



## MEMORANDUM

FROM: Miller Canfield Paddock and Stone, PLC

RE: **Financial Assistance Available to Business Operations with 500 or Fewer Employees: Understanding the Essentials**

DATE: April 1, 2020

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Through the recently enacted Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the U.S. government will be providing over \$2 trillion in financial aid to the U.S. economy. The CARES Act provides two major programs for business operations in the U.S. with 500 or fewer employees\*: *Economic Injury Disaster Loans (EIDLs)* and *Paycheck Protection Program Loans (PPP loans)*. This memorandum focuses on small businesses; funding for non-profits and larger business operations will be addressed in a separate memorandum. Below is a basic outline describing these programs and the provisions of the recently released Paycheck Protection Program Application Form and instructions.

	Economic Injury Disaster Loans	Paycheck Protection Program Loans
<i>Eligibility Requirements</i>	<ul style="list-style-type: none"> <li>• Business, sole proprietorship or independent contractor</li> <li>• Fewer than 500 employees, including employees of affiliated companies*</li> <li>• In operation by Jan 31, 2020</li> <li>• Not required to show inability to borrow elsewhere</li> </ul>	<ul style="list-style-type: none"> <li>• Business and eligible self-employed, sole proprietors, and independent contractors in operation before Feb 15, 2020</li> <li>• 500 or fewer employees (or 1,500 employees for certain types of businesses), including employees of affiliated companies*</li> <li>• Not required to show inability to borrow elsewhere</li> </ul>
<i>Disqualifiers</i>	<ul style="list-style-type: none"> <li>• Certain applicants listed on SBA site: <a href="#">link</a></li> </ul>	<ul style="list-style-type: none"> <li>• The applicant or any 20% owner is ineligible or excluded from participation by any federal department or agency</li> <li>• The applicant or any 20% owner is in bankruptcy</li> <li>• The applicant or any 20% owner, or any business owned by any of them has been in default on a direct or guaranteed loan from the SBA or other federal agency in the past 7 years</li> <li>• Any 20% or greater owner :               <ul style="list-style-type: none"> <li>▪ is incarcerated, on probation or parole or subject to formal criminal charges in any jurisdiction;</li> <li>▪ is not a U.S. Citizen or lawful permanent (not clear what if foreign entity is owner); or</li> <li>▪ has, within the last 7 years, been convicted, placed in pretrial diversion or on any form of parole or probation, pleaded guilty or nolo contendere to any felony or misdemeanor involving a minor.</li> </ul> </li> </ul>
<i>Amount Available</i>	<ul style="list-style-type: none"> <li>• Up to \$2 million</li> </ul>	<ul style="list-style-type: none"> <li>• 250% of the amount of the average monthly Payroll Costs (over 12 month period prior to application)</li> <li>• “Payroll Costs” means amounts paid employees or independent contractors for:               <ul style="list-style-type: none"> <li>• wages, salaries, commissions, tips, similar comp (subject to \$100k cap per employee)</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• vacation, sick leave, parental or family leave</li> <li>• severance or dismissal payments</li> <li>• health care benefit costs, retirement benefits, state and local taxes assessed on employee compensation</li> <li>• Amounts to be <u>excluded</u> from “Payroll Costs”: <ul style="list-style-type: none"> <li>• compensation of employee with residence outside the US</li> <li>• federal payroll taxes, social security taxes</li> <li>• qualified sick leave wages or qualified family leave wages for which a credit is allowed under Families First Coronavirus Response Act</li> </ul> </li> <li>• Maximum of \$10 million</li> </ul>
<i>Restrictions on Use of Loan Proceeds</i>	<ul style="list-style-type: none"> <li>• General working capital necessary until resumption of normal operations and to alleviate economic injury</li> <li>• Paying sick leave to employees unable to work due to the direct effect of COVID-19</li> <li>• Maintaining payroll to retain employees</li> <li>• Meeting increased costs to obtain materials unavailable from the business’s original source because of supply chain issues</li> <li>• Rent or mortgage payments</li> <li>• Repaying certain obligations that cannot be met due to revenue losses</li> <li>• Covered period is Jan 31, 2020 – Dec 31, 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Payroll Costs from Feb 15, 2020 – June 30, 2020</li> <li>• Mortgage interest payments, rent on property or equipment leases and utility payments</li> <li>• Interest on existing debt (incurred before Feb 15, 2020)</li> <li>• Applicant must represent that to the extent feasible it will purchase only US-made equipment and products</li> </ul>
<i>Interest Rate</i>	<ul style="list-style-type: none"> <li>• 3.75% per annum</li> </ul>	<ul style="list-style-type: none"> <li>• 0.50% per annum fixed</li> </ul>
<i>Repayment</i>	<ul style="list-style-type: none"> <li>• Up to 30 years</li> <li>• No payments in 1<sup>st</sup> year</li> </ul>	<ul style="list-style-type: none"> <li>• 2 years</li> <li>• No payments for 6 months (interest accrues from draw date)</li> <li>• No prepayment fees or penalties</li> </ul>
<i>Loan Forgiveness Possibilities</i>	<ul style="list-style-type: none"> <li>• No. Loan amounts not subject to forgiveness at this time</li> </ul>	<ul style="list-style-type: none"> <li>• Amount paid during first 8-week period of loan on payroll, mortgage interest, rent and utilities is eligible for forgiveness</li> <li>• Forgivable amount reduced if: <ul style="list-style-type: none"> <li>• number of employees from Feb 15, 2020 - June 30, 2020 is less than same period in 2019 (different rules if business not in operation at that time or if seasonal employees)</li> <li>• total compensation for employees earning less than \$100,000 reduced by more than 25% from the full quarter immediately prior to Feb 15, 2020</li> <li>• But business can reverse these forgiveness reductions by rehiring and restoring payroll by June 30, 2020</li> </ul> </li> <li>• Reduced by amount of any EDIL Advance Grant</li> <li>• Current Treasury Department guidance indicates that, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs</li> </ul>
<i>Personal Guarantees or Collateral</i>	<ul style="list-style-type: none"> <li>• None for loans less than \$200,000</li> <li>• Loans over \$200,000 must be guaranteed by each 20% owner</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>

<p><i>Expedited Advance of \$10,000 Grant</i></p>	<ul style="list-style-type: none"> <li>• Any business applying for an EIDL can also apply for an expedited grant of \$10,000 (available within three days)</li> <li>• Any business is eligible, but the SBA will approve the grant solely on basis of applicant’s credit score</li> <li>• No requirement to repay any advance payments, even if later denied an EIDL</li> <li>• Advance may only be used for (1) providing sick leave to employees due to COVID-19, (2) maintaining payroll, (3) meeting increased costs due to supply chain disruptions, (4) rent or mortgage payments, and (5) repaying obligations that cannot be met due to revenue losses</li> <li>• Advance reduces aggregate loan available for forgiveness under PPP loan</li> </ul>	<ul style="list-style-type: none"> <li>• No advances available</li> </ul>
<p><i>How to apply</i></p>	<ul style="list-style-type: none"> <li>• Online with Small Business Administration at this <a href="#">link</a></li> </ul>	<ul style="list-style-type: none"> <li>• Contact bank or lender that handles SBA 7(a) loans</li> <li>• Click <a href="#">here</a> to obtain a sample Paycheck Protection Program Application Form</li> <li>• Click <a href="#">here</a> to obtain the Paycheck Protection Program Information Sheet</li> <li>• Lenders to make available their applications shortly</li> </ul>

## **IMPORTANT FAQS**

### ***\*In counting number of employees, do I need to add employees of affiliates, subsidiaries and parent?***

Yes, in counting the number of employees for qualification as a small business, [SBA rules](#) require that you generally need to include employees of foreign and domestic affiliated businesses, such as the business’ parent company and all subsidiaries, domestic and foreign. However, these affiliation rules are not applicable for accommodation and food service business with multiple locations, SBA designated franchises, or businesses receiving assistance under section 301 of the Small Business Investment Act.

### ***Can I apply for both an EIDL and a PPP loan?***

A business that has applied for an EIDL can apply for a PPP loan ONLY if it will not duplicate its use of the EIDL. Note that the purposes for which the PPP loans may be used are similar to those for which EIDLs may be used, with a difference being that EIDLs may also be used for “meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains.” In addition, a business can apply for an EIDL loan now and then for a PPP loan when it becomes available. If you qualify and accept the EIDL loan, and you subsequently qualify for the PPP loan, you can refinance the EIDL loan with the PPP loan, or you can apply for both loans and decide which one you take if you qualify for both.

### ***When should my business apply?***

Because demand will be great, if your business will need funding, you should apply as soon as possible. There are no application fees, guarantee fees, servicing fee or prepayment fees, and no obligation to accept the loan. Applications for EIDL are available now and can be submitted online with the SBA. Applications for PPL loans must be submitted by June 30, 2020, and can be submitted as follows:

- April 3, 2020 for small businesses and sole proprietorships through exiting SBA lenders
- April 10, 2020 for independent contractors and self-employed through exiting SBA lenders

***What if my business already has a SBA loan?***

Not only is your business still eligible to apply for an EIDL or PPP loan, but if your business has any existing SBA loans (except for the PPP loans), the SBA will pay all principal, interest and fees on all these SBA loans for 6 months as additional relief to small businesses negatively affected by the COVID-19 pandemic.

***Are there any specific certifications and acknowledgement my business will need to make?***

Yes, for the PPP loan program the business applicant and each 20% or greater owner will need to certify:

- current economic uncertainty makes the loan request necessary to support ongoing operations
- loan proceeds will be used to retain workers and fund payroll, mortgage, lease and utility expenses, acknowledging that the U.S. government may pursue criminal fraud charges if loan funds are used for unauthorized purposes
- documentation verifying employees, Payroll Costs, mortgage interest payments, rent and utility payments for the 8 week period following loan disbursement will be provided to the lender
- loan forgiveness will be provided for documented Payroll Costs and covered mortgage, lease and utility payments provided that it is anticipated that not more than 25% of the forgiven amount may be for non-Payroll Costs
- between Feb 15, 2020 and Dec 31, 2020 the applicant has not and will not receive another loan under the PPP program
- all information and supporting documents are true and accurate
- acknowledgement that the lender will calculate the loan amount on the basis of tax documents and an affirmation that the tax documents provided to the lender are identical to those provided to the IRS and that the lender can share the tax information provided within the SBA

In addition, the application and these certifications require the signature of the applicant and each 20% or greater owner.

***What if I already laid off some workers or reduced compensation? Can I re-hire employees?***

Your business is still eligible for the loans under both programs, but it may affect how much of the PPP loan will be forgiven: the PPP loan amount subject to forgiveness will be reduced in proportion to the number of fewer FTE workers you employed from Feb 15, 2020 - June 30, 2020 as compared to the number of such workers employed during the same period in 2019. Same applies if the total employee compensation is reduced by more than 25% from full quarter immediately prior to Feb 15, 2020. However, if you reduced your workforce or payroll between Feb 15, 2020, and Apr 26, 2020, the amount of PPP loan forgiveness for which are eligible will not be reduced according to the formulas above if, not later than June 30, 2020, you eliminates the reduction, as compared to Feb 15, 2020, in the number of full-time equivalent employees and/or wages of 1 or more employees.

***What if I have more questions?***

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