

MEMORANDUM

DATE: April 19, 2020

RE: Update regarding the Coronavirus AID, Relief and Economic Security (CARES) Act

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The Act expands one SBA loan program and adds a new one; and both programs are designed to help small businesses during this emergency. This memorandum summarizes those loan programs.

Paycheck Protection Program Loans

The Paycheck Protection Program provides for SBA loans to help small businesses maintain their payroll and pay some other expenses. The loans may be wholly or partly forgiven.

Eligible Businesses. Generally, the following are eligible for these loans so long as they have no more than 500 employees: for-profit business entities, 501(c)(3) organizations, veterans’ organizations, and tribal businesses. The 500-employee limit includes both full-time and part-time employees. Some businesses with more employees may qualify based on their NAICS (industry classification) code. For a business in the accommodations or food sector, the 500-employee limit is counted per physical location. Sole proprietors, independent contractors, and self-employed individuals are also eligible for loans, with no requirement that they have employees.

Lending Criteria. To receive a loan, a borrower must have been in operation before February 15, 2020 and must be able to certify in good faith that the uncertainty of current economic conditions makes the loan request necessary to support ongoing operations. Lenders may *not* require personal guaranties or collateral for the loans.

Loan Amount and Terms. The maximum loan amount is 2.5 X the borrower’s average monthly payroll costs (see below), up to \$10 million. The interest rate is 1.0% and the term is 2 years. There are no payments for the first 6 months.

Use of Loan Proceeds. A borrower may use the loan to pay for the following during the period of February 15-June 30, 2020:

- Payroll costs – salaries, wages, commissions, or similar compensation; cash tips or equivalent; vacation, parental, family, medical, or sick leave payments; allowances for dismissal or separation; payments (including premiums) for group healthcare benefits; retirement benefit payments; and payment of state or local taxes on employee compensation. There

are a few excluded payroll costs, notably compensation of an individual employee that exceeds \$100,000/year; federal payroll taxes; and qualified sick leave or family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.

For sole proprietors, independent contractors, and self-employed individuals, payroll costs mean wages, commissions, income, net earnings from self-employment, or similar compensation, but only up to \$100,00/year, prorated for the covered period.

A partnership, or an LLC taxed as a partnership, may also include its owners' (i.e., partners' or members') self-employment income (up to \$100,000/year annualized) in payroll costs.

- Costs to continue group healthcare benefits during periods of paid sick, medical, or family leave, and insurance premiums.
- Mortgage interest payments.
- Rent.
- Utilities.
- Interest on other debt incurred before February 15, 2020.

75% of the loan proceeds must be used for payroll costs.

Loan Forgiveness. Loan forgiveness is available for the amount the borrower spent on the following during the 8-week period beginning on the date of loan origination: the payroll costs described above, mortgage interest payments, rent under a lease agreement, utility payments, and additional wages paid to tipped workers.

The amount of loan forgiveness will be reduced if there is a reduction in the number of FTE employees or a reduction of more than 25% in wages to employees who are paid less than \$100,000/year. There is an exception if the FTE count or wages are restored by June 30, 2020.

The amount forgiven will not be counted as gross income for the borrower's income tax purposes.

Other Consideration. A borrower receiving a Paycheck Protection Program loan is not eligible for the refundable employee retention credit (payroll tax credit) under the CARES Act. In addition, a borrower receiving loan forgiveness may not delay paying payroll taxes as otherwise allowed under the CARES Act.

Additional Resources. The US Chamber of Commerce has a checklist for the new SBA loan program. You can find it at: https://www.uschamber.com/sites/default/files/023595_comm_corona_virus_smallbiz_loan_final.pdf.

Loan Application. Loan applications will be accepted starting April 3, 2020 (or April 10 for sole proprietors and independent contractors). Treasury has created an application form, which you can find at: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>.

Economic Injury Disaster Loans (“EIDL”)

The SBA disaster loans have been expanded and revised provide for emergency loans to businesses with economic losses caused by COVID-19. The program will be available through December 31, 2020. Applications are available at <https://covid19relief.sba.gov/#/> and are made directly through the SBA. While some detailed information about the business is required, generally the application process appears to be fairly straight forward.

Eligible Businesses: EIDL is available for a small business that was in business on January 31, 2020. A small business again means that it generally has no more than 500 employees (note that certain businesses may have more than 500 employees based on their NAICS code). Loans are available to all sole proprietors, independent contractors, tribal businesses, cooperatives, and ESOPs, and also nonprofits apparently without regard to size. In one notable difference from the Paycheck Protection Program, aggregation of locations DOES apply, meaning that all employees are counted for businesses in the accommodations and food sectors.

In addition, certain modifications apply thanks to the CARES Act. A business only needs to have been in business on January 31, 2020, and not for a year prior. A business is NOT required to show that credit is unavailable elsewhere. Approval may be based solely on the applicant’s credit score (although the SBA is allowed to create an appropriate alternative method). An applicant will have to certify that the loan is necessary for the uncertainty caused by the COVID-19 crisis.

Loan Amount and Details. The maximum loan amount is determined by a formula based on the business, up to a maximum amount of \$2 million. EIDLs carry an interest rate of 3.75% (or 2.75% for nonprofits), and may have a term of up to 30 years. These loans do not require a personal guaranty for loans under \$200,000. The SBA may still take collateral. There are no loan fees, guarantee fees, or prepayment fees.

Advances. The Act requires the SBA to make \$10,000 advances while the loans are pending, which will be paid within three days of the application. The SBA will not require these advances to be repaid, even if a business is denied a loan, and are based solely on the applicant’s self-certifying eligibility. They may be used for any allowable purpose of an EIDL loan, and the CARES Act specifically enumerates the following: sick leave for workers affected by COVID-19, to maintain payroll to retain employees, for the extra cost of supply, to cover rent or mortgage obligations, or to repay obligations that cannot be met because of revenue loss. If the borrower subsequently receives loan forgiveness on a 7(a) loan (such as the Paycheck Protection Loan), then this advance will be taken into account in the amount of forgiveness.

Allowable uses. EIDLs are generally intended to help meet working capital needs, but there are limitations, so confirm that your uses are allowable. It is possible to obtain both the EIDL loan and a Paycheck Protection Loan, but you cannot obtain the loans for same purposes, i.e., you can’t double-dip, and you can’t co-mingle the funds with another loan for the same purpose.

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