



## Essentials of the SBA Economic Injury Disaster Loan Application Process for Your Business

*Foster Swift Legal Update E-blast*

March 26, 2020

On March 19, Governor Gretchen Whitmer announced that the U.S. Small Business Administration (SBA) approved her request for a statewide Economic Injury Disaster Loan (“EIDL”) declaration, thus allowing certain Michigan small businesses and nonprofits who have suffered economic losses from the COVID-19 outbreak to apply for low-interest loans as part of \$1 billion in funding made available to the SBA by Congress earlier this month.

Here is what you need to know about the SBA EIDL program:

### **Which Michigan businesses and nonprofits are eligible?**

Those eligible to receive loans are small businesses, small agricultural cooperatives, small aquaculture businesses and most private non-profit organizations, including:

- Those directly affected by the disaster
- Those that offer services directly related to the businesses in the declaration
- Those indirectly related to the industry that are likely to be harmed by losses in their community (e.g., a manufacturer of widgets may be eligible as well as the wholesaler and retailer of the product)

In general, eligible businesses include, but are not limited to, hotels, recreational facilities, charter boats, manufacturers, sports vendors, owners of rental property, restaurants, retailers, souvenir shops, travel agencies, and wholesalers.

### **What are the criteria for loan approval?**

Through an application process (described below), applicants will be evaluated on the following criteria:

- **Credit History**—Applicants must have a credit history acceptable to the SBA.

---

#### **AUTHORS/ CONTRIBUTORS**

Scott A. Chernich

---

#### **PRACTICE AREAS**

Business & Tax

Business Law

Finance, Real Estate & Bankruptcy Law

- **Repayment**—The SBA must determine that the applicant business has the ability to repay the SBA loan.
- **Eligibility**—The applicant must be *physically located* in a county with a declared disaster and have suffered working capital losses due to the declared disaster, not due to a downturn in the economy or other reasons. An applicant’s economic presence alone in a declared area does not meet this requirement. The physical presence must be tangible and significant. Merely having a P.O. box in the disaster area would not qualify as a physical presence.

### **How much can I borrow?**

The borrowing terms and use limitations for EIDLs include:

- **Loan Amount**—Eligible entities may qualify for loans up to \$2 million.
- **Interest Rates**—The interest rates for loans are 3.75 percent for small businesses and 2.75 percent for nonprofit organizations with terms up to 30 years.
- **Eligibility**—Eligibility for working capital loans is based on the size (must be a small business) and type of business and its financial resources.
- **Limitations**—Working capital loans may be used to pay fixed debts, payroll, accounts payable, and other bills that could have been paid had the disaster not occurred. The loans are not intended to replace lost sales or profits or for expansion.

### **What are loan collateral requirements?**

Collateral requirements for EIDLs differ based on loan amounts and an applicant’s individual circumstances.

- EIDLs over \$25,000 require collateral.
- The SBA will take real estate as collateral when it is available.
- The SBA will not decline a loan for lack of collateral, but requires borrowers to pledge what is available.

### **Are EIDLs different from other SBA loans?**

EIDLs differ from other SBA loans in several respects, including

- EIDL funds come directly from the U.S. Treasury.
- Applicants do not go through a bank to apply. Instead, they apply directly to SBA’s Disaster Assistance Program at: [DisasterLoan.sba.gov](https://DisasterLoan.sba.gov).
- There is no cost to apply.
- There is no obligation to take the loan if offered.
- The maximum unsecured loan amount is \$25,000.
- Applicants may have an existing SBA Disaster Loan and still qualify for an EIDL for this disaster, but the loans cannot be consolidated.

### **What information is required to apply for a loan?**



The following information is required to apply for a loan, although other information may be requested. Paper applications and forms may be submitted, but it is recommended that applications be transmitted electronically through the application website.

- Completed SBA loan application (SBA Form 5)
- Tax Information Authorization (IRS Form 4506T) for the applicant, principals and affiliates
- Complete copies of the most recent federal income tax return
- Schedule of Liabilities (SBA Form 2202)
- Personal Financial Statement (SBA Form 413)

**Are any entities specifically excluded from EIDL assistance?**

The following entities are ineligible for loan assistance:

- **Agricultural Enterprises**—If the primary activity of the business (including its affiliates) is as defined in Section 18(b)(1) of the Small Business Act, neither the business nor its affiliates are eligible for EIDL assistance
- **Religious Organizations**
- **Charitable Organizations**
- **Gambling Concerns** (e.g., concerns that derive more than one-third of their annual gross revenue from legal gambling activities)
- **Casinos and Racetracks** (e.g, businesses whose purpose for being is gambling (e.g., casinos, racetracks, poker parlors, etc.))—Not eligible for EIDL assistance regardless of one-third criteria described above

**What should I do next?**

If you are not sure whether you qualify for EIDL assistance, would like to discuss the relative costs and benefits of this loan program, or have questions about how to apply, please contact Foster Swift attorney Scott Chernich for assistance. Scott can be reached at 517.371.8133 or at [schernich@fosterswift.com](mailto:schernich@fosterswift.com).