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Business Advisors & CPAs

Navigating the CARES Act: How Your Small Business Can Benefit

Webinar - March 31, 2020

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Overview

1. SBA – Economic Injury Disaster Loans (EIDLs)
2. Paycheck Protection Program Loans and Loan Forgiveness
3. Employee Retention Credit
4. Delay of Payment of Employer Payroll Taxes
5. Opportunities for Income Tax Amendments and Future Savings
6. Economic Stabilization and Assistance Program
7. Q&A

EIDL – Can You Apply?

- Businesses and private non-profits, sole proprietors and independent contractors, cooperatives and ESOPs (all with **less than 500 employees**); Affiliation rules apply
- Business must be either directly affected by COVID-19 or indirectly affected through harm and losses in their community
- Creditworthiness standards - SBA may approve applicant for small-dollar loans based solely on credit score or “alternative appropriate methods to determine an applicants ability to repay”; tax return not required

EIDL – How Much Can You Receive?

- Loan amount is ***based on proven impact***, \$2,000,000 maximum
- Applicant can request \$10,000 ***non-refundable*** advance within 3 days after application
- If applicant subsequently obtains a PPL loan, the amount of the emergency advance (up to \$10,000) is reduced from your available loan forgiveness under the PPL loan

EIDL – How Can You Use it?

- Loans are available to pay accounts payable, debts, payroll, and other bills that the business cannot pay as a direct result of the COVID-19 pandemic
- Interplay with PPP Loans

EIDL – What are the Terms?

- 30-year amortization; 3.75% interest rate (2.75% for non-profits)
- NOT forgivable
- Personal guaranties required for loans > \$200,000
- Collateral required for loans > \$25,000 (borrowers with existing secured credit facilities will likely need the consent of their existing lenders to take an EIDL and grant a security interest to the SBA)

EIDL Application Requirements

- Three-step application process:
 - 1) Gather information required and submit application directly through the SBA website or via paper application
 - 2) Credit review and EIDL verification completed by the SBA
 - A provision of the CARES Act allows the SBA to determine creditworthiness solely by reviewing credit score of applicant
 - 3) Loan amount appeal and/or closing process for loan
- Regular turnaround times are 2-3 weeks for EIDL loans; due to high volume this will likely increase

SBA Customer Service Information

Website – www.SBA.gov/disaster

Application – <http://disasterloan.sba.gov/els>

Call – (800) 659-2955

Email – disastercustomerservice@sba.gov

Paycheck Protection Program (“PPP”)

- \$349 billion for small businesses through federally backed loans
- Provided under section 7(a) of the Small Business Act
- Lenders authorized to make loans under the SBA’s current Business Loan Program are automatically approved to make and approve PPP Loans
 - The Treasury Secretary may extend authority to additional private sector lenders

PPP –

Can you Apply?

- Generally, any business, nonprofit organization, veterans' organization or Tribal business that employs not more than the greater of:
 - 500 employees (full-time, part-time or other basis); or
 - If applicable, the size standard in number of employees established by the SBA for the industry in which such business concern operates
<https://www.sba.gov/document/support--table-size-standards>
- Sole Proprietors, Independent Contractors and Eligible Self-Employed Individuals
- SBA is to issue guidance to prioritize loans to applicants in underserved and rural markets, veterans and the military, business concerns owned and controlled by socially and economically disadvantaged individuals and women and Businesses in operation for less than 2 years

PPP Affiliation Rules – Do You Have > 500 Employees?

- Generally, affiliation exists when one business controls or has the power to control another or when a third party controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties
- If a borrower has affiliates the 500 employee count is aggregated across all of the relevant affiliates' companies
- The PPP waives SBA affiliate rules regarding aggregated employee count for certain applicants
 - NAICS code 72 businesses, franchises identified as such by the SBA, and businesses that receive financial assistance from a licensed Small Business Investment Company

PPP -

How Much Can Receive?

The lesser of:

- 2.5 times the average total monthly payroll costs incurred during the 1-year period before the loan
 - Plus the outstanding amount of a loan under SBA 7(b)(2) (EIDL) that was made after 1/31/20, but before the date PPP loans were made available
- OR
- \$10,000,000
- !
- Different time periods for 'average total monthly payroll costs' for seasonal employers or employers not in business during portions of 2019

Definition of “payroll costs”

Payroll costs include:

- Salaries, wages, commission, or similar compensation
- Payment of cash tip or equivalent
- Payment for vacation, parental, family, medical, or sick leave
- Allowance for dismissal or separation (severance)
- Payment required for the provisions of group health care benefits, including insurance premiums
- Payment of any retirement benefit
- Payment of State or local tax assessed on the compensation of employees
- Sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation, capped at \$100k

Definition of “payroll costs”

Payroll costs **exclude**:

- The compensation of an individual employee in excess of an annual salary of \$100k, as prorated for the covered period
 - Some ambiguity in this language
- Taxes imposed or withheld under chapters 21, 22 or 24 of the Internal Revenue Code (i.e. FICA and Medicare)
- Any compensation of an employee whose principal residence is outside of United States
- Qualified sick leave or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act

PPP – How Can You Use it?

- Payroll costs (including continuation of group health care benefit during periods of paid sick, medical or family leave, and insurance premiums, commissions or similar compensations);
- Payments of interest on any mortgage obligations;
- Rent
- Utilities
- Interest on any other debt obligations that were incurred before the covered period
- In addition to other permissible uses under SBA Section 7(a).

Application Process

- Application process is directly with SBA approved lenders
 - Certifications for applicants
- Lenders need to consider:
 - Applicant was in operation on 2/15/20
 - Applicant paid salaries and payroll taxes for employees or independent contractors
- Companies should start to gather 'payroll cost' data
 - Generate reports from payroll provider
 - Generate internal reports from accounting system for certain GL codes
 - Potential need to generate reports from health insurance provider

PPP – Loan Forgiveness

- PPP loans qualify for tax-free loan forgiveness equal to the total amount borrower expends within 8-weeks after the loan for
 - Payroll costs
 - Payments of interest on existing mortgage obligations
 - Rent obligations
 - Covered utility payments
- Forgiveness amounts will be reduced by a percentage to reflect employee cuts or reductions in wages between February 15th and June 30th (reductions or cuts reversed before June 30th do not count against borrower)
- Amounts not forgiven have 10-year amortization; 4% maximum interest rate

Loan Forgiveness (Cont.)

- PPP loan computation and forgiveness computation are apples to oranges
- There will be an application process to submit for loan forgiveness
 - Companies should make sure to separately track eligible costs for 8-week period after receiving PPP loan
 - Companies should keep cancelled checks and/or other proof of payment for items allowed under forgiveness computation
- Forgiveness of covered loans is **excluded** from gross income

PPP – What are Other Key Terms?

- No collateral or guarantees required

Borrower Certifications

- The loan is needed to continue operations during the COVID-19 emergency
- Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments and utility payments
- The applicant does not have any other application pending under this program the same purpose
- From February 15, 2020 through December 31, 2020 the applicant has not received any duplicative amounts under the program

Can you Apply for both an EIDL and a PPP? -

Applicants may receive both an EIDL and PPP Loan if:

The EIDL (i) was made between January 31, 2020 and “the date on which covered loans are made available” and (ii) the EIDL was made for a purpose other than paying payroll costs.

If an applicant received a EIDL after January 31, 2020, the borrower may refinance the outstanding balance as part of the PPL.

SBA Loan Summary

Economic Injury Disaster Loans	Paycheck Protection Program Loans
Direct with Small Business Administration (“SBA”)	Provided through either the SBA or in cooperation with the private lenders/banks
Small businesses, small agricultural cooperatives, and most private nonprofit organizations are eligible to apply.	Small businesses, nonprofit organizations, veterans organizations and Tribal businesses with fewer than 500 employees (or the applicable size standard for the industry as provided by the SBA) are eligible to apply
SBA Affiliation rules apply	Sole proprietors, independent contractors and “eligible self-employed individuals” as defined in the Families First Coronavirus Response Act
\$2,000,000 maximum Amount dependent on proven impact	\$10,000,000 maximum Amount generally equal to 2.5 times the applicant’s monthly payroll costs for preceding 12 months
30-year amortization; 3.75% interest rate (2.75% for non-profits)	10-year amortization; 4% maximum interest rate
Not forgivable	Forgivable, based on maintained employment and salary levels
Collateral required for loans in excess of \$25,000	No collateral or guarantees required
Requires creditworthiness and demonstration of negative impact of COVID-19	Requires certification that funds are needed to maintain operations during COVID-19 outbreak

Other Relief - Payments on Existing SBA Loans

For six months, the SBA will pay all principal, interest, and fees on all existing SBA loan products, including 7(a), Community Advantage, 504, and Microloan programs (not PPP loans).

The borrower does not have to repay this amount

SBA Express Bridge Loans

Available to businesses with business relationships with SBA Express Lenders to access up to \$25,000 on an expedited basis.

<https://www.sba.gov/sites/default/files/2020-03/Express-Bridge-Loan-Pilot-Program-Guide-FINAL-3.25.20.pdf>

Employee Retention Credit

- Refundable credit against employer's share of Social Security taxes
- For employers whose operations were suspended or quarterly receipts are less than 50% of receipts in same quarter of 2019
- Capped at \$10k per employee
- Employers who get a payroll protection loan under SBA Section 7(a) are not eligible

Delay of Payment of Employer Payroll Taxes

- Employer's 2020 Social Security tax payments can be deferred
- 50% due 12/31/21 and 50% due 12/31/22
- Employers who had indebtedness forgiven under the CARES Act are not eligible

Opportunities for Income Tax Amendments & Future Savings

- Eliminated restrictions on net operating losses
- Reduced limitations on business interest deductions
- Additional depreciation on qualified improvement property

Economic Stabilization and Assistance

Title IV of the Act provides relief to organizations through direct loans, loan guarantees, and other investments consisting of:

- \$25 billion for air carriers;
- \$4 billion for cargo air carriers;
- \$17 billion for businesses critical to maintaining national security; and
- ***\$454 billion for programs established by the Federal Reserve System to provide liquidity to the financial system that supports “eligible businesses,”*** states, and municipalities.

Assistance to Mid-Size Businesses

- There are several loan programs that draw from the \$454 billion fund.
- One program is for eligible businesses having between 500 and 10,000 employee (“Mid-Size Businesses”).
- “Eligible Business” is defined broadly as, “a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the Act”.
- Unlike the loans under the Paycheck Protection Loan Program, these loans are ***not eligible to be forgiven.***

Mid-Size Business Loan Terms

Certain economic terms of these loans are provided in the Act:

- An annualized interest rate not higher than 2 percent.
- A six-month period (or longer as the Secretary may determine) where no principal or interest is due and payable.
- However, no guidance has been provided yet on the expected term of these loans.

Certifications and Restrictions

A business that accepts a loan under this may not while the loan or guarantee is outstanding and for 12 months thereafter:

- If a publicly traded business, it may not buy back its equity (or that of a parent company) unless an existing agreement requires it
- The business may not make any dividends or distributions on common stock
- No employee whose compensation (broadly defined) exceeded \$425,000 in 2019 may receive compensation exceeding his or her 2019 compensation; no severance for such employee may exceed twice the maximum compensation received in 2019.
- No employee whose compensation exceeded \$3,000,000 in 2019 may receive compensation exceeding the sum of \$3,000,000 and 50% of the excess over \$3,000,000 he or she received in 2019.

Good Faith Certifications

For a Mid-Size Business to receive this loan, it must make the following good faith certifications:

1. The uncertainty of economic conditions makes the loan request necessary;
2. The funds it receives will be used to retain at least 90 percent of its workforce, at full compensation, until September 20, 2020;
3. It intends to restore not less than 90 percent of its workforce existing as of February 1, 2020, and to restore all compensation and benefits to its workers no later September 30, 2020;
4. It must certify to the dividend, distribution and buy-back restrictions described previously;
5. It will not outsource or offshore jobs for the term of the loan and for two years after repayment of the loan;
6. It will not cancel existing collective bargaining agreements for the term of the loan and for two years after repayment of the loan;
7. It will remain neutral in any union organization effort for the term of the loan;
8. It is created/organized and domiciled in the U.S. with significant operations and a majority of its employees located in the U.S.; and
9. It is not in bankruptcy.

Mainstreet Lending Program

- Another potential lending program that may complement the previously discussed loan programs is the “Mainstreet Lending Program”.
- The Act provides little to no insight into the scope and size of the Mainstreet Lending Program.
- The Act simply states that the Federal Reserve is not prohibited from establishing a Main Street Lending Program that supports lending to small and mid-sized business.
 - » The Act provides no definition of what constitutes a “small” or “mid-size” business for the particular program.

Ok, so now what?

1. Is my business eligible?
2. What type of loan is most applicable to my business?
3. If interested in pursuing a PPP Loan, do I have an existing lender/banking relationship? Do I have outstanding indebtedness with a lender/bank?
4. How much should my business be applying for?
5. Does my business have extraordinary circumstances it should be considering?
6. Do I have the financial information ready for my application?
 - Most recent IRS Form 941: Employer's Quarterly Fed Income Tax Return; Breakdown of payroll expenses from January 2019 through February 2020; 2019 Financials (profit/loss and balance sheet)

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Question

Question: For seasonal businesses, how is the less than 500 employee count determined (as of what date or dates or average of dates)?

Answer: Seasonal employee count is only set out for determining your payroll costs and related forgiveness, which is the average number of full-time equivalent employees per month employed by the recipient during the period beginning on February 15, 2019 and ending on June 30, 2019.

Question

Question: Can funds from either program be used to reimburse funds drawn from an existing Line of Credit to cover allowable expenses?

Answer: The funds from a PPP Loan can be used to pay interest on any existing debt obligations.

Question

Question: Is it obvious we should borrow the maximum if it will be forgiven?

Answer: Generally, we would advise to borrow the max, especially since there are no prepayment penalties.

Question

Question: Does the requirement to maintain FTE's :

- Include the furloughed and unpaid, but not terminated, employees since last week's order by NYS?

Answer: If they are on an unpaid furlough, the amount forgiven would be reduced based on a reduction in salary of employees.

- If the average FTE is less, does it disqualify the forgiveness provision or reduce it?

Answer: It reduces it. It is a reduction and not total elimination in the amount available for forgiveness.

Question

Question: If we have not laid anyone off but did reduce work hours for the past two weeks are we still eligible - or does it affect the calculation of what our "payroll" is?

Answer: A reduction in the work hours (if those include a reduction in overall salary) will decrease the amount you are eligible to be forgiven under the PPP loan assuming you do not reinstate the hours before June 30.

Question

Question: What qualifies a
ALR/EALR/SNALR for financial
assistance?

Answer: The eligibility requirements would be the same regardless of whether the entity is an ALR/EALR/SNALR.

Question

Question: 1) What would be the collateral required to be pledged to secure the loan? Would the SBA subordinate to the bank's existing position?

Answer: There are no requirements for collateral in the PPP Loans. For the EIDL there is collateral required for loans in excess of \$25,000. The law does not discuss subordination; you should discuss subordination and possible consent for additional indebtedness with your existing lender if this applies to you.

2) Are the personal guarantee requirements changing from those in the existing 7a program? How about the home mortgage requirements on guarantors?

Answer: Yes, the personal guarantee requirements are now waived under the PPP loans. There is no requirement for home mortgage (or collateral) with the PPP Loans. The personal guarantee requirement still applies to EIDLs in excess of \$200,000.

Question

Question: Are there any differences or incentives for the programs offered for specific industries? i.e. Manufacturers, Design, Service Based Sectors?

Answer: For PPP and EIDL Industries are not generally treated differently but there may be some benefits to certain industries as it relates to eligibility requirements (i.e. hospitality).

Question

Question: Does being an "essential or non-essential" business have anything to do with eligibility?

Answer: No.

Question

Question: Can a start up apply for funds?

Answer: Yes, just have to have been in business on February 15, 2020 and you can test payroll off a period starting as late as January 1, 2020.

Question

Question: Are these loans available to nonprofits?

Answer: Yes, the PPP Loans are available to 501(c)(3) not for profits. The EIDL program is available for most “private not for profits”, including any entity exempt under section 501(c), in addition to certain organizations tax-exempt under 501(d) or 501(e).

Question

Question: For payroll protection loan, is it fully forgiven if one simply rehires all staff by the June date even if all funds have not yet been spent at that time (considering how long it could be until we can fully reopen and with staff on unemployment prior to the rehire date)?

Answer: No, the amount that may be forgiven is tied to the amount of loan proceeds you use during the “covered period”, as further noted above.

Question

Question: Has there been any discussion regarding the relaxing of the SBA qualifying criteria based upon NAICS classification?

Answer: Except with respect to the loosening of affiliation rules for franchises and classification 72, no.

Question

Question: If a business has furloughed a group of employees already, are they able to qualify for this program? and bring back the employees on payroll?

Answer: Yes. What is still open however is what happens if an employee does not come back to work. Additional guidance in the regulations should hopefully address this.

Question

Question: If a company has cash reserves, and yet we know we will need more cash to get us through to the other side of this, how do we show that the \$ we rec'd from the grant went towards payroll? Should we establish a new account and start paying payroll out of that account only?

Answer: We would recommend that companies set up a separate cash account to hold the loan proceeds so it will be very clear what the proceeds were used for. We also recommend that companies make sure they have the ability to separately track the costs being paid by the loan proceeds and keep documentation (cancelled checks, invoices, etc.) for each payment out of the loan proceeds as these will need to be submitted with the loan forgiveness application.

Question

Question: If I submitted an application for economic disaster relief before the CARES act was passed do I have to re-apply or just stick with the original application?

Answer: You do not need to reapply for an EIDL, however if you want a PPP Loan too, you'll need to separately apply.

Question

Question: Are there filing/closing fees on these loans?

Answer: All loan fees are waived for borrowers and lenders.

Question

Question: What exemptions for medical providers?

Answer: None, medical providers that are otherwise eligible may apply and receive funds under either the EIDL or PPP Loan programs.

Question

Question: Does a law firm come within the definition of a small business?

Answer: Yes, assuming it otherwise satisfies the eligibility criteria.

Question

Question: Will the eligibility criteria only be 500 employees or will SBA Net Profit and Net Worth limits enter in.

Answer: It appears that the eligibility requirement relates only to the number of employees but we may get additional information on this in the subsequent regulations.

Question: Must a company keep all salaries whole during the eight week period. Or can salaries above \$100K be reduced.

Answer: Forgiveness reduction only applies to payments to employees up to \$100,000.

Question

Question: For employees that missed pay after 02/15/20 and before the loan is issued, must they be made whole.

Answer: No, don't need to be whole.

Question: Does a reduction in commissions paid to an employee (as a result of reduced sales) count as a reduction in salary for purposes of the forgiveness percentage?

Answer: It should not as the reduction in commissions is not an act taken by the employer and is merely related to external market forces. There may be additional guidance on this in the regulations.

Question

Question: Does the loan cover health care premiums – in full, or partially? For some employees it is a shared expense, for other fully paid by the company. Does that matter?

Answer: The loan computation includes all group health care costs incurred by the company, including health care premiums. The employee piece of any shared expenses would be included in the employee's gross salary or wages, and thus should not be double counted in the health care costs. It is unclear as to whether there will be limitations on benefits includable in the computation for the loan amount for employees that make over \$100k.

Question: Are HSA contributions by the company considered a health care benefit covered by the loan?

Answer: We believe these would be includable as costs required for the provisions of group health care benefits. |

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