ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM

The CARES Act made several changes to the Economic Injury Disaster Loan (EIDL) Program:

- EIDL Loans are available to small businesses in a declared disaster area (all 50 states, Puerto Rico, Guam and the North Mariana Islands have all been declared disaster areas for purposes of the EIDL Program effective January 31, 2020) to cover economic injury resulting from the disaster (e.g., loss of revenue).
- EIDL Loans are processed directly through the SBA, although the SBA may determine to enlist the assistance of lenders for the processing and making of loans.
- EIDL Loans are available in a maximum amount of $2 million, carry an interest rate of 3.75 percent and have a maximum term of 30 years.
- Loans over $200,000 must be guaranteed by any owner having a 20 percent or greater interest in the applicant (the CARES Act removed the requirement for personal guarantees on loans under $200,000).
- The CARES Act also removed standard EIDL Program requirements that the borrower not be able to secure credit elsewhere or that the borrower have been in business for at least one year, as long as it was in operation on January 31, 2020.
- Applicant may request an expedited disbursement that is to be paid within three days of the request. The advance may not exceed $10,000 and must be used for authorized costs but is otherwise not repayable if the EIDL Loan is not approved.
- NOTE: An applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program described below) as long as the basis for the loans/costs being paid with each are different (no "double-dipping"). For example, a company could use the EIDL for working capital and use the PPP for payroll assistance. There are no prepayment penalties for the EIDL or the PPP.

SBA is once again accepting applications through a new online system: https://covid19relief.sba.gov/

Through this portal, you can request the $10,000 forgivable loan. As of this writing (30 March 2020), this is the only way to access the $10,000 forgivable loan. If a company accepts the $10,000 forgivable loan, and then accepts a loan under the Paycheck Protection Program (PPP), the amount of forgivable expenses will be reduced by $10,000. (See PPP section below.) If you received an EIDL loan related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, you would be able to refinance the EIDL into the PPP for loan forgiveness purposes.

PAYCHECK PROTECTION PROGRAM

The CARES Act allows for the creation of the Paycheck Protection Program. This program will make loans of up to $10 million available to certain qualified small businesses. Portions of these loans are intended to be forgivable if the borrower maintains employees and otherwise complies with the CARES Act. Applications are due by 30 June 2020.

"In addition to small business concerns, any business concern, nonprofit organization, veterans organization, or Tribal business concern" may qualify if:

- Does not have more than 500 employees or the maximum number of employees specified in the current SBA size standards, whichever is greater; or
- If the business has more than one location and has more than 500 employees, does not have more than 500 employees at any one location and the business' primary NAICS code starts with "72" (Accommodation and Food Service); or
- Is a franchisee holding a franchise listed on the SBA's registry of approved franchise agreements; or
- Has received financing from a Small Business Investment Corporation (SBIC).

You can check the size standard for your business at
https://www.sba.gov/document/support--table-size-standards

Sole proprietorships, independent contractors, and self-employed individuals may qualify under this program. Nonprofit organization and churches (organized under Section 501(c)(3) of the Internal Revenue Code), qualified veterans organizations (organized under 501(c)(19)), and certain Tribal business concerns are eligible. Trade associations (and organizations like chambers of commerce) organized under 501(c)(6) are not eligible.

Daycares and other operations affiliated with religious organizations are eligible, but need to have financial records that are distinguishable from the operations of the church.

The maximum amount of the loan is set by formula (average total monthly payroll during the one-year period before the loan date times 2.5 plus the amount of any other debt approved for refinancing, including any debt incurred as a result of COVID-19 under the EIDL Program), subject to a maximum of $10 million. Companies with seasonal employment can have a different formula: the average total monthly payments for payroll shall be for the 12-week period beginning February 15, 2019, OR March 1, 2019, and ending June 30, 2019; the time frame is at the discretion of the business owner.

The new loan will be able to cover payroll costs including 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 shall not include any prepayment of or payment of principal on a mortgage obligation); rent (including rent under a lease agreement); utilities; and, interest on any other debt obligations that were incurred before February 15, 2020.

Other key provisions:

- Maximum interest rate of 4 percent per annum.

- Loans are made by SBA-approved lenders that have delegated authority to make the loans without approval from the SBA. Direct SBA Authorization is not required for each individual loan, which should help expedite the loan processing and closing process.
- In reviewing the application, a lender has to evaluate whether the borrower was in business on February 15, 2020 and had employees and paid salaries and taxes or had independent contractors and filed 1099-MISC for them.
- The guarantee fees (which are typically 2 percent-3.75 percent of the loan amount, depending on the size of the loan) have been waived. These fees are typically paid by the borrower.

Loans are non-recourse to the borrower. In addition to waiving any guaranty that might otherwise be required by the Small Business Act, the CARES Act specifically provides each loan is nonrecourse to the shareholders, members and partners of the borrower. The lender is unable to pursue the borrower's other funds, possessions, or funding sources in case of default. Please note: If a business uses the proceeds of this loan on any non-forgivable expense, that money is still owed to the lender. A default on this loan would still be recorded, and would impact the borrowers credit score.

The borrower does NOT have to demonstrate it was unable to secure financing elsewhere before qualifying for SBA financing.

- No collateral requirement.
- No prepayment penalties.
- Payments are deferred for six to 12 months.

The applicant is required to certify:

- Current uncertain economic times make the loan request necessary to support ongoing operations; and
- Funds will be used to keep workers and make payroll, mortgage payments, lease payments and utility payments; and
- Applicant does not already have an application pending for other payroll assistance under the CARES Act.

NOTE: The SBA Economic Injury Disaster Loan (EIDL) is not part of the CARES Act. As noted above, an applicant may receive an EIDL Loan and loans under other programs (such as the Paycheck Protection Program) as long as the basis for the loans/costs being paid with each are different (no "double-dipping").

NOTE: A loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit made available under the CARES Act. This only applies to the Employee Retention Tax Credit in the CARES Act and does not apply to any credits available under the FFCRA (such as the paid sick leave tax credit) or other credits available under the CARES Act.

What should borrowers do now to prepare for the PPP application?
Several banks have advised borrowers to gather the following information: 2019 IRS Quarterly 940, 941 or 944 payroll tax reports, payroll reports for a twelve-month period (ending on your most recent payroll date), 1099's for independent contractors, documentation showing a total of all health insurance premiums paid by the company owners under a group health plan (employees + owners), documentation on retirement plan funding that was paid by the company owners (but not funding that came from employee paychecks).

LOAN FORGIVENESS PROVISIONS

Small business loan borrowers will be eligible for loan forgiveness, both for new loans under the Paycheck Protection Program and for existing 7(a) loans.

Under the Paycheck Protection Program, loan forgiveness will equal the amount spent by the borrower in the eight-week period after the loan origination date on the following items (not to exceed the original principal amount of the loan):

- payroll costs (not to exceed $100,000 of annualized compensation per employee); and
- payments of interest on any mortgage loan initiated prior to February 15, 2020; and
- payment of rent on any lease in force prior to February 15, 2020; and
- payment on any utility for which service began before February 15, 2020.

The amount forgiven is not considered taxable income to the borrower.

We do not yet have guidance on the employee annual compensation limit. (Are employees that are paid over $100,000 completely ineligible, or only the portion of their pay above that limit? SBA is working on a FAQ that will answer that question.

The amount forgiven will be reduced proportionally by any reduction in the number of employees retained as compared to the prior year. The proportional reduction in loan forgiveness also applies to reductions in the pay of any employee where the pay reduction exceeds 25 percent of the employee's prior year compensation. A borrower will not be penalized by a reduction in the amount forgiven for termination of an employee made between February 15, 2020 and April 26, 2020, as long as the employee is rehired by June 30, 2020.
NOTE: SBA is looking at the total number of jobs, and not the specific individual that was terminated or re-hired.

The amount forgiven will also be reduced by $10,000 for businesses that accepted the $10,000 forgivable loan that is available through the SBA Economic Injury Disaster Loan program.

Any amount outstanding after considering the amount forgiven will be repayable over a term not to exceed 10 years.

NOTE: The borrower must apply to the lender for loan forgiveness with supporting documentation. The lender will determine if the borrower is in compliance with the rules of the loan program.

For borrowers with existing 7(a) or microloan program loans, the SBA will pay principal, interest, and any associated loan fees for a six-month period starting on the loan's next payment due date. Payment on loans that are on deferment will begin with the first payment after the deferment period. Please note that this relief will not include loans made under the Paycheck Protection Program.

Notes for Financial Institutions / Lenders

SBA-certified lenders and non-SBA lenders will be authorized to make PPP loans. All lenders participating in the program (including banks, credit unions, and other financial institutions) will be moved to delegated authority, which allows them to process loans quickly without SBA approval.

The risk rating loans for loans issued under the Payroll Protection Program is 0 percent.

The SBA will pay lenders fees for processing loans under the Payroll Protection Program as follows:

- 5 percent of loan up to $350,000
- 3 percent of loan from $350,000 to $2 million
- 1 percent of loans of $2 million or more.

Fees to lenders are payable within five days of disbursement of the loan.

The Express Loan Program loan limit is raised to $1 million from $350,000 until December 31, 2020.

The SBA has up to 30 days following the enactment of the CARES Act to issue operating guidelines (SOP) and regulations for implementing certain provisions of the CARES Act. The Treasury Department is also required to issue regulations and guidance for certain provisions of the CARES Act. These future operating guidelines and regulations may impact loan approvals and disbursement.