Bond
INFORMATION MEMO

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Summary of Federal Relief Loans Available to Small Businesses Amid the COVID-19 Pandemic

Small businesses face unprecedented and unique financial difficulties in wake of the COVID-19 pandemic. This Information Memo provides a comprehensive summary of three main relief programs that may be available to small businesses and other eligible entities: 1) the Paycheck Protection and Loan Forgiveness Programs as created under the CARES Act; 2) Economic Injury and Disaster Loans and the Emergency Economic Injury Grants through the U.S. Small Business Administration (SBA); and 3) a six-month payment of principal, interest and fees owed under certain existing SBA loans.

1. CARES Act Stimulus Bill – The Paycheck Protection and Loan Forgiveness Programs

The Coronavirus Aid, Relief, and Economic Security Act or the CARES Act (the Act) provides relief for small businesses amidst the COVID-19 pandemic and is a significant deviation from existing SBA loan programs. The total amount appropriated to aid small businesses under the Act is $349 billion.

The Paycheck Protection Program

Under the Act, the Paycheck Protection Program (PPP) is a new loan program provided under the SBA's 7(a) loan program. The purpose of the PPP is for small businesses to retain workers and maintain payroll and/or make mortgage payments, lease payments and utility payments. Importantly, if the business has already laid off its employees due to the COVID-19 pandemic, there is no penalty for obtaining the PPP loan and rehiring those employees.

The main difference between the PPP and existing SBA Economic Injury Disaster Loan program, which is discussed later, is that PPP loans will be administered by SBA approved private lenders and not the Department of Treasury. It is anticipated that private lenders will be able to process applications and administer loans faster than is done under existing federal loan programs. Significant differences also include: 1) a maximum $10 million loan amount; 2) payment deferral; 3) no collateral requirement; and 4) no personal guarantee requirement. The "covered period" under the Act is from February 15, 2020 to June 30, 2020. Therefore, businesses must apply for the PPP loan within this period; however, as of the date of this Information Memo, the PPP application process is still being finalized and lenders are not yet accepting applications from businesses.

Which businesses are eligible for the PPP loan?

To qualify, an eligible business, which includes nonprofit organizations under IRS 501(c)(3), veterans organizations and tribal business concerns, must have been in operation since February 15, 2020. The business must also have paid salaries, payroll taxes, or Form 1099 non-employee compensation. The business must follow one of the following employee number limitations:

- A business may not employ more than 500 employees.
- For accommodation and food service industries, the number of employees cannot exceed 500 per physical location. Thus, local franchises of larger accommodation and food services corporations may still be eligible for the PPP.

- A business with certain “size standards” according to the SBA, which may be more than 500 employees.

Sole-proprietors, independent contractors, and the self-employed are also eligible for the PPP.

What monies are available under the PPP?

To determine the amount of the PPP loan, the business must average the total monthly payments for payroll costs (defined below) made the prior year (e.g., the average monthly payroll cost for 2019). That number will be multiplied by 2 1/2, which will be the amount of the loan (2 1/2 months of payroll costs). A business’ PPP loan amount is capped at $10 million. If the business received a separate loan on January 31, 2020 or later to maintain business operations due to the COVID-19 pandemic, the Act allows for refinancing of those loans as well.

What can the PPP loan be used for?

The PPP may only be used for the following authorized purposes:

- Payroll costs, which include:
  - Salaries and employee compensation
  - Cash tips
  - Payment for vacation, parental, family, medical or sick leave
  - Allowance for dismissal or separation
  - Group health care benefits, including insurance premiums
  - Retirement benefits
  - Income withholding taxes
  - Compensation to sole proprietors and/or independent contractors (not to exceed $100,000);
- Costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, insurance premiums;
- Rent payments;
- Utility payments;
- Mortgage interest payments; and
- Interest on any other debt obtained before the COVID-19 pandemic.

The PPP may **not** be used for the following purposes:

- Employee salaries in excess of $100,000;
- Salaries of employees who live permanently outside of the United States;
- Social Security or Medicare withholding taxes; and/or
- If the business is already receiving a credit in payroll taxes (such as extended FMLA or sick time leave), it cannot include such expenses for additional loan amounts.

The PPP is available for businesses who have employees that are both full time and part time. The PPP loan application requires good-faith certifications that the business will only use these funds for the authorized purposes.

Other important details for the PPP loan:

The typical requirement that businesses exhaust all other lending options to obtain credit prior to obtaining an SBA loan has been waived under the Act. As noted above, personal guarantees are not required for the loan, nor is a business required to post collateral. Additionally, there is also a deferral of payment on the principal, interest and fees of the PPP loan for a minimum of six months, but not more than one year. In the event of non-payment, the lender has no recourse against the borrower unless the PPP loan amounts are used for unauthorized purposes.

A business that obtains a PPP loan will be ineligible for certain other benefits under the Act. For example, a business that obtains a PPP loan is not eligible for the employee retention tax credit. Therefore, businesses should carefully consider the various relief programs available under the Act along with their unique business needs and challenges during this time prior to applying for a particular relief program.

The Loan Forgiveness Program

The Act also includes a loan forgiveness component for certain expenses that are authorized under the PPP. Businesses are eligible for PPP loan forgiveness in an amount equal to the sum of certain costs incurred and payments made during the eight-week period starting from the loan origination date. However, it is important to note that not all authorized uses of funds under the PPP loan are eligible for loan forgiveness.

Which costs are eligible for forgiveness?

For the eight-week period starting from the PPP loan origination date, the following costs and payments are eligible for loan forgiveness:

- Payroll costs;
- Any payment of interest on a covered mortgage obligation existing before February 15, 2020;
- Rent obligations, which existed before February 15, 2020; and
- Utility payments related to electricity, gas, water, transportation, telephone or internet access, which were in effect before February 15, 2020.

What documentation is needed?

It is extremely important that during the applicable eight-week period all costs and payments are documented by the business. To be eligible for PPP loan forgiveness, a business must apply to its lender and include the following documentation:

- Verification of the number of full-time equivalent employees on payroll and payrates, including payroll tax filings; state income, payroll, and unemployment insurance filings; and
- Cancelled checks, payment receipts, transcripts of accounts or other documents verifying payments on covered mortgage obligations, payments on lease obligations, and utility payments.

The business must also certify that: 1) the uncertainty of current economic conditions justifies the loan request to support the ongoing operations of the borrower; 2) the provided documentation is true and correct; and 3) the funds expended were used to retain employees.

Once a business has requested PPP loan forgiveness and provided the lender the required documentation supporting the request, the lender must render a decision within 60 days. An otherwise eligible recipient of loan forgiveness will be denied if the required documentation is not submitted to the lender.

Other important information

There are some restrictions on the PPP loan forgiveness program. The amount of loan forgiveness may not exceed the principal amount of the loan. Further, the amount of loan forgiveness will be reduced proportionally by the reduction of employees compared to the prior year, as well as reduced by any decrease in salaries of more than 25% as compared to the prior year. However, as an incentive to re-hire laid off employees, businesses that re-hire employees that were previously laid off due to the COVID-19 pandemic are not subject to the foregoing limits as related to those rehired employees.

For the loan amounts that either fall outside of the eight-week period, or expenses that are not part of the reimbursement program, businesses are allowed up to 10 years to pay back the loan after the deferral period ends. The portion of the PPP loan amount that was not forgiven is not included as taxable income.

2. Disaster and Economic Injury Loans

Another option available to businesses during this time is the SBA's Disaster and Economic Injury Loan Programs. The Act has broadened eligibility and increased funds to these programs, which are administered directly by the SBA and the Department of Treasury as opposed to private lenders.

Economic Injury Disaster Loan

The Economic Injury Disaster Loan (EIDL) program is available to businesses that have been "severely" economically injured by the COVID-19 pandemic. The EIDL is a low-interest working capital loan available to small businesses who suffer working capital losses due to the COVID-19 pandemic. Businesses must apply directly to the SBA for an EIDL. If a business applies for an EIDL and ultimately receives funds under a different program, there is no obligation to take the EIDL loan. However, a business may utilize both EIDL loans and PPP loans. The deadline to apply for an EIDL is December 31, 2020.

Which businesses are eligible for the EIDL?

The EIDL is available to small businesses, small agricultural co-ops, small aquaculture businesses, and most private non-profit organizations. Moreover, the Act expanded EIDL eligibility to all co-ops with 500 employees or less, ESOPs, tribal small business concerns and individuals who operate under a sole proprietorship or as an independent contractor. Eligible businesses must have been in operation since at least January 31, 2020.

Businesses applying for EIDL relief must have suffered economic injuries due to the COVID-19 pandemic. The SBA defines economic injury as a "decrease in income from operations or working capital with the result that the business is unable to meet its obligations and pay ordinary and necessary operating expenses in the normal course of business."

What are the terms of the EIDL?

Businesses may apply for an EIDL loan in an amount up to $2 million, with repayment terms of up to 30 years. Interest rates are fixed at 3.75% for small businesses and 2.75% for nonprofit organizations. However, the actual amount of the EIDL loan ultimately granted to a business will be based on its actual economic injury and financial needs. EIDL loans over $25,000 will also require collateral, unlike PPP loans.

Businesses must have acceptable credit and show the ability to repay to receive the EIDL. However, the SBA has shown leniency in its application standards for EIDL loans related to the COVID-19 pandemic. The Act has also raised the personal guarantee requirement for these loans to $200,000 from $25,000.

What can EIDL monies be used for?

Businesses have greater flexibility in their use of EIDL funds than PPP funds. EIDL loans may be used for the same purposes under the PPP (up until a PPP loan has been obtained), in addition to the payment fixed debts, accounts payable, supply chain interruptions, and other bills that cannot be paid because of the COVID-19 pandemic's impact. However, the EIDL may not be used to refinance long-term debt, directly replace lost sales or lost profits, or to fund expansion projects.

Can a business apply for both the PPP and EIDL loans?

The Act allows businesses to receive both a PPP loan and an EIDL under certain circumstances, including if the business obtained the EIDL before the PPP loans became available. However, if a business obtains both an EIDL and a PPP loan, EIDL funds must be used for purposes other than paying payroll costs and other expenses covered under the PPP. Additionally, a business may receive and expend funds under the EIDL for disasters other than the COVID-19 pandemic.

Emergency Economic Injury Grants

The Act includes an emergency EIDL grant of $10,000 to all eligible small businesses and nonprofits who apply for an EIDL. Upon request from the borrower, the grant will be advanced within three days of applying for the EIDL. The use of this grant may be used for allowable purposes under the EIDL, including: providing sick paid leave to employees unable to work due to the direct effect of the COVID-19 pandemic; maintaining payroll; meeting increased costs to obtain materials unavailable due to interrupted supply chains; making rent or mortgage payments and repaying obligations that cannot be met due to revenue losses.

3. Payments on Existing SBA Loans

The Act also provides relief for businesses who have already existing loans from the SBA. For six months, the principal, interest and any associated fees that are owed under certain existing SBA loans will be paid in full by the government. These loans include 7(a) loans, Community Advantage Pilot Program, Microloan Program and 504 loans. These payments do not apply to PPP loans.

The attorneys at Bond, Schoeneck & King can help you determine if your business qualifies for a PPP or EIDL loan and assist with the application process. Please contact Kate Chmielowiec, Elizabeth Lehmann, Jeffrey B. Scheer, any of the attorneys in the Business and Transactions Practice Group, or the attorney at the firm with whom you are regularly in contact.

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