

Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”)

Resources for Small Businesses

Four Primary Considerations

1. Economic Injury Disaster Loans (EIDL)
2. Paycheck Protection Program (PPP)
3. Additional Small Business Benefits
4. Other Considerations

Economic Injury Disaster Loans (EIDL)

- The U.S. Small Business Administration is offering low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of the Coronavirus (COVID-19).
- Any Economic Injury Disaster Loan assistance declaration issued by the SBA makes loans to small businesses with less than 500 employees (including sole proprietorships and independent contractors) and private, non-profit organizations to help alleviate economic injury caused by the Coronavirus (COVID-19). (Note: borrower must have suffered working capital losses as a result of the disaster and not some other cause.)
- EIDLs offer **up to \$2 million** in assistance and can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.
- These loans may be used to pay expenses that could have been met had the disaster not occurred - fixed debts, payroll, accounts payable and other bills. The interest rate is **3.75%** for small businesses and **2.75%** for non-profits.
- SBA offers loans with long-term repayments in order to keep payments affordable, up to a **maximum of 30 years**.

Economic Injury Disaster Loans (EIDL)

- Terms are determined on a case-by-case basis, based upon each borrower's ability to repay, including acceptable credit history.
- Loans will not be declined because of a lack of collateral but will require borrowers to pledge what is available. (SBA takes real estate collateral when possible.)
- EIDLs are currently available and administered directly by the SBA.
- Application can be made:
 - online at <https://disasterloan.sba.gov/ela>;
 - sent overnight to the SBA office in Ft. Worth, TX;
 - faxed to 202-481-1505;
 - or scanned and sent by email to ELA.doc@SBA.gov.

Economic Injury Disaster Loans (EIDL)

Application Requirements

- Application
- Personal Financial Statement for any General Partner and/or Owner of 20% or more of the business
- Affiliated business information for any business in which the General Partner or 20% Owner owns more than 50%
- Statement of Liabilities for the Applicant
- IRS 4506T form
- Tax Returns
- In addition, be prepared to provide monthly sales figures and projections with the application – monthly revenue amounts will be the main consideration used by the SBA to determine revenues lost during the period and the ultimate the loan amount offered.

Paycheck Protection Program (PPP)

- \$349 billion forgivable loan program available to small businesses, sole proprietors, independent contractors and most private non-profit organizations that have been “substantially affected by COVID-19.”
- Must have 500 employees or fewer or meet current SBA size standards.
- Loans up to the lesser of \$10 million or 250% of an employer’s average monthly payroll costs.
- Loan proceeds may be used for employee salaries, mortgage payments, rent, utilities and any other debt obligations that were incurred before the covered period.

Covered payroll costs include:

- Salary, wages and payment of cash tips (up to an annual salary of \$100,000)
- Employee group healthcare benefits, including insurance premiums, retirement contributions and covered leave
- Vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation
- Payment of state or local tax assessed on the compensation of employees

Paycheck Protection Program (PPP)

- If employers maintain payroll, the portions of the loan used for up to eight weeks worth of payroll costs, mortgage interest, rent and utilities would be forgiven. Forgiveness amounts are reduced for decreases in monthly average headcount and salary/wage reductions.
- The remaining loan balance will have a maturity of not more than 10 years and a maximum interest rate of 4% with an option to defer payments of interest and principal not more than 1 year.
- This program is retroactive to February 15, 2020 to help bring workers who may have already been laid off back onto the payroll.
- Waives affiliation rules for businesses in the hospitality and restaurant industries.
- Repayment ability is not a factor in approval. Instead, banks will determine if the business was open on February 15, 2020 and had employees or independent contractors on payroll.

Paycheck Protection Program (PPP)

- Program is in process of being set-up and is administered by an SBA lender.
- Loans are available through June 30, 2020.
- While we are still waiting on the SBA application process, what can you do now? Request and organize your payroll records for the past 12 months. We know this will be one of the most important parts of the application process.
- Borrowers should evaluate both potential options and choose accordingly. However, EIDL application process may be initiated now. If offered, the loan could be declined or refinanced into the PPP if borrower wants to go with the PPP loan.

Can a business receive both a PPP loan and an EIDL? What are the relevant considerations for deciding which type of loan is more appropriate?

- Generally, a business can apply for loans under both the PPP and the EIDL program but must use the EIDL for a purpose other than covering payroll costs. (Borrowers may not obtain an EIDL and a PPP loan for the same purpose.)
- To determine whether to apply for a PPP loan or EIDL, businesses should consider the following:
 - *Eligibility:* As described herein, the eligibility requirements are somewhat different for each program.
 - *Maximum Loan Amounts:* PPP loans are capped at \$10 million, with an applicant's limit determined by a formula tied to payroll costs; EIDLs are capped at \$2 million.
 - *Loan Forgiveness:* PPP loans may be eligible for loan forgiveness; EIDLs have no such feature. However, EIDL applicants may receive an emergency grant of up to \$10,000 that does not have to be repaid.
 - *Maximum Maturity:* PPP loans can have maturities of up to 10 years, with no obligation to make payments under the loan for up to the first 12 months. EIDLs can have maturities up to 30 years. EIDL payments can also be deferred for up to a year; however, interest accrues during deferment periods.
 - *Interest Rates:* Paycheck Protection Program loan interest rates are capped at 4%. The EIDL interest rates for COVID-19 are 3.75% for businesses and 2.75% for nonprofit organizations.

Source: Arnold and Porter, “Small Business Loan Relief from Cares Act, March 30, 2020.

Additional Small Business Benefits

- The federal tax return filing and payment deadlines are now July 15, 2020.
- Tax credits for businesses with fewer than 500 employees to cover:
 - Two weeks of paid sick leave for employees who have been quarantined, have a sick family member, or have been affected by school closings
- Payroll taxes due to the IRS through the end of 2020 can be deferred with 50% of those deferred payments due by December 31, 2021 and the remaining 50% due by December 31, 2022. (Note: taxpayers that had indebtedness forgiven under the CARES Act are excluded from this benefit.)
- Increases to the amount of interest expense businesses may deduct from 30% to 50% for 2019 and 2020.

Other Considerations

- Understand and manage cash flow needs (project 30, 90 and 180 days out)
- Review loan documents and initiate conversations with lenders about loan payment deferment options or loan restructures.
- Review leases and initiate conversations with landlords about lease payment deferrals.
- Understand whether you have business interruption insurance.

Concluding Thoughts and Questions

“You never want a serious crisis to go to waste. And what I mean by that is an opportunity to do things that you think you could not do before.”

Rahm Emanuel, former Mayor of Chicago

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