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Understanding SBA Loan Opportunities Under the CARES Act

Following the President's signing of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act of 2020 into law, we wanted to provide a brief overview of the two primary financing options for businesses that have been negatively impacted by the COVID-19 pandemic: (1) U.S. Small Business Administration ("SBA") Economic Injury Disaster Loans ("EIDLs") and (2) SBA 7(a) loans under the CARES Act.

Economic Injury Disaster Loans

The SBA offers low-interest EIDLs to small businesses up to \$2,000,000. The actual amount awarded is based on the business's economic injury and financial needs. EIDL funds may be used to pay fixed debts, payroll, accounts payable, and other bills a business cannot pay because of the COVID-19 impact. This includes, for example, vehicle purchases and refinancees, equipment purchases, inventory, and other general business needs. EIDL funds may not be used to refinance long-term debts, provide working capital the business needed before the pandemic, or replace sales or lost profits. EIDLs are not forgivable and must be repaid.

Small businesses are eligible for EIDLs if they have suffered substantial economic injury as a result of the COVID-19 pandemic and are located in a declared disaster area. A business has suffered a "substantial economic injury" if the business cannot meet its obligations and pay its ordinary, necessary operating expenses due to the impact of COVID-19. All 50 states are now declared disaster areas. Businesses with credit available elsewhere are generally not eligible for EIDLs.

CARES changes the EIDL program, to the benefit of small business owners, in several ways. During the CARES "Covered Period" (January 31, 2020 to December 31, 2020), certain requirements will be waived or reduced, to include the following: (i) a business will not be required to demonstrate it is unable to obtain credit elsewhere; (ii) entities will not be required to exist for at least one (1) year prior to the date of the disaster event; (iii) EIDLs less than \$200,000 will not require personal guarantees; and (iv) the SBA may approve loans based solely on an applicant's credit score, without requiring a tax return. CARES also allows applicants to request an EIDL advance up to \$10,000 within three days of application submittal to maintain payroll, provide sick leave, and satisfy other business costs. The advance does not have to be repaid even if the loan application is ultimately denied.

Coronavirus Aid, Relief, and Economic Security Act

CARES adds a new Business Loan Program to the SBA which will allow loans to eligible businesses to cover payroll, benefits, mortgage and rent payments, and other operating expenses. CARES allocates \$349 billion in guaranteed lending, which will be available to eligible businesses during the covered period (beginning on February 15, 2020 and ending on June 30, 2020).

Eligible businesses are employers that employ less than the greater of (i) 500 employees or (ii) the applicable standard size for employees in the industry in which the business operates. It is our current expectation that businesses that have not historically been able to access SBA programs will be included as eligible businesses.

The maximum loan amount is equal to the lesser of (i) the average monthly payroll costs incurred in the one year period prior to obtaining the loan multiplied by 2.5, plus the outstanding amount of any existing Emergency Injury Disaster Loan received after January 31, 2020; or (ii) \$10,000,000. Interest rates may not exceed 4%. Lenders must defer the initial loan payments for a period of at least six months and up to one year. The SBA must provide lenders with deferment guidance within 30 days of enactment.

Funds may be used to cover payroll expenses, health care benefits, mortgage and rent payments, utilities, and interest (but not principal) on any other debt incurred before the covered period. Indebtedness is forgiven to the extent the loan is used for allowable uses. However, to discourage lay-offs and pay cuts, the amount forgiven is reduced to the extent an eligible business terminates its employees or reduces employee salaries. Any loan forgiveness is excepted from cancellation of indebtedness income. The summary table that appears on the following pages provides additional insight on each of the SBA programs.

**ANALYSIS OF SBA ECONOMIC INJURY DISASTER LOAN
COMPARED TO STIMULUS FUNDS AVAILABLE IN CARES ACT**

| | ECONOMIC INJURY DISASTER LOANS (“EIDL”) (pre-CARES) | EIDL Expansion | CARES Stimulus | NOTES - CARES Act |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Apply Through | SBA | Covered Period is 1/31/20 - 12/31/20 | SBA 7(a) Lenders | Covered Period is 2/15/2020 - 6/30/2020 |
| Application Process | Apply directly to SBA via online portal, in person at a disaster center, or by mail | | <p>“Good faith certification” that:</p> <p>(1) loan is necessary to support operations; funds will be used for operating expenses (e.g. payroll, mortgage/rent payments, utilities);</p> <p>(2) applicant does not already have a pending application under SBA for the same purpose; and</p> <p>(3) and applicant has not received an SBA loan for the same purpose during the period beginning February 15, 2019- December 31, 2019</p> | <p>Lender Considerations</p> <p>(1) Was the business operating on 2/15/2020?</p> <p>(2) Did the business have employees that were getting salaries; and</p> <p>(3) was the business using independent contractors receiving a 1099(MISC)</p> |
| Required Documentation | Completed Business Loan Application form, IRS Forms 4506- T, federal income tax returns, personal financial statements, schedule of liabilities of all fixed debts. May be required to submit additional financial information on request | Waiver of requirement to provide federal income tax returns | <p>(1) Documentation verifying number of FT employees and pay rates for periods;</p> <p>(2) Verification of payments on covered mortgage/lease obligations, and utility payments;</p> <p>(3) Certification from applicant representative that (i) the documents</p> | Other documentation TBD. The SBA will give guidance within 30 days of the passage of the Act |

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| | | | <p>submitted and (ii) amount of requested forgiveness was used to retain employees, and pay mortgage/rent and utilities; and</p> <p>(4) Any other documentation deemed necessary by the SBA Administrator</p> | |
| Max Loan Amount | <p>Maximum of \$2MM</p> <p>Loan amount will be given based on actual economic injury and the entity’s financial needs.</p> | <p>Entities may request an emergency advance of \$10,000, which does not have to be repaid even if the loan application is later denied and will be awarded w/in 3 days of application</p> <p>If entity received an emergency advance and transfers into an SBA Business Loan, the advance amount will be reduced from any payroll cost forgiveness amounts</p> | <p>Maximum Loan Amount (capped at \$10MM) shall be the lesser of:</p> <p>(1) 2.5x average total monthly payroll costs incurred in the 1-year period before the loan is made (or for the seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019) PLUS the outstanding amount of a loan made under the SBA’s Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program; OR</p> <p>(2) Upon request, for businesses that were not in existence during the period from February 15, 2019 to</p> | <p>Lenders eligible for reimbursement of processing fees</p> <p>SBA Application fees waived</p> |

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| | | | June 30, 2019 - 2.5x the average total monthly payroll payments from January 1, 2020 to February 29, 2020 PLUS the outstanding amount of a loan made under the SBA’s Disaster Loan Program between January 31, 2020 and the date on which such loan may be refinanced as part of this new program | |
| Who is Eligible? | <p>Small businesses suffering substantial economic injury as a result of COVID-19 in a disaster declared area.</p> <p>All 50 States and US Territories have COVID-19 EIDL declarations</p> | Applies to small business as eligible under the CARES act including Small Business Concerns | Any businesses, nonprofit organization, veterans’ organization, or Tribal business, which employs not more than 500 employees. | <p>For businesses with multiple locations, 500 employees per location AND assigned to the accommodation and food services sector</p> <p>Complicated “Affiliation rules” waived for companies which operate hotels, motels or restaurants and provide traveler accommodations or catering services, are franchisees or received financial assistance from a small venture investment company licensed under the Small Business Investment Act</p> |
| Terms | 3.75%, amortized up to 30 years | | Negotiable interest rate not to exceed 4%; amortized over maximum of 10 years | |

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| Uses of Funds | <ul style="list-style-type: none"> ▪ Pay fixed debts Payroll ▪ Accounts payable ▪ Employee sick leave ▪ Other bills that cannot be paid due to the disaster’s impact. <p>CANNOT be used to refinance debts incurred prior to the disaster event; make payments on other loans owned by another federal agency or SBA; pay tax penalties or non-tax criminal/civil fines; pay dividends or disbursements; repair physical damage.</p> | | <ul style="list-style-type: none"> ▪ Payroll ▪ Healthcare benefits ▪ Medical/family leave ▪ Insurance premiums ▪ Interest on mortgages (NOT principal) ▪ Rent ▪ Interest on any other debt | <ul style="list-style-type: none"> ▪ Loan cannot be used for: ▪ Individual employee compensation over US\$100,000 per year; ▪ Compensation of an employee whose principal place of residence is outside the US; and ▪ Sick and family leave wages covered under the Families First Coronavirus Response Act <p>EIDL can be obtained in addition to 7(a) loans for purposes other than those set forth in the CARES Act</p> |
| Loan Forgivable | NO | | <p>YES</p> <p>Loans would be forgiven completely in an amount (not to exceed the principal amount of the loan) equal to the following costs incurred and payments made during the covered period:</p> | <p>Forgiveness amounts will be reduced for any employee cuts or reductions in wages. The reduction formula for fewer employees is:</p> <p>The maximum available forgiveness under the rules multiplied by the average number of full- time equivalent employees (FTEEs) per month (calculated by the average number of FTEEs</p> |

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| | | | <ul style="list-style-type: none"> ▪ Payroll costs; ▪ Interest payments on mortgages; ▪ Rent; and ▪ Utility Payments <p>Amounts forgiven would not result in forgiveness of indebtedness income and would not be included in gross income or taxable.</p> | <p>for each pay period falling within a month - during the covered period divided by either (at the election of the borrower)</p> <p>Average number of FTEEs per month employed from 2/15/19 - 6/30/19 OR</p> <p>average number of FTEEs per month employed from 1/1/2020 until 2/29/2020 OR</p> <p>for seasonal employers - the average number of FTEEs per month employed during the covered period.</p> <p>Any amount not forgiven would retain 100% SBA guarantee to be repaid within 10 years. Deferred payment options at least 6 months and up to 1 year.</p> <p>For reduction in wages, forgiveness reduction is reduced by the amount of any reduction in total salary or wages of any employee during the covered period in excess of 25% of the employee's salary/wages during the most recent full quarter of employment before the covered period</p> <p>Relief from above penalties for employers who make up for wage reductions or rehire employees by 6/30/20</p> |

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| SBA Guaranty | If made in participation with a financial institution, SBA’s guaranty percentage is generally up to 90% for disaster loans (varies based on loan amount and program type). 13 CFR 123.5(a) | | The amount to be guaranteed is an amount equal to a factor of the average total monthly payroll costs in the one- year period before the loan is made or from February 15, 2019, through June 30, 2019, if the business did not exist last year. – Payroll costs are defined as the sum of all payments for compensation, including salary, wage, cash tips, paid time-off, severance, healthcare benefits, state or local taxes for period 2/15/20-6/30/20 | |
| Personal Guaranty | <p>SBA generally does not require collateral to secure an EIDL of \$25k or less.</p> <p>Loans greater than \$25k must be secured to the extent possible, but SBA will not deny an EIDL application for the sole reason no collateral is available</p> <p>SBA generally requires personal guarantee of all principals</p> <p>SBA accepts real estate as collateral for EIDLs</p> | <p>No PG required on loans under \$200K</p> <p>Waiver of requirement that entity have one year in business prior to disaster</p> <p>Waiver of Requirement that applicant be unable to find credit elsewhere</p> | During the covered period (February 15, 2020 – June 30, 2020), no collateral or personal guarantee shall be required for the loan | |

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| Timing | 2-3 weeks for initial decision Initial disbursement (\$25k) given within 5 days of SBA receiving signed loan documents | Receipt of funds will likely take longer than normal due to the high volume of applications and SBA website glitches that have already occurred | | |
| Payment Deferral Relief | No payments due until 12 months after receipt of funds | | Complete payment deferral relief is presumed for 6-12 months for businesses operating on February 15, 2020 and that have a pending or approved loan application. | |
| Misc. | | SBA can approve and offer EIDL based solely on the applicant’s credit score or “alternative appropriate method” for determining applicant’s ability to repay the loan (no tax return required) | | |

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