



# SBA Economic Injury Disaster Loans for COVID-19

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The current [coronavirus disease \(COVID-19\) outbreak](#) may have significant [economic implications](#) for businesses and nonprofit organizations including negative impacts on imports, [global supply chains](#), and [tourism](#). Furthermore, if [COVID-19 becomes widespread](#) or prolonged it may [slow global growth](#), and some businesses may be forced to [furlough](#) or [lay off workers](#). This Insight considers whether the [Small Business Administration](#) (SBA) could provide economic injury disaster loans (EIDLs) to eligible businesses and organizations that have suffered substantial loss as a result of COVID-19.

## EIDL Overview

EIDLs provide eligible small businesses and nonprofit organizations up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. Loan proceeds can only be used for working capital necessary to enable the business or organization to alleviate the specific economic injury and to resume normal operations. Interest rates for EIDLs are statutorily set at 4% per annum or less and can have maturities up to 30 years.

EIDLs are available only to businesses and private and nonprofit organizations that are located in a declared disaster area, have suffered substantial economic injury, are unable to obtain credit elsewhere, and are defined as small by [SBA size regulations](#).

## Potential Triggers

There are three disaster declarations that could make EIDL available:

1. the SBA Administrator issues an EIDL declaration under the Small Business Act upon certification from a state governor that at least five small businesses have suffered substantial economic injury as a result of a disaster;
2. a physical disaster declaration is issued by the SBA Administrator under the Small Business Act in response to a gubernatorial request for assistance; or

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3. the President issues a [major disaster declaration](#) under the [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#) that authorizes both [Individual Assistance](#) (IA) and [Public Assistance](#) (PA).

## EIDL Declarations

Though it has never been tested for an infectious disease outbreak, on February 4, 2016, the [SBA made EIDLs available to Genesee](#) and adjacent counties in Michigan following a disaster declaration request from Michigan’s governor related to public water contamination in Flint, MI. Given that precedent which the SBA referred to as a “historic health emergency,” it could be argued that an EIDL declaration by the SBA Administrator would be the most likely type of trigger to provide EIDL assistance to businesses. However, an EIDL declaration for COVID-19 would (1) require a governor to certify that five or more business concerns are economically injured as a result of COVID-19, and (2) require the SBA Administrator to determine that COVID-19 meets the definition of a disaster under the Small Business Act.

## Five-Business Threshold

EIDL declarations cover designated counties, but COVID-19 may be geographically diffuse. As a result, there may be instances in which a governor has five or more business economically affected by COVID-19 that are not in the same political subdivision.

## Disaster Definition under the Small Business Act

It is unclear whether COVID-19 meets the Small Business Act’s definition of a disaster. The definition states

the term “disaster” means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves ..., riots, civil disorders or other catastrophes, except it does not include economic dislocations (15 U.S.C. 636 (b)).

[13 C.F.R. §123.2](#) elaborates on the definition:

Disaster declarations are ... specific geographic areas ... damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents such as oil spills. [They] are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion.... However, for purposes of economic injury disaster loans only, they do include droughts and below average water levels in ... the United States that supports commerce by small businesses ... Past examples include ocean conditions causing significant displacement ... as well as contamination of food or other products for human consumption....

Strictly interpreted, COVID-19 may not be considered a “sudden event” and not tied to a “specific geographic area.”

It should be noted, however, that EIDL has been provided for incidents that are not sudden such as droughts and, as just mentioned, the Flint water contamination incident (which arguably is also a public health incident). This may suggest to some that the definition of a disaster under the Small Business Act could be interpreted broadly to include an EIDL declaration.

## Major Disaster and Physical Disaster Declarations

As mentioned earlier, major disaster declarations under the Stafford Act that provide IA and PA also trigger EIDL. Potential issues of interest associated with major disaster declarations are twofold: (1) the

list of incidents in the definition of a major disaster under the Stafford Act does not include outbreaks of infectious diseases. In the past some incidents were considered ineligible due to definitional reasons (such as [the major disaster denial for the Flint water contamination incident](#)); (2) the thresholds used to determine whether to provide IA and PA are based on damages to homes and public infrastructure. It is unlikely COVID-19 would cause physical damages.

Emergency declarations under the Stafford Act do not have the definitional and threshold challenges posed by a major disaster declaration. Emergency declarations, however, do not authorize EIDL.

Though the thresholds for a physical disaster declarations under the Small Business Act are significantly lower than major disaster declarations (generally, at least 25 homes or businesses or a combination of the two have uninsured losses of 40% or more), as noted it is unlikely a COVID-19 incident would cause physical damages.

## Issues for Congress

Given the existing statutory constraints, if Congress wishes to make EIDL assistance available to small businesses and nonprofit organizations affected by COVID-19, it may consider amending the Small Business Act to provide explicit statutory assistance following an infectious disease outbreak, or amending the Stafford Act to make EIDL assistance available under an [emergency declaration](#).

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