Thus, whether a company is deemed a "small business" for SBA purposes and qualifications, is completely fact dependent.

The following chart (set forth in **13 C.F.R. § 201**) sets forth the applicable "**size standards**":

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Private Nonprofit Organization

The term “**private nonprofit organization**,” is defined in the **Federal Regulations**, titled “Is my business eligible to apply for an economic injury disaster loan?”(13 C.F.R. § 123.300)

*The Regulation defines an eligible “private nonprofit organization” as “. . . a non-governmental agency or entity that currently has **(1)** an effective ruling letter from the , granting tax exemption under sections 510(c), (d), or (e) of the Internal Revenue Code of 1954 **OR** **(2)** satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit organized or doing business under State law.”*

Section 3.30(C)(3) of the latest “Standard Operating Procedure” from the SBA, dated **May 31, 2018** and applicable to the SBA Disaster Loans procedures prior to the CARES Act, directs SBA employees that “**private nonprofit organizations of any size are eligible**” for a 7(b)(2) Loan.

- Although the SBA’s Standard Operating Procedure does not have the legal authority of a statute or regulation, it will guide the SBA personnel’s’ determinations of eligibility.
- Per the Standard Operating Procedure, to the extent a business meets the definition of “private nonprofit organization”, then there is no size limitation with regard to applying for a 7(b)(2) Loan.

Section 1110(a) of the CARES Act

Economic Injury Disaster Loan

- The SBA is authorized to extend a 7(b)(2) Loan to a business based on the business’ actual economic injury and financial needs up to **\$2,000,000**.
- The SBA is further authorized to extend loan terms for up to 30 years at **3.75%** interest to for-profit entities and **2.75%** for nonprofits).

Section 1110(e)(7) of the CARES Act

7(b)(2) Loan Application Process

A business seeking a 7(b)(2) Loan must fill out an application through the SBA’s online portal. The SBA **may** approve a borrower purely based on the borrower’s application and credit score (*without* requiring supporting information, such as a tax return). However, it may require a business to fill out further forms and provide additional information.

Section 1110(d) of the CARES Act

Additionally, through the CARES Act, Congress eliminated the requirements for a business seeking a 7(b)(2) Loan to:

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- Provide a **personal guarantee** for loans of less than \$200,000; however, the SBA will likely provide further guidance concerning guarantees
- Be in business for 1 year prior to the disaster (to participate in the 7(b)(2) Loan program a business must merely have been operating on or before **January 31, 2020**)
- Show that the business is unable to obtain credit elsewhere

Allowable Uses of the 7(b)(2) Loan

Upon receipt of a 7(b)(2) Loan, proceeds may be used to pay fixed debts, payroll, accounts payable and other obligations that cannot be paid as a result of the coronavirus disaster.

Specifically, the SBA Regulations provide that loans are designed to provide:

“working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.” [13 C.F.R. § 123.303](#)

Loan proceeds are **not** intended to replace lost sales or profits and **cannot be used for** refinancing debt, making payments on loans owed by another federal agency, paying tax penalty obligations, repairing physical damages, and/or paying dividends to stockholders.

Section 1110(c) of the CARES Act

Economic Injury Disaster Loan Applicant May Request an Immediate Emergency Grant

A business that meets the above criteria for eligibility, “may request that the provide an advance . . . to the within 3 days of the receive an application” from the business.

A business may submit this “request” by checking a box during the online application process. Before disbursing an advance, the SBA **will** verify that the borrower is eligible to participate in the 7(b)(2) Loan program by reviewing the borrower’s a **self-certification**. The self-certification is made under penalties of perjury and may expose the borrower to criminal liability should the individual make a false self-certification.

Section 1110(e) of the CARES Act

An advance made as an Emergency Grant may be used for any “allowable use” (as defined above”) including:

- providing paid sick leave to employees unable to work due to COVID-19;
- maintaining payroll to retain employees;
- covering increased costs resulting from interrupted supply chains;

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- making rent or mortgage payments; **AND/OR**
- repaying obligations that cannot be met due to revenue losses.

Section 1110(e)(4) of the CARES Act

A business is not required to repay such advance, even if subsequently denied for a 7(b)(2) Loan. However, to the extent the business applies for and is approved for a 7(a) Loan (more about those here: [CARES Act: Paycheck Protection Program Provides Small Businesses an Opportunity for Relief](#)), the advance shall reduce the forgivable portion of the 7(a) loan.

Section 1110(e)(5) - 6) of the CARES Act

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