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PPP AND EIDL PROGRAMS

THE PAYCHECK PROTECTION PROGRAM (PPP)

The Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated $350 billion to help small businesses keep workers employed amid the pandemic and economic downturn. The Paycheck Protection Program (PPP) provides 100% federally guaranteed loans to eligible small businesses who maintain their payroll during the Coronavirus (COVID-19) pandemic.

The SBA may forgive the principal of PPP loans if a borrower maintains its payroll during the crisis or restores its payroll afterward. The amount of principal that may be forgiven is equal to the sum of expenses for payroll, interest on existing interest payments on mortgages, rent payments on existing leases, and payments on existing utility service agreements. Payroll costs include employee salaries (up to an annual rate of pay of $100,000), hourly wages and cash tips, paid sick or medical leave, and group health insurance premiums. If a borrower would like to use the PPP for other business-related expenses, like inventory, the business can, but that portion of the loan will not be forgiven.

A business will apply for a PPP loan through a bank that is familiar with SBA loans starting April 3, 2020. Here is the application form: PPP Application

THE ECONOMIC INJURY DISASTER LOAN (EIDL)

The SBA's Economic Injury Disaster Loans (EIDL) under the CARES Act are based on a company's actual economic injury determined by the SBA (less any recoveries such as insurance proceeds) up to $2 million. To qualify for an EIDL under the CARES Act, the applicant must have suffered "substantial economic injury" from COVID-19. A borrower may use EIDL proceeds to meet payroll and other costs, to pay increased costs due to supply chain interruption, to pay other obligations that cannot be met due to revenue loss, and to pay other expenses. 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 the 20% of the borrower for loans in excess of $200,000. The CARES Act waives the requirement for the borrower to demonstrate that it is unable to obtain credit elsewhere. Unless changed by the SBA, it appears that the requirement for collateral on EIDL loans over $25,000 would still apply, and, the SBA must make a determine that the applicant has the ability to repay the loan. The SBA can, however, approve an EIDL based solely on the credit score of the applicant or other means of determining the applicant's ability to repay the loan, without requiring the submission of tax returns, which should expedite approval of EIDLs during the Coronavirus (COVID-19) pandemic.

Pursuant to the CARES Act, small business owners in all U.S. states, Washington D.C., and territories are eligible to apply for an EIDL advance of up to $10,000. The loan advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue. Funds will be made available within three days of a successful application, and this loan advance will not have to be repaid.

The SBA is now accepting applications for EIDL loans and loan advance requests: https://covid19relief.sba.gov/#/

INTERACTION BETWEEN PPP AND EIDL PROGRAMS

Because the allowed purposes for EIDLs are broader than forgivable purposes of PPP loans, a business can obtain an EIDL for a purpose that is not allowed under the PPP loan and keep that EIDL even if the business also obtains a PPP loan. If a business receives an EIDL advance grant award of up to $10,000, that amount would be subtracted from the amount forgiven under PPP.

However, a business cannot obtain an EIDL and a PPP loan *for the same purpose (i.e., payroll, rent, and utilities)*, however, if a business obtains an EIDL (for payroll, rent, and utilities) related to COVID-19 between January 31, 2020 and the date at which the PPP becomes available, the business can refinance the existing EIDL loan into a PPP loan. Remaining portions of the EIDL that the business used for purposes other than those laid out in loan forgiveness terms for the business's PPP loan would remain an EIDL that must be repaid pursuant to its terms.