Small Business Administration Loan Opportunities - EIDL and PPP

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Our Presenters Today

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• Webinar will be recorded
• All Attendees will be placed on mute
• Questions may be input into the Questions Box within the GOTOWEBINAR
• Presentation available in handouts
The information presented today is provided for educational purposes and should not be considered legal advice.
New Reports available today:
- CARES Paycheck Protection Program Report
- FFCRA
SBA Economic Injury Disaster Loan Program (‘EIDL’)
and
Emergency Economic Injury Grants
Small business owners in all U.S. states and territories are currently eligible to apply for a low-interest loan due to Coronavirus (COVID-19).

EIDLs are lower interest loans of up to $2 million, with principal and interest deferment available for up to 4 years, that are available to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.
Those eligible are the following with 500 or fewer employees:

- Small business concerns (including sole proprietorships, with or without employees)
- Independent contractors
- Cooperatives and employee owned businesses
- Private non-profits
- Tribal small businesses
These grants provide an emergency advance of up to $10,000 to small businesses and private non-profits harmed by COVID-19 within three days of applying for an SBA Economic Injury Disaster Loan (EIDL). To access the advance, you must first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (the “CARES Act”)

Paycheck Protection Program (“PPP”)
The CARES Act will establish a new paycheck protection loan program making available up to $349 billion of loans (“Paycheck Protection Loans”) by banks and other lending institutions to small businesses. These loans are intended to cover the cost of maintaining payroll, costs related to the continuation of group health benefits during periods of paid sick, medical, or family leave, and insurance premiums, employee salaries, commissions, or similar compensations (with some exclusions), payments of interest on any mortgage obligation (excludes prepayment), rent (including rent under a lease agreement), utilities and interest on any other debt obligations that were incurred before February 15, 2020 arising from maintaining pre-COVID-19 employment and compensation levels.
• The business must have been in operation on February 15, 2020.

• Maximum Number of Employees. For loans made under the Paycheck Protection Loan program, all businesses, certain nonprofit organizations, veterans organizations and Tribal business concerns that each employ (a) 500 employees or fewer (including any employee employed on a full-time, part-time, or other basis) or (b) if higher, the maximum number specified for the type of business in the SBA’s Table of Small Business Size Standards, are eligible to qualify for Paycheck Protection Loans. Generally, the SBA affiliation rules will apply unless there is a special exemption.
WHO IS ELIGIBLE FOR THE PPP? (cont’d)

• **Hotels and Restaurants.** A significant waiver of the standard rules will apply to hotels, restaurants and other food service providers that have no more than 500 employees per location. Such businesses also are exempt from the affiliation rules in connection with Paycheck Protection Loans.

• **Sole Proprietors, Independent Contractors, and Self-Employed Individuals.** Individuals who operate under sole proprietorships or as independent contractors, as well as individuals who qualify as “self-employed individuals” under Section 7002(b) of the Families First Coronavirus Response Act (based on eligibility to receive sick leave if similarly employed by an employer), also will qualify for Paycheck Protection Loans.
WHO IS ELIGIBLE FOR THE PPP? (cont’d)

- **Nonprofit Organizations.** Organizations described in Section 501(c)(3) of the Internal Revenue Code that are exempt from federal taxation under Section 501(a) of the Internal Revenue Code will qualify for Paycheck Protection Loans (but affiliation rules will apply).

- **Nonprofit Veterans’ Organizations.** Organizations described in Section 501(c)(19) of the Internal Revenue Code that are exempt from federal taxation under Section 501(a) of the Internal Revenue Code will qualify for Paycheck Protection Loans (but affiliation rules will apply).
WHO IS ELIGIBLE FOR THE PPP? (cont’d)

- **Tribal Business Concern.** Small business concerns that are either (a) wholly owned by one or more Indian tribal governments or by a corporation wholly owned by one or more Indian tribal governments, or (b) owned in part by one or more Indian tribal governments, or a corporation that is wholly owned in part by one or more Indian tribal governments, as long as all other owners are U.S. citizens or small business concerns will qualify for Paycheck Protection Loans.
• Certification. Each borrower of a Paycheck Protection Loan must make a good faith certification that: (1) the loan request is necessitated by current economic conditions to support ongoing operation of the business; (2) funds will be used to retain workers and maintain payroll or make payments on mortgages, leases, utilities and/or other debts incurred before the covered period; and (3) it does not have an application pending for, and has not and will not receive between February 15, 2020, and December 31, 2020, a duplicative Paycheck Protection Loan.

• Existence as an Employer. Lenders extending Paycheck Protection Loans will verify that the borrower (1) was in operation as of February 15, 2020, and (2) had employees for whom the borrower paid salaries and payroll taxes, or paid independent contractors as reported on a Form 1099 MISC.
The maximum loan amount under PPP is the lesser of:

- the average total monthly payments by the applicant for payroll costs* incurred during the 1-year period before the date on which the loan is made multiplied by 2.5**;

- plus the outstanding amounts of any Emergency Injury Disaster Loan (EIDL) obtained on or after January 31, 2020 which is to be refinanced under this loan; OR

- $10,000,000.00.
* Average total monthly payments for the following payroll costs: salary, wage, commission, or similar compensation, payment of cash tip or equivalent, payment of vacation, parental, family, medical, or sick leave, allowance for dismissal or separation, payment required for the provisions of group health care benefits, including insurance premiums, payment of any retirement benefits, payment of state or local tax assessed on the compensation of employees, compensation to sole proprietors or independent contractors (including commission-based compensation) up to $100,000 in 1 year, prorated for the covered period. This excludes compensation of an individual employee or owner in excess of $100,000 prorated for the period beginning February 15, 2020 and ending June 30, 2020; taxes imposed or withheld under FICA (Social Security and Medicare), Railroad Retirement Act and income tax at source on wages (income tax withholding); compensation to employees whose principal place of residence is outside the U.S.; and, sick and family leave wages for which credit is allowed under the Families First Coronavirus Response Act.

** Note that there may be alternative calculations for seasonal businesses or in the case of borrowers otherwise eligible but who were not in business during the period from February 15 – June 30, 2019.
• **Interest Rate/Use of Loan Proceeds.** Paycheck Protection Loans will accrue interest at a rate not exceeding 4% per annum. The SBA announced that the interest rate is .5% per annum.

• Borrowers may use the proceeds of any Paycheck Protection Loan for any of the following limited purposes: payroll costs; group healthcare benefit costs during paid sick, medical, or family leave, unless otherwise covered under the Family First Coronavirus Response Act.; health insurance premiums; employee salaries and commissions; mortgage interest payments; rent; utilities; and interest on other existing debt that arose prior to February 15, 2020.
• **Maturity.** The principal amount of a Paycheck Protection Loan that is not forgiven in accordance with the CARES Act will continue as a loan guaranteed by the SBA with a maturity to be agreed upon with the applicable lender, not to exceed 2 years. The CARES Act waives guarantee fees and annual fees typically payable to the SBA under the Business Interruption Loan Program during the covered period. In addition, prepayment penalties are waived.
The CARES Act requires all lenders to provide complete payment deferment for all principal, interest and fees with respect to Paycheck Protection Loans for a period of at least six months and not more than one year. The CARES Act also requires that the SBA issue further guidance on loan deferrals within 30 days after enactment.
During the covered period, personal guarantees and collateral shall not be required for any Paycheck Protection Loan. In addition, individual shareholders, members or partners of an eligible recipient will not face recourse for nonpayment (except to the extent the shareholder, member or partner uses the proceeds of a Paycheck Protection Loan for an unauthorized purpose).
• The CARES Act provides that, subject to reduction as described below, borrowers of Payroll Protection Loans are eligible for the costs they incur over an 8-week period (beginning on the loan origination date) related to payroll costs, mortgage interest, rent obligations and utility payments.
• The amount of a Paycheck Protection Loan to be forgiven will be reduced as follows:
  
  o Any reduction in the average number of full-time equivalent employees employed by the borrower during the eight-week measurement period beginning upon origination of the loan, as compared to one of the following (at the borrower’s election):
    
    o the average number of full-time equivalent employees per month employed between February 15, 2019, and June 30, 2019, or
    
    o the average number of full-time equivalent employees per month employed between January 1, 2020, and February 29, 2020.
Compensation reductions per employee of more than 25% versus compensation during the most recent full quarter for which the employee was employed before the eight-week measurement period, subject to the following exceptions and adjustments:

- Employees who received compensation of more than $100,000 per year during 2019 are excluded from this calculation.
- Additional forgiveness is provided for additional wages to tipped workers and allowances are available for seasonal employers.
The loan forgiveness calculation is made without regard for reductions in full-time equivalent employees (layoffs) or individual employee compensation between February 15, 2020 (as compared to the number of full-time employees and full-time employee compensation as of February 15, 2020), and 30 days after the date of enactment of the CARES Act, so long as such layoffs or compensation reduction is reversed by June 30, 2020.

The portions of Paycheck Protection Loans that are forgiven in accordance with the CARES Act are excluded from gross income for federal taxation purposes of each applicable borrower.
We counsel our clients through preparation of the application, working with them to ensure all necessary documentation is accurate before submission. This critical step prepares the client to quickly and correctly respond to questions that routinely arise, and lessen the probability that the SBA will delay processing the application due to missing or inaccurate data. If the documents are not properly crafted, it can seriously delay processing. Further, once documentation is submitted to the SBA, making any changes will create delays and give rise to unnecessary questions.
After the application is submitted, we review all of the loan documents, starting with the loan approval letter, a document that should **NOT** be signed by a borrower without counsel review. There are numerous requirements that are generally overlooked by the borrowers. We give clients a checklist and make sure they understand exactly what is needed to avoid potentially costly delays.

We also assist you in closing the loan. This can be a straight-forward process, however, without the proper documentation and information in place, the closing date will likely be delayed.
Shulman Rogers attorneys have performed work for SBA lenders and borrowers and have liquidated SBA loans for lenders. Our vast experience helps our attorneys provide 360° perspective of the SBA process, another value-add for our clients.
FOR MORE INFORMATION, PLEASE CONTACT:

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• Question and Answer Session
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