



How small businesses can access funding under the Small Business Administration's Disaster Loans Program in response to COVID-19

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Small businesses that are struggling financially as a result of the COVID-19 crisis may be able to access low-interest loans through the Small Business Administration's Disaster Loans Program.

The United States Small Business Administration (the "SBA") is an independent agency of the federal government, created in 1953. The SBA provides aid and assistance to small businesses and administers several types of loan programs, including the Disaster Loans Program. The SBA partners with banks, lenders, and credit unions in order to provide loans that are partially guaranteed by the federal government. By guaranteeing a portion of the loan, the SBA helps small businesses obtain loans from private banks when the small business may otherwise be denied funding under conventional lending guidelines. See 13 C.F.R. § 120.2. Note that the SBA rules generally require personal guaranties on all loans for the portion of the loan not guaranteed by the federal government.¹

A business must meet the criteria set forth below in order to qualify for loan programs provided by the SBA. Further, in order to receive assistance specifically related to COVID-19, the business must meet additional criteria for disaster loans.

General criteria to qualify for a SBA loan:

A business must meet the following criteria in order to be considered a "small business" by the SBA and thus be eligible for a loan:

- For-profit business of any legal structure (private nonprofits are also eligible for disaster loans, although they may not be considered a "small business" for other SBA programs)
- Independently owned and operated

¹ See 13 C.F.R. § 120.160(a) ("Personal guarantees. Holders of at least a 20 percent ownership interest generally must guarantee the loan. When deemed necessary for credit or other reasons, SBA or, for a loan processed under an SBA Lender's delegated authority, the SBA Lender, may require other appropriate individuals or entities to provide full or limited guarantees of the loan without regard to the percentage of their ownership interests, if any.").

- Not be nationally dominant in its field
- Physically located and operate in the U.S. or its territories²
- In need of credit and unable to obtain credit elsewhere

See 13 C.F.R. § 120.100-01.

In addition to the requirements noted above, qualification for a small business loan also varies by industry. The SBA uses the industry classifications set forth under the North American Industry Classification System (“NAICS”) in order to establish size standards. These size standards take into consideration economic characteristics of the specific industry, such as competition, start-up costs, and entry barriers. Certain types of businesses, such as lenders, marketing cooperatives, charities, and businesses deriving one-third of their revenue from legal gambling, are explicitly excluded from the program. See 13 C.F.R. § 123.301.

The SBA uses the business’ NAICS code, average annual receipts and revenue, and sometimes the number of employees of the business in order to determine if a particular business meets the applicable size standard and therefore qualifies as a small business. “Annual receipts” is defined by the SBA as the “total income plus the cost of goods sold.” Generally, receipts are averaged over the business’s most recent three fiscal years. However, as noted below, economic disaster loans, such as the loans available for businesses impacted by the coronavirus, use a five fiscal year average of receipts. Annual receipts of affiliates can also be considered. This analysis is fact-based and made on a case-by-case basis. For more guidance on determining annual receipts and revenue, see 13 CFR 121.104.

Certain businesses may find that they are ineligible for SBA funding due to the broad definition of “affiliate.” The number of employees of a small business includes all individuals, regardless of full-time, part-time, or other status, and affiliates are included in determining the number of employees. Affiliation is defined broadly and generally means the “power to control, whether exercised or not.” Often, this is when an entity or person has 50 percent (50%) or more ownership in the business, though some exceptions for smaller percentage ownership can apply. There are several tests that the SBA uses to determine affiliation, including counting entities that have common management, such as the same managing members, partners, or board of directors. This analysis is fact-intensive and made on a case-by-case basis. For more guidance on determining affiliation, see 13 CFR 121.103 and the free tool provided on the SBA’s website.

Criteria to qualify for a Disaster Loan:

The Coronavirus Preparedness and Response Supplemental Appropriations Act (HR 6074), passed into law on March 6, 2020, explicitly provides that coronavirus shall be deemed a “disaster” under the Disaster Loans Program. The state in which the qualifying small business sits needs to be declared a “disaster area” by that state’s governor through an official request to the SBA. Many states and counties across the country have been so declared. See the [SBA’s website for a full list of coronavirus declared disaster areas](#).

² The SBA notes that “businesses outside the U.S. may still be counted as small if they have an operation in the U.S. that makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor.”

Qualifying small businesses in designated disaster areas are eligible to apply for low-interest federal disaster loans. Importantly, small businesses that have credit available elsewhere are not eligible. The loans are aimed to assist small businesses suffering from “substantial economic injury” as a result of the recent crisis.

Disaster loans may be used to pay for the following:

- Fixed debt,
- Payroll,
- Accounts payable, and
- Other bills that cannot be paid due to the ongoing crisis.

Disaster loans may not be used for certain purposes, including to refinance debt, make payments on loans owed by another federal agency, to pay tax penalty obligations, repair physical damages, or to pay dividends to stockholders. See 13 C.F.R. § 123.303.

Other characteristics of these loans include:

- **Loan Size:** up to \$2,000,000
- **Current Interest Rate:**
 - 3.75% (small businesses)
 - 2.75% (private nonprofits)
- **Term:** Up to 30 years, but decided on a case-by-case basis
- **Personal Guarantee:** The SBA may require personal guarantees for any portion of the loan not guaranteed by the federal government. See 13 C.F.R. 120.160(a).

Once an applicant applies and is determined to be eligible, a loan officer is assigned to the case who will match the applicant with a qualifying lender. Specific loan terms are provided on a case-by-case basis.

Ways to apply for SBA loans

- Applicants may apply online, receive additional disaster assistance information, and download applications at <https://disasterloan.sba.gov/ela>.
- Applicants may also call SBA’s Customer Service Center at (800) 659-2955 or email disastercustomerservice@sba.gov for more information on SBA disaster assistance. Individuals who are deaf or hard-of-hearing may call (800) 877-8339.
- If a paper application is preferred, completed applications should be mailed to U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.
- Paper forms are preferred, they can be accessed here: <https://disasterloan.sba.gov/ela/Information/PaperForms>

The SBA also has a page specifically related to disaster loans in response to COVID-19: <https://www.sba.gov/disaster-assistance/coronavirus-covid-19>

In conclusion, we are encouraging our clients who may be eligible to apply as soon as possible. At this time, the SBA and many of its lending partners are overwhelmed. Potential borrowers should get “in queue” as soon as possible and be prepared for delays.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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