

SBA Liquidity Assistance for Businesses – In the Form of Forgivable Loans and Non-Forgivable Disaster Loans

Mar 27, 2020 | Banking Law, Business & Corporate, Coronavirus, Coronavirus and business, Coronavirus and finance law, Coronavirus and tax law, Tax Law



On March 27, 2020, the U.S. House of Representatives passed the COVID-19 stimulus bill, known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R.

748), which provides much needed assistance for small businesses.

The **Paycheck Protection Program** is an expansion of the existing SBA 7(a) Loan Program, including the following:

- Loans are available to businesses with 500 or fewer employees, including 501(c)(3) not for profits, sole proprietorships and independent contractors, without a revenue limitation (there are exceptions for accommodation and food services businesses and certain franchises)
- Generally, the maximum loan amount the business can receive is equal to 2.5x the average monthly payroll over the prior 12 months
- Payroll costs can include 1099 contractor payments in certain circumstances and any compensation to an employee in excess of 100,000 (annualized) will not be considered in the calculation (there are special provisions for seasonal employers and for self-employed individuals who are operating a business concern)
- The loan does not require collateral or a personal guarantee of the business owner
- The loan is 100% guaranteed by the SBA
- There are minimal financial disclosures required — just a Borrower certification that current economic conditions makes the loan necessary to support ongoing operations of the Borrower
- The customary SBA requirement for a business to be unable to obtain credit elsewhere has been waived and is not to be applied to these loans
- All of the origination fees are paid by the SBA and the CARES Act includes incentives for banks to participate in the program
- A portion of the Loan will be forgiven to the extent the loan proceeds are used for the following: 8 weeks of payroll, mortgage interest, utilities and rent. There will be a reduction in the forgiveness amount to the extent that: (i) there is more than a 25% reduction in wages; (ii) the workforce is reduced as compared to a similar period in 2019; or (iii) the business is receiving payroll tax credits related to the paid sick time or

FMLA paid leave for child care that is now mandatory for those impacted by COVID-19.

NOTE: to the extent that employees are furloughed and are rehired within 30 days of the CARES Act, it will not impact the ability of the business to receive forgiveness of the loan.

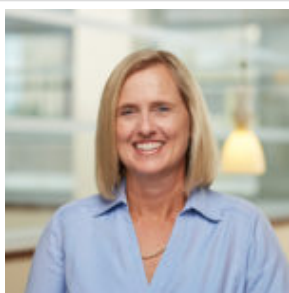
- The loan forgiveness will require documentation to verify the use of the loan proceeds.
- The forgiveness of the loan amount will NOT be discharge of indebtedness income to the borrower.
- To the extent a portion of the loan is not forgiven, the balance is converted to a 10 year loan at 4%, and will continue to be 100% guaranteed by the SBA.

The CARES Act also greatly relaxed the rules for **Economic Injury Disaster Loans (EIDLs)**, and while these loans are also available, they do not qualify the forgiveness program of the Paycheck Protection Program. Here are the highlights of the expanded Economic Injury Disaster Loans:

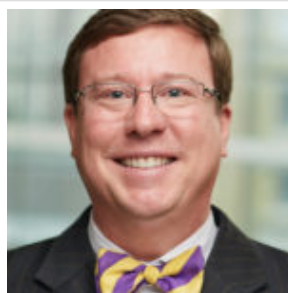
- Loans are available to business with 500 employees or fewer. Eligible businesses include non-profits, sole-proprietorships and independent contractors, with no revenue limitation.
- No personal guarantee is required for loans up to \$200,000.
- All fees will be paid by the SBA.
- Borrower need not have been in business for one year (but must have been in operation on January 31, 2020).
- Borrower need not show that it could not obtain credit elsewhere.
- Loans approved based solely on credit score of applicant (no tax return required).
- Borrower may request advance of up to \$10k to be paid within 3 days after the SBA receives the application. Advance does not need to be repaid, even if the loan request is ultimately denied.
- The interest rate on the loan will be no more than 4%.

Taking out a disaster loan will not preclude a Borrower from also taking out a forgivable PPL. But the EIDL cannot be rolled into the Paycheck Protection Loan. In other words, the Borrower can't convert the Economic Injury Disaster Loan into a forgivable Paycheck Protection Loan.

This post is intended to provide a general overview of the Paycheck Protection Program and the Economic Injury Disaster Loan program. If you think your business may qualify and would like to discuss the specific requirements or you would like other assistance during this difficult time, please contact Blalock Walters at 941.748.0100 as our attorneys are ready to assist you. You can also email [tax law attorney Jenifer Schembri](mailto:jschembri@blalockwalters.com) at jschembri@blalockwalters.com or [business & corporate law attorney Matt Lapointe](mailto:mlapointe@blalockwalters.com) at mlapointe@blalockwalters.com.



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