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## **Paycheck Protection Program and Economic Injury Disaster Loans**

By the Business Practice Group

The recently enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act) creates several benefits for small businesses in need of liquidity due to the Coronavirus pandemic. Two of the key benefits from the CARES Act come in the form of loans with potential forgiveness (Paycheck Protection Program loans) and loan advances (Economic Injury Disaster Loan Emergency Grants).

We are still waiting for information on these programs to emerge and for regulations to be implemented, but the following is a summary of the current information available regarding the new options for relief.

### **Overview of the Paycheck Protection Program (PPP)**

The Paycheck Protection Program (PPP) creates loan opportunities for eligible borrowers to maintain payroll and other operational expenses with the added benefit of available loan forgiveness. The loans are guaranteed by the Small Business Administration (SBA) and administered by private local lenders approved to participate.

### **Who is eligible to borrow?**

The following entities with 500 or fewer employees or entities that meet the size standard for number of employees in their industry as established by the SBA may apply:

- Businesses
- 501(c)(3) Nonprofit Organizations
- 501(c)(19) Veteran Organizations
- Tribal Businesses
- Sole Proprietors
- Independent Contractors
- Self-employed Individuals

A sole proprietor, independent contractor, or self-employed individual will have to provide documentation to evidence eligibility including payroll tax filings, Forms 1099-MISC, and income and expenses as determined by the SBA.

## When and how can you apply?

- **April 3, 2020** is when small businesses and sole proprietorships can apply for and receive loans from *pre-existing* SBA lenders with processes already in place.
- **April 10, 2020** is when independent contractors and self-employed individuals can apply for and receive loans from *pre-existing* SBA lenders with processes already in place.

Eligible borrowers will have until **June 30, 2020** to apply for a PPP loan. However, guidance from the U.S. Department of Treasury encourages everyone to apply quickly due to the funding cap and time needed for lenders to process loans. The U.S. Department of Treasury has provided the application form on its website, link here. Specifically, lenders will be looking for the following in processing PPP loans:

- The borrower was in operation on **February 15, 2020**.
- The borrower had employees and salaries and payroll taxes.
- The borrower's dollar amount of average monthly payroll costs (needed to determine amount of loan borrower can receive).

The private local lenders will be responsible for processing applications and disbursing funds. You can contact your current bank, credit union, or other lender to see if it is participating in the PPP or preapproved as an SBA lender. **Again, lenders preapproved by the SBA will be in the best position to quickly process loans and approve your applications.** Otherwise, you may also contact your nearest SBA office for information on participating lenders in your area.

## Important Terms of PPP Loans

- **Loan Amount:** Your "average monthly payroll costs" (taken from the last year) multiplied by 2.5 with a cap of \$10 million. The calculation for "average monthly payroll costs" changes if you are a seasonal business or were not in operation for the full prior year.
- **Approved Uses of Loan**
  - Payroll costs (salary capped at \$100k per employee, wages, cash tips, vacation and sick leave, allowance for dismissal, insurance premiums, retirement benefits, state or local tax assessed on employee compensation),
  - Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums,
  - Employee salaries, commissions, or similar compensations,
  - Payments of interest on any mortgage obligation (which does not include any prepayment of or payment of principal on a mortgage obligation) arising before February 15, 2020,
  - Rent (including rent under a lease agreement) on obligations in force before February 15, 2020,
  - Utilities for which service began before February 15, 2020, and
  - Interest on any other debt obligations arising before February 15, 2020.
- **Prohibited Uses of Loan**
  - Employee compensation in excess of \$100,000,
  - Compensation to an employee whose principal residence is outside the U.S.,
  - Taxes imposed or withheld under chapters 21, 22, and 24 of the Internal Revenue Code (payroll, railroad retirement, and income taxes), and
  - Costs for qualified sick leave and family leave wages where a tax credit is available under sections 7001 and 7003 of the Families First Coronavirus Relief Act.

- **Interest Rate:** The U.S. Department of Treasury has indicated a **0.50%** fixed rate will apply. However, this may not be implemented universally, and the CARES Act states the interest rate **will not exceed 4%**.
- **Maturity Date:** Loans will have a maturity date of 2 years with payments deferred for 6 months (interest still accrues) and no penalty for prepayment.
- **No Collateral/Guarantees:** No collateral or personal guarantees are required. However, there is recourse if loan proceeds are used for fraudulent or prohibited uses.
- **Certifications:** Borrower must certify economic uncertainty necessitates loan to continue operations, proceeds will be used to retain workers and cover other approved costs, and that you will/have not receive another loan under the PPP for the same purpose.
- **Credit Elsewhere:** No requirement to show an inability to obtain credit elsewhere.
- **Loan Forgiveness:** The recipient of a PPP loan may have the loan forgiven in an amount equal to the sum of costs incurred and payments made, for an 8-week period beginning on the date of origination of the loan, related to:
  - payroll,
  - mortgage interest incurred in the ordinary course of business on mortgage obligations arising before February 15, 2020,
  - rent under lease agreements in force before February 15, 2020, and
  - covered utilities (electricity, gas, water, transportation, telephone, or interest access for which service began before February 15, 2020).

**Loan Forgiveness Reduction and Rehire Exemption.** It is important to keep in mind that the amount of loan forgiven may be reduced based on any reduction in the number of employees and/or any reduction in employee salaries and wages. Businesses who have laid-off employees or reduced wages since February 15, 2020, may still qualify for the full amount of loan forgiveness if they rehire employees or restore wages by June 30, 2020. The SBA is expected to provide additional rules for implementing the loan forgiveness program, which will likely provide additional guidance on how employers who have already reduced their employees or their employees' salaries can take advantage of the rehire exemption.

### **How do I apply for loan forgiveness under the PPP?**

In order to qualify for loan forgiveness, the borrower must submit an application to the lender that includes documentation of the number of employees plus their pay rates and documentation to support payment of payroll, mortgage interest, rent, and covered utilities. No more than 60 days after receiving an application for loan forgiveness, a lender must issue a decision on the application.

### **Guidance from the U.S. Department of Treasury**

The U.S. Department of Treasury has released additional guidance on the PPP, which can be found on its [webpage](#) and includes the following:

- [Borrower Factsheet](#)
- [PPP Loan Application](#)

## Economic Injury Disaster Loan (EIDL) and Emergency Grants

The SBA has an Economic Injury Disaster Loan (EIDL) program that provides small businesses and other entities with working capital loans of up to \$2 million, which can provide economic support to help overcome temporary loss of revenue. You can apply directly through the SBA's website—link [here](#).

### Who can receive one?

The main criteria to qualify for an EIDL is showing you have suffered “substantial economic injury” due to the COVID-19 pandemic. Showing “substantial economic injury” means an inability to:

- Meet obligations as they mature,
- Pay ordinary and necessary operating expenses, or
- Market, produce, or provide a product or service ordinarily marketed, produced, or provided.

The entities that are eligible to apply for and receive the loan include:

- Small business concerns
- Private nonprofit organizations
- Agricultural cooperatives
- A business with not more than 500 employees
- Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor
- A cooperative with not more than 500 employees
- An ESOP (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) with not more than 500 employees
- A tribal small business concern, as described in section 31(b)(2)(C) of the Small Business Act (15 U.S.C. 657a(b)(2)(C)), with not more than 500 employees

### Important Terms

- **General:** loan amounts and other terms are determined on a case-by-case basis dependent on injury suffered and ability to repay with the following limits:
  - 3.75% fixed interest rate for small businesses
  - 2.75% fixed interest rate for nonprofits
  - Up to a 30-year term and amortization
- **Terms Waived and Adjusted by CARES Act**
  - No personal guarantees on advances or loans of no more than \$200,000,
  - Requirement that applicant be in business for 1-year period before the disaster, except there is no waiver for businesses not in operation on January 31, 2020,
  - Applicant may be approved based solely on credit score and no requirement to submit a tax return or tax return transcript for approval, and
  - Other alternative methods may be used to determine an applicant's ability to repay.
- **Collateral:** No collateral is required for loans of \$25,000 or less. A general security interest in business assets will be used for collateral of loans greater than \$25,000.

## Emergency Grants During Application Process

- **Requesting a Grant.** An eligible entity that applies for an EIDL may also request an advance (emergency grant) from the SBA that is in the amount requested within 3 days after the SBA receives an application. The applicant must verify it is an eligible entity through a self-certification under penalty of perjury.
- **Grant Amount.** The amount of the emergency grant **may not exceed \$10,000**.
- **Approved Use of Grant.** The proceeds from the grant can be used for same purposes allowed for an EIDL including payroll costs, rent, mortgage, cost increases for materials, and meeting other obligations that cannot be met due to revenue loss.
- **No Repayment of Grant.** An applicant is not required to repay any amounts advanced even if denied an EIDL.
- **Grant Reduced from PPP Loan Forgiveness.** If the applicant is approved for a PPP loan, then the advance amount will be reduced from the loan forgiveness amount.

## Further Questions?

If you would like more information on the loans and grants available under the CARES Act, you may want to explore the SBA's website [page](#) dedicated to general small business guidance during the Coronavirus Pandemic, which contains links to SBA webpages covering the PPP, the EIDL, the Express Bridge Loans, and other resources.

As always, if you have any questions about the information provided in this notice or other legal questions related to the Coronavirus pandemic's impact on you or your business, please do not hesitate to contact us.

As federal and state governments continue to respond and provide guidance to the pandemic, our goal is to keep you timely informed of such changes and to be available for your legal needs as they may arise.