

RELIEF FOR SMALL BUSINESSES UNDER THE CARES ACT

By Michelle E. Hernandez

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was passed and signed into law. This alert provides a brief summary of the three main relief programs under the CARES Act: (1) the Paycheck Protection Program, (2) Emergency Economic Injury Grants and Economic Injury Disaster Loans, and (3) Small Business Debt Relief.

Paycheck Protection Program (PPP)

The PPP provides increased loan amounts for immediate capital to cover the cost of retaining employees for eligible small businesses and includes a mechanism for loan forgiveness. PPP loans will be available from participating commercial lenders between February 15, 2020, and June 30, 2020. These PPP loans are fully guaranteed by the SBA and will generally be forgiven to the extent that a small business borrower can demonstrate that (1) the loan proceeds were used for payroll and most mortgage interest, rent, and utility costs during the 8 week period after the loan was made, and (2) that employee levels and the compensation limits contained in the Act are maintained.

A business can generally qualify under the PPP if:

- It was operating as of February 15, 2019; and
- The company has five hundred (500) employees or less, or meets the industry's applicable employee-based size standards set by the SBA.

Potential applicants include for-profit businesses, most franchises, sole

proprietorships, independent contractors, gig economy workers, and other self-employed individuals, tribal businesses, veterans' organizations, and non-profit organizations. On April 3, 2020, the Treasury issued interim final rules and associated guidance to clarify under which circumstances an entity is an affiliate of an applicant, which may positively impact the eligibility of start-ups.

To apply, an applicant will also make certain certifications, including that:

- The current economic uncertainty makes the loan request necessary to support the ongoing operations of the applicant;
- Funds will be used to retain workers and maintain payroll, or to make mortgage payments, lease payments or utility payments;
- During the period beginning on February 15, 2020, and ending on December 31, 2020, the applicant has not and will not receive another loan under the PPP.

The legal landscape surrounding the PPP is changing daily; however, at the time of this article, you could find the application for the Paycheck Protection Program available here.

Emergency Economic Injury Grants and Economic Injury Disaster Loans (EIDL)

For businesses and private non-profit organizations in need of a quick infusion of cash to cover immediate expenses, the CARES Act offers an advance known as an Emergency Economic Injury Grant, of up to \$10,000 within three days of applying for an EIDL. An EIDL is a lower interest loan of up to \$2 million that is

available to pay for fixed expenses, including payroll and operating expenses, which could have been met had the disaster not occurred. Deferment of principal and interest under an EIDL is up to the administrator's discretion.

To access the advance, a company must first apply for an EIDL and then request the advance. The advance does not need to be repaid and may be used to keep employees on payroll, for sick leave, to meet increased production costs resulting from supply chain disruptions, or to pay business obligations, including debts, rent, and mortgage payments. This advance is not meant for business expansion.

For any EIDL application resulting from COVID-19, the following requirements are waived or adjusted as set forth below:

- Between January 31, 2020 and December 31, 2020, personal guarantees on loans which do not exceed \$200,000 are not required;
- Although the business must have operated as of January 31, 2020, the applicant is not required to be operational for the 1-year period before the disaster;
- Whether or not an applicant is able to obtain credit elsewhere will not impact eligibility;
- Lenders may approve EIDLs based solely on the applicant's credit score or other appropriate methods; and
- The business need not be located in a state or county that received an economic injury disaster declaration from the SBA.

Small Business Debt Relief

To ease the fear of keeping up with payments on current or potential SBA Loans, the SBA will automatically pay for six months the principal, interest, and fees of loans issued prior to September 27, 2020. To qualify for this benefit, such loans must be issued under the SBA's 7(a), Community Advantage, 504, and microloan programs. If the loan is currently in deferment, then the SBA will begin making payments after the deferment period.

The provisions of the CARES Act which apply to small business debt relief do not apply to loans under the new Paycheck Protection Program.

The information provided above is not exhaustive but is meant to only serve as a brief summary of the programs available under the CARES Act. If you are interested in applying for one of the relief programs described above or would like to learn more, please contact our office at (510) 451-3300. The attorneys at Donahue Fitzgerald are committed to assisting our community with its business needs through this challenging time and look forward to connecting with you.



Michelle E. Hernandez
Associate
mhernandez@donahue.com

Disclaimer: *This article is intended to provide Donahue Fitzgerald clients and contacts with general information. The content of this publication is for informational purposes only and is not legal advice. The law frequently changes and legal matters are fact specific. Readers should obtain legal counsel to provide advice on a particular matter and should not act upon the information contained in the publication without seeking professional counsel. Neither the presentation of the information in this publication nor the receipt of the information creates an attorney-client relationship. Donahue Fitzgerald assumes no liability for the use or interpretation of information contained herein.*

Copyright 2020©, Donahue Fitzgerald LLP.
All rights reserved.

