



MEMORANDUM

TO: MPL Clients

FROM: MPL Law Firm, LLP

DATE: March 31, 2020

RE: CARES Act – Small Business Stimulus Programs

As you are all aware from our prior updates, Coronavirus Aid, Relief and Economic Security Act (the “*CARES Act*”) was signed into law, providing emergency assistance for individuals, families and businesses affected by the COVID-19 pandemic. Two of the main programs unveiled with the CARES Act for small businesses are the Paycheck Protection Program (“*PPP*”) and the Economic Injury Disaster Loan Program (“*EIDL*”), both to be administered through the Small Business Administration (“*SBA*”).

Given the very favorable terms of these two SBA loan programs and the potential for loan forgiveness under PPP loans, eligible small businesses who have been economically impacted by the COVID-19 pandemic should strongly consider taking advantage of these loan programs. Both programs run through the end of 2020, so there is no deadline to apply for either loan. Applications for EIDL loans *should be submitted directly* to the SBA, while PPP loans *will be available from SBA-approved lenders*. While the EIDL applications may already be submitted, most SBA-approved financial institutions (who will administer the PPP program) have yet to establish their internal programs, so we have not seen any of these PPP loans processed yet.

It may be best to consult your financial institution or another financing consultant in order to evaluate and determine the best program for you, or what all is available. Our office is happy to refer our clients to some of our trusted financing consultants to assist anyone with this process.

PAYROLL PROTECTION PROGRAM

PPP will provide roughly \$349 billion in loans to eligible small businesses. Unlike many other economic relief loans rolled out to combat the effects of COVID-19, the PPP is the only program with the potential of complete loan forgiveness under certain circumstances. The loans may be used for a variety of purposes, including payroll costs (as described below), rent, utilities, mortgage interest (not principal) and interest on debt existing prior to February 15, 2020. The below summary is based on an article posted by the National Law Review.

Eligibility

Eligible entities are those with less than 500 employees. For the purposes of determining the 500 employee threshold, applicants should include all full time, part-time and other basis employees. Eligible entities include the following (subject to the 500 employee threshold, except as noted below):

- Businesses
- 501(c)(3) nonprofit organizations
- Veterans organizations
- Certain tribal business concerns
- Eligible self-employed individuals
- Independent contractors
- Sole proprietorships
- Businesses in the accommodation and food services industry (NAICS 72) that have less than 500 employees per physical location.

Amounts

Loan amount limits equal the *average monthly payroll costs* multiplied by 2.5, with a cap of \$10 million. In addition, but still subject to the \$10 million cap, loan amounts may be increased by the amount of SBA backed EDIL proceeds¹ received after January 31, 2020 that are refinanced with the loan. *Average monthly payroll costs* are calculated based on the one-year period prior to the loan disbursement date, except for seasonal employers and employers not in business between February 15, 2019 and July 30, 2019. In the case of seasonal employers, the employer may choose to calculate the average monthly payroll costs based on the 12-week period starting February 15, 2019 or the period starting March 1, 2019 through June 30, 2019. In the case of new employers not in business between February 15, 2019 and July 30, 2019, the average monthly payroll costs is calculated based on the period beginning January 1, 2020 through February 29, 2020.

To calculate the average monthly payroll costs, certain payroll costs are included, while others are excluded.

- Included payroll costs: employee salary, wages and commissions; payment of cash tips; payment of vacation; parental, family, medical or sick-leave; allowance for dismissal or separation; payment required for group health benefits (including insurance premiums); payment of retirement benefits; or payment of state or local tax assessed on employee compensation; and sole proprietor income or independent contractor compensation not in excess of \$100,000.
- Excluded payroll costs: compensation of an individual person in excess of \$100,000 (as prorated for the period); federal employment taxes imposed or withheld taxes; compensation to an employee whose principal residence is outside of the U.S.; qualified sick leave for which a credit is allowed under Section 7001 of the Families

¹ It is our experience that most of our clients reading this will not have an EIDLs to refinance due to the timing, and thus this won't impact their maximum amount under the PPP.

First Coronavirus Response Act; and qualified family leave wages for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act.

Loan Terms

Loans are available for up to a 10-year term (amortized) at 4 percent interest, with six months (and up to one year) deferral of principal and interest payments. Notably, certain SBA requirements are waived, including:

- No personal guaranties of shareholders, members or partners
- No collateral
- No proving recipient cannot obtain funds elsewhere
- No SBA fees (may still have to pay lender processing fee)
- No prepayment fee

Application

Eligible entities may file applications with an SBA-approved lender. Lenders have been delegated authority to make loans without SBA review. Eligible applicants will have been in operation on February 15, 2020, and will have paid employees and payroll taxes or independent contractors. Applicants will need to certify that: (i) the loan is necessary, (ii) it will be used to retain workers and pay eligible expenses, (iii) no other application for a loan for the same purpose is pending, and (iv) the applicant has not received any other loan for the same purposes through December 31, 2020.

Forgiveness

Loans through the PPP are forgivable under certain circumstances. The forgiven amount will be equal to the amount actually paid for payroll costs, salaries, benefits, rent, utilities and mortgage interest during the eight (8) weeks following disbursement of the loan. The forgiveness amount is subject to reduction if there is a workforce reduction or a reduction in the salary or wages of an employee.

- The amount attributable to a workforce reduction will be equal to the initial forgiven amount multiplied by the quotient of average FTEs during the eight-week period divided by the average FTEs for the period from February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020, as determined by the recipient
- The amount attributable to a salary or wage reduction will be the amount of any salary or wage decrease in excess of 25 percent of the total salary or wages during the most recent full quarter such employee was employed before the eight-week period. Only employees who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in excess of \$100,000 are included in this calculation.

- Reductions in workforce, salaries and wages that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020.

Borrowers must apply for forgiveness with the lender servicing the loan. Lenders have 60 days to review and make a determination. Any portion of the loan that is forgiven will be excluded from gross income for 2020.

ECONOMIC INJURY DISASTER LOAN PROGRAM

Another option for small businesses is the SBA's existing EIDL Program, which was expanded by the CARES Act and provides for longer-term loans with favorable borrowing terms. Small business companies are eligible for EIDL loans relating to economic injury caused by the COVID-19 pandemic. While there are no loan forgiveness provisions applicable to EIDL loans, companies that have already applied for or received EIDLs due to economic injury attributable to the COVID-19 pandemic can seek to refinance their EIDL loans under the PPP to take advantage of the PPP's loan forgiveness provisions. Additionally, while companies may be eligible for loans under both programs, they are unable to seek recovery under the EIDL loan *for the same costs* that are covered by a PPP loan.

Eligibility

The CARES Act expanded EIDL eligibility for the period between January 31, 2020 and December 31, 2020, to generally include any business with not more than 500 employees, any individual operating under a sole proprietorship or as an independent contractor, and other limited exceptions. Additionally, entities previously eligible to receive SBA EIDLs, including small business concerns, private nonprofit organizations and small agricultural cooperatives, remain eligible for such loans under the more favorable terms authorized by the CARES Act. To qualify for an EIDL under the CARES Act, the applicant must have suffered "substantial economic injury" from COVID-19.

Forgivable Advance

The CARES Act also permits applicants to request an advance of up to \$10,000 to pay allowable working capital needs; the advance is expected to be paid by the SBA within 3 days of a complete application. This advance is essentially a grant as it is not required to be repaid, even if the application is ultimately denied, but the amount of the advance must be deducted from any loan forgiveness amounts under a PPP loan, described above.

Loan Terms; Amount

The amount of EIDL loans are based on a company's actual economic injury determined by the SBA (less any recoveries such as insurance proceeds), not to exceed \$2 million. EIDL loans may be used for payroll and other costs as well as to cover increased costs due to supply chain interruption, to pay obligations that cannot be met due to revenue loss and for other uses. The

interest rate on EIDL loans is 3.75% fixed for small businesses and 2.75% for nonprofits. The EIDL loans have up to a 30-year term and amortization (determined on a case-by-case basis).

EIDLs under the CARES Act do not require personal guarantees for loans up to \$200,000, but do require personal guarantees by owners of more than 20% of the borrower for loans in excess of \$200,000. The CARES Act waives the requirement for the borrower to demonstrate that it cannot obtain a loan elsewhere. However, unless subsequently changed by the SBA, the SBA requirement for collateral on EIDL loans over \$25,000 still applies, meaning SBA will essentially look to collateralize the loans with any available collateral, even in junior positions. The SBA must also, in processing a borrower's application, make a determination that the applicant has the ability to repay the loan. To expedite approval of EIDLs during the covered period, the SBA can approve a loan based solely on the credit score of the applicant (or other means of determining the applicant's ability to repay the loan). This means applicants are relieved of the need to submit tax returns in most cases.

Pennsylvania Economic Relief – PIDA

Beyond federal specific programs, Pennsylvania businesses are eligible for a state specific relief through \$60M of funds provided by the PA Industrial Development Authority (“**PIDA**”) Coronavirus Relief. PIDA is making emergency relief loans up to \$100,000 available to qualifying small businesses with 100 or fewer employees at a 0% interest rate for a term of 3 years. The new program is called the COVID-19 Working Capital Access Program (“**CWCA**”) and is meant for PA businesses to be able to keep their doors open during the shutdown. As of now, the CWCA program is only funded with \$60M for the entire state, and are granted on a first come, first serve basis.

Because this is a working capital program, the actual loan amount (up to \$100,000) is determined based on a dollar for dollar match of their three (3) month look-back period of operating expenses. Please note that the loan is based on operating costs *spent* in the past 3 months, not expenses *incurred* in the last 3 months. If the applicant spent, in the last 3 months, \$100,000 in operating expenses, then the loan request can be for the full \$100,000 amount. The loan request must match the operating expenses for the look-back period. An exception applies for retail and service based businesses, which provides for a six (6) month look-back period and a loan amount based on one-half of the operating expenses for such look back period. While applicants will not have to document how they meet the loan request amount at the time of application, they will have to document it for closing.

This program is currently live, and all loan applications must be submitted through a Certified Economic Development Organization (“**CEDO**”). To find the correct CEDO, please use this website: www.dced.pa.gov/cedo. For those in York County, the appropriate CEDO is the York County Economic Development Corporation (see their website [here](#)). To review additional information about the CWCA program, you can access the [CWCA program website](#) maintained by DCED.

For additional information on York County programs, including state and federal updates, a good website to bookmark and periodically review is [Prepared York](#), which is maintained by the York County Economic Alliance.

Please visit our [Resource Center](#) for additional information on the CARES Act and other small business resources during this challenging time. While our office will be closed pursuant to Governor Wolf's stay at home and shutdown order, our attorneys will remain available via cell phone and email. If you have any questions, please contact your MPL attorney to discuss the above, or other questions about the effect of COVID-19 on your operations. ***Email contacts: Andy Miller (amiller@mpl-law.com); James Sanders (jsanders@mpl-law.com); and Christian Miller (cmiller@mpl-law.com).***