SBA EIDL Loans Over $200K: The Personal Risk for Business Owners That Can Be Overlooked

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For businesses that accepted a Small Business Administration loan for more than $200,000 during the pandemic, there can be a hidden risk for owners.

When a business took out these loans, known as a COVID-19 Economic Injury Disaster Loan or EIDL, the exposure isn't just limited to the business when the value tops $200,000. Loans above that threshold generally require a personal guarantee, which means personal income and assets, not just the company's, can be on the line if the loan goes into default.

About 500,000 delinquent EIDL loans have been sent to Treasury for collection action. As SBA and the government ramps up collection on these delinquent loans, understanding that personal exposure, and the options available to manage it, has never been more important.

This article walks through some of the intricacies that face borrowers. This includes what a personal guarantee actually means for larger EIDL loans, what government collection looks like if a loan defaults, the negotiation tools available to borrowers, how bankruptcy fits into the picture, and the steps people can take now before a loan ever becomes delinquent.

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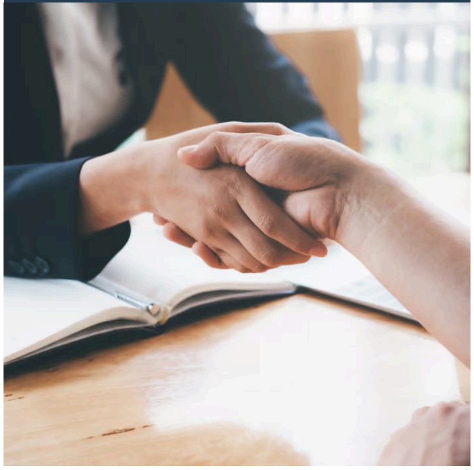

Frost Law is working extensively on COVID-19 EIDL issues. To help borrowers understand what they face, Frost Law has written a series of articles covering the loan program. Explore the rest of the series here:

- Overlooked: Nearly A Half-Million Delinquent SBA Loans Sent To Federal Collection Process and Private Debt Collectors
- Frost Law Alert: SBA Loan Holder Rights May Have Been Violated When Debts Sent to Treasury for Collection
- SBA EIDL Loans Sent to Treasury: What Borrowers Should Know
- Businesses With an SBA EIDL Loan Between $25,000 AND $200,000 May Still have Assets at Risk

Why Loans Over $200,000 Are Different

The SBA's COVID-19 EIDL program relaxed several of its usual requirements during the pandemic, but personal guarantees remained tied to loan size. Under the 2020 CARES Act that created the COVID EIDL program, SBA was authorized to waive personal guarantee requirements only for loans of $200,000 or less. That means most borrowers with loans above $200,000 signed a personal guarantee as a condition of receiving the funds.

This is an important distinction. A personal guarantee is a separate legal promise, made by an individual, to repay the loan if the business cannot. It exists independent of the loan itself, and it typically survives even if the business closes, dissolves, or files for bankruptcy protection. **Loans above $25,000 also generally required collateral**, which adds another layer of exposure beyond the guarantee itself.

Understanding Personal Guarantee Exposure

Signing a personal guarantee means a creditor can pursue people individually for the unpaid balance, and that's separate from any action taken against the business. This means personal income and assets, including outside wages, bank accounts, and property, can be pursued, not just business assets.

For SBA COVID EIDL borrowers, this personal exposure has become more concrete in the past year. SBA has increasingly moved delinquent COVID EIDLs into active federal debt collection, and a charge-off (SBA's internal accounting step for treating a loan as uncollectible) does not eliminate the guarantor's obligation to repay. It also does not stop collection activity; it often signals the start of more aggressive recovery efforts.

Here's another hidden trap. Guarantors should also be aware that any debt ultimately cancelled as uncollectible by the government may be treated as taxable income, adding a tax dimension to an already difficult financial situation.

Collection and Enforcement Risk if You Default

Once a COVID EIDL loan becomes seriously delinquent, it typically leaves SBA's hands and moves into one or more of the following federal collection channels:

- **Treasury Offset Program (TOP):** Federal payments owed to the individual, including tax refunds, Social Security benefits, and certain federal salary or contractor payments, can be intercepted and applied to the debt. Agencies generally must refer debts to this Treasury program once they're 120 days past due.
- **Treasury Cross-Servicing:** Once transferred, the Treasury's Bureau of the Fiscal Service, not SBA, takes over servicing the loan. The Treasury can negotiate payment plans, pursue administrative wage garnishment, or refer the debt for litigation. But once a loan moves to Cross-Servicing, it generally cannot be sent back to SBA.
- **Fraudulent loans:** In cases involving suspected fraud or where litigation is warranted, the loan may be referred for a collection lawsuit, in addition to Treasury collection.
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Earlier this year, SBA's temporary authority expired to keep servicing delinquent COVID EIDLs itself, rather than referring them to Treasury. As a result, a large volume of pandemic-era loans, including loans well above the $200,000 threshold, have already moved into these enforcement channels, along with the personal guarantors attached to them.

The SBA has sent roughly 500,000 delinquent loans over to the Treasury collection process, a step that has surprised many delinquent borrowers. Frost Law has also seen situations where borrowers were not notified of the transfer in advance.

Negotiation Options for Guarantors

Default on these loans is not necessarily the end of the road. Several avenues exist for borrowers and guarantors to reduce the damage or reach a resolution before government enforcement escalates:

- **Payment reduction assistance.** Eligible borrowers who are current with their loans, or less than 90 days past due, can request to reduce their payments by 50% for six months. This doesn't reduce principal or stop interest from accruing, but it can create breathing room during a temporary cash-flow problem. Under current SBA policy, borrowers can only use this option once every five years, so it's worth timing the request carefully.
- **Offer in Compromise.** For loans that are fully due and payable, SBA accepts formal settlement offers submitted on SBA Form 1150. A workable Offer in Compromise submission generally requires full financial disclosure, a clear source of funds, and a reasonable relationship between the amount offered and what SBA could realistically recover through enforced collection. This route is typically reserved for cases where the business has ceased operations, and its assets have already been liquidated.
- **Disputing the debt.** If there's a legitimate dispute about the amount owed or whether the debt is valid, Cross-Servicing and TOP both have processes for raising and resolving disputes before enforcement proceeds further. These disputes generally take one of three forms: challenging the amount owed, challenging whether SBA followed proper notice procedures before transferring the debt or challenging whether the debt is valid, for example, arguing no enforceable guarantee exists.

Each of these options has strict eligibility requirements and documentation demands, and a misstep in the process can close off options that might otherwise have been available.

Bankruptcy Considerations

Bankruptcy can address personal guarantee liability, but it isn't automatic and it isn't universal. A personal guarantee is a debt owed by an individual, so business bankruptcy alone does not necessarily discharge it. That means a loan guarantor may need to pursue personal bankruptcy relief separately to address that exposure. Guarantors should also weigh:

- Whether other assets — like real estate, savings, future income — pledged as collateral or otherwise reachable would be affected.
- How bankruptcy would interact with any pending Treasury Cross-Servicing action or wage garnishment.
- The long-term credit impact, which is separate from and often more lasting than the impact of a charge-off alone.

Bankruptcy is a significant legal step with consequences well beyond a single SBA loan, and it should be evaluated as part of a borrower's overall financial picture, not in isolation.

Planning Before Default

If there's one takeaway from this article, it's this: The most effective step a borrower can take is to keep the loan current with SBA. The options available to a guarantor shrink considerably once a loan is delinquent and has been referred out for collection. Borrowers with EIDLs above $200,000 are generally better positioned if they:

- Prioritize staying current with SBA and request payment assistance or accommodation before missing payments, not after.
- Review their loan documents now to confirm the personal guarantee terms and any collateral pledged.
- Keep documentation of financial hardship organized in case an Offer in Compromise becomes necessary later.
- Get legal guidance before a loan crosses the 60- to 180-day delinquency window that triggers referral to federal collection programs.

Because COVID EIDLs carry 30-year terms, this issue is likely to affect borrowers for years to come, and the government's approach to collection has continued to shift. Staying ahead of a potential default, rather than reacting after referral to Treasury or even the Department of Justice, gives borrowers meaningfully more control over what happens and their financial future.

For people struggling with this situation, Frost Law may be able to help. We've worked with dozens of EIDL borrowers. Schedule a consultation with the Frost Law team by calling **(410) 497-5947** or through our **contact form**.

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