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Small Business Loan Programs – Overview and Insights *As of April 2, 2020*

The President of the United States signed the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) into law on Friday March 27, 2020. The CARES Act includes specific programs sponsored by the Small Business Administration (“SBA”) designed to provide economic relief for those small business concerns that have been impacted by the coronavirus pandemic.

What Programs Are Available?

- **Available Immediately – Economic Injury Disaster Loans (“EIDL”).** The CARES Act expanded upon the SBA’s EIDL program by providing \$10,000,000,000 in funding for disaster loans related to the coronavirus.
 - All 50 states and all of their counties have been declared economically impacted areas and are eligible for the disaster loans. Applicants apply directly through the SBA for the disaster loans which may be for a maximum amount of \$2,000,000 and applicants can receive emergency funding of \$10,000 within three days of the application submission.
 - The \$10,000 emergency funding is not required to be repaid, even if the applicant is ultimately denied the disaster loan by the SBA. The term of the loan is for a maximum of 30 years at an interest rate not to exceed 3.75% for small businesses.
- **Available Immediately - SBA Express Loans.** The CARES Act increased the maximum amount an applicant may borrow on the existing SBA Express Loans program. From March 27, 2020 through December 31, 2020, a borrower may have a line of credit under the SBA Express Loans program up to the maximum amount of \$1,000,000. On January 1, 2021, the maximum amount allowed under these loans will revert back to its original amount of \$350,000. The SBA Express Loans are in the form of a working capital line of credit.
- **Available Starting April 3, 2020.** The CARES Act created a new forgivable SBA 7a loan program by providing \$349,000,000,000 in funding to the SBA for the PPP loans. The purpose of these loans is to help employers make payroll and other operational costs such as rent, utilities and interest on existing loans.

- An applicant may obtain a loan not to exceed the lesser of \$10,000,000 and 2.5x its average monthly payroll as determined in accordance with the CARES Act. All interest and principal fees on the loan are deferred for not less than 6 months and not more than 1 year. Borrower does not pay any fees.
- The principal amount of the loan used for payroll and other approved purposes is forgivable as long as the employer maintains certain employment and wage levels. The applicant must apply for forgiveness and provide the appropriate documentation as set forth by the SBA.
- Any remaining principal amount after the application of the forgiveness shall mature 2 years after the application for forgiveness and the loan shall have an interest rate of 1%. The prepayment penalty for the PPP loans has been waived.

Do I Qualify?

Qualifications for EIDL. To qualify for the EIDL program, a business needs to either (i) qualify under the Small Business Act (15 U.S.C. 632) as a small business concern, private nonprofit organization or small agricultural cooperatives, (ii) be a business with not more than 500 employees, (iii) be an individual who operates under a sole proprietorship (with or without employees) or an independent contractor, (iv) be a cooperative with not more than 500 employees, (v) be an ESOP as defined in section 3 of the Small Business Act (15 U.S.C. 632) with not more than 500 employees, or (vi) be a tribal 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, during the covered period beginning on January 31, 2020 and ending on December 31, 2020.

The SBA has waived the requirement that the applicant must have been in business for the 1 year period before the disaster, requiring only that the business have been in operation on January 31, 2020. Additionally, the requirement for the applicant having not been able to obtain credit elsewhere has been waived. The SBA may approve an applicant based solely on its credit score and shall not require a tax return or a tax return transcript or the SBA may use alternative methods to determine an applicant's ability to repay the loan. No personal guarantee is required for loans of not more than \$200,000 during the covered period. The SBA requires collateral for loans over \$25,000 but has noted that the lack of collateral will NOT disqualify an applicant.

Qualifications for SBA Express Loans. To qualify for a SBA Express Loan, a business needs to qualify under the Small Business Act (15 U.S.C. 632) as a small business concern, operate for profit, engage in operation within the USA, and be in operation for at least 2 years. Additionally, the applicant must be able to prove/show a need for financing, have already financed the business through alternative means, show the funds will be used for sound business purposes, have no delinquencies on previous debts to the government and generally have a credit score at least 600.

Qualifications for the Paycheck Protection Program. During the covered period beginning on February 15, 2020 and ending on June 30, 2020, to qualify a business needs to:

- Be a business concern, nonprofit organization, veterans organization, or Tribal business concern as described in section 31(b)(2)(C) of the Small Business Act (15 U.S.C. 657a(b)(2)(C)) that employs not more than the greater of (1) 500 employees, or (2) the size standard in number of employees established by the SBA for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates,
- Be a sole proprietorship, independent contractor or eligible self-employed individual (as defined in Section 7002(b) of the Families First Coronavirus Response Act (Public Law 116-127)).

The following exceptions apply:

- Business concerns with more than 1 physical location which employ not more than 500 employees per physical location and are in the NAICS code designation beginning with 72 (accommodation and food service) shall be eligible to receive PPP loan;
- The provisions applicable to affiliations are waived for the following: (1) any business concern with not more than 500 employees that is in the NAICS code designation beginning with 72 (accommodation and food service), (2) any business concern operating as a franchise that is assigned a franchise identifier by the SBA, and (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681).

What Do We Know About The Process?

SBA Express and EIDL are available now - <https://www.newsday.com/business/sba-disaster-loans-zeldin-1.43461686>

To apply for an EIDL: Applicants apply directly with the SBA for an EIDL at <https://www.sba.gov/funding-programs/disaster-assistance>. Applicants will need to complete an SBA loan application (SBA Form 5); a Schedule of Liabilities (SBA Form 2202) and a Personal Financial Statement (SBA Form 413). In the event that the SBA is not able to approve the applicant solely on its credit score or some alternative method, the applicant should be prepared to provide its Federal Income Tax Return or Tax Transcript. Additionally, the applicant may need to provide a current year-to-date profit-and-loss statement and/or an Additional Filing Requirements (SBA Form 1368) providing monthly sales figures. An applicant may request an emergency grant in an amount not greater than \$10,000 when it applies and the SBA will provide that grant within 3 days of the application (note, this grant does not need to be repaid, even if the applicant is denied the loan). If approved for the loan, the applicant does not need to accept it.

To apply for an SBA Express Loan: Applicants apply directly with a lender (a bank or financing company). Borrower will need to provide a Borrower Information Form (SBA Form 1919) and any other information or requirements as set forth by the lender with whom they are applying. The lender has the ability to make the eligibility and creditworthiness determination. The SBA will respond within 36 hours of receiving the documentation from the lender. No collateral is required

for loans of up to \$25,000. For loans greater than \$25,000 lenders are allowed to use their own existing collateral policy.

Guidance from the SBA for applications to the Paycheck Protection Program: The application window will open on April 3 for small businesses and sole proprietorships, and on April 10 for independent contractors and self-employed individuals. Applicants are encouraged to move quickly, as there is a funding cap and the program is expected to be oversubscribed. Fortunately, the application form is only four pages long and is relatively straightforward.

Funds are provided in the form of loans that will be fully forgiven when used for payroll costs, interest on mortgages, rent, and utilities (amount of loan forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels). The SBA has capped the amount of non-payroll costs that may be forgiven to 25% of the total forgiven amount. Interest and principal loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.

Companies can apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. Companies should consult with their local lender as to whether it is participating. All loans will have the same terms regardless of lender or borrower. A list of participating lenders as well as additional information and full terms can be found at www.sba.gov.

Preparing to Apply: An applicant can take the following steps to put itself in a position to be ready to apply for a loan:

- Fill out the Paycheck Protection Program Application Form;
- Determine eligibility either under the expanded eligibility set forth in the CARES Act;
- Calculate your potential maximum loan amount through utilization of the average monthly payroll costs as set forth in the CARES Act;
- Communicate with your existing lenders to ensure that if your existing loan documentation requires a waiver, consent or amendment for you to be able to obtain a PPP loan, you have already had the discussions with your existing lenders and started any required documentation,
- Be prepared to provide the lender any additional information it may require on the ownership and structure of the applicant, the payroll calculation of the applicant and anything else lender may need to determine eligibility and approve the loan.

What Steps Can I Take Now?

In connection with the steps set forth in the Assumption

Step 1: Conduct an initial company assessment with available resources. If you have specific SBA eligibility or affiliation questions, you can reach out to

Step 2: Reach out to your banking relationships to determine which banks with whom you have a relationship will be participating as a lender for the PPP and to determine what, if any, steps you may need to take related to any existing loans you have.

Step 3: If you believe you will be eligible, begin to complete the current application for the [SBA Paycheck Protection Program](#) to begin gathering information and in preparation for the application.

Step 4: Most important, keep yourself, your employees and your families safe and healthy!

What Should I Avoid?

Congress and the SBA understand the urgency with which this funding is needed to support small businesses, and have not attached many strings. That said, there are several important considerations to keep in mind to ensure your company's loan request is met.

First, because these loans will be forgiven if companies maintain all of their employees at their normal salaries (including benefits), companies should avoid layoffs, and/or rehire any employees that were recently let go. Then, once the loan is disbursed, companies should avoid using funds for any unauthorized purposes, lest they open themselves up to allegations of fraud or receive a smaller percentage of loan forgiveness. Beyond those two requirements, as long as the company stays out of bankruptcy and hasn't defaulted on a previous SBA loan, there shouldn't be too many pitfalls to avoid.

Who Should I Contact With Questions? Please reach out to COVIDSBA@hklaw.com with ANY questions you may have related to the CARES Act and other legislation so that they can direct you to the correct experts within the firm.