



# CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY ACT (CARES ACT)

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# LOAN OPTIONS

**\*UPDATED 4-7-2020**

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This document is not legal advice. Exhibitors are encouraged to consult with counsel about the specific elements of the loan programs and other aspects of the CARES Act that are relevant to your operations. We will update this document as new information becomes available. The date on the first page of the document indicates the latest date this document was updated.

### 5 LOAN OPTIONS

- ▶ SBA: Paycheck Protection Program
- ▶ SBA: Emergency Economic Injury Disaster Loans
- ▶ Treasury Distressed Sector Loan: Eligible Businesses
- ▶ Treasury Distressed Sector Loan: Mid-Size Businesses
- ▶ Treasury Distressed Sector Loan: Main Street Businesses

### QUESTIONS TO KEEP IN MIND

- ▶ Which loan(s) am I eligible for? Can I apply for multiple? Can I receive multiple?
- ▶ Pay employees? Furlough? Lay off?
- ▶ How long will I need coverage? When will the industry come back?
- ▶ When do I need funds? Can I wait?



# **SBA LOANS**

**(1)**

**PAYCHECK  
PROTECTION**

**(2)**

**EMERGENCY  
DISASTER LOAN**

## (1) PAYCHECK PROTECTION PLAN

- ▶ Loan to incentivize small businesses to retain employees
- ▶ Offers loan to eligible businesses of **2.5x average monthly payroll cost** at .5% (capped at \$10 million)
- ▶ Loan forgiveness of 8 weeks of eligible spending
- ▶ The Act also increases the maximum SBA Express loan (a loan whose application SBA will process in 36 hours) from \$350,000 to \$1 million through December 31, 2020. Other terms apply.



### PAYCHECK PROTECTION PLAN: ELIGIBLE BUSINESSES

- ▶ Any business, nonprofit organization, veterans' organization, or Tribal business, which employs not more than 500 employees, unless the covered industry's SBA size standard allows more than 500 employees.
- ▶ Businesses with multiple locations and 500 employees or fewer at each location carrying a NAICS code beginning with 72 (restaurant/hotel) as of the date of loan disbursement can count each location as a separate business
- ▶ Affiliation rules also waived for certain franchises and the NAICS code 72 businesses

# A QUICK NOTE ON FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION

- ▶ The Unemployment Compensation provision is complicated and we will not go into it in detail today.
- ▶ CARES Act provides individuals who are not already eligible for state and federal unemployment programs—but would be able to work in the absence of the coronavirus outbreak—a set amount of unemployment compensation at **\$600 per week plus whatever benefit would have been available at the state level.**
  - ▶ Excludes those employees who are able to telework with pay or receive some form of sick leave or other paid-leave benefits.
  - ▶ Expands coverage to some employees who quit their job for coronavirus-related reasons. This not only applies to those who contract the virus themselves, but also those who must leave their jobs to provide full-time care to family and other relatives but do not have access to paid leave benefits.

# PAYCHECK PROTECTION PLAN: LOAN AMOUNT

- ▶ Loan is for 2.5x average payroll costs within a set time frame (typically 2019 average)
  - ▶ Payroll costs include salary (capped at \$100,000), paid leave (except leave already covered by the Families First Coronavirus Response Act), allowance for dismissal or separation, healthcare benefit payments, retirement benefits and the like;
    - ▶ Doesn't cover payroll taxes, employees based outside the US
  - ▶ Example: Business with \$1 million in average payroll eligible for \$2.5 million. Caps at \$10 million
- ▶ Loan can be used for payroll costs listed above plus insurance premiums, interest on pre-existing debt, mortgage, rent, and utility payments.
  - ▶ SBA Interim Final Rule published 2 April indicates that **75% of loan proceeds and forgivable amount must be spent on payroll costs.**

# PAYCHECK PROTECTION PLAN: TERMS

- ▶ 1% Interest
- ▶ 2 year maturity
- ▶ Loans guaranteed at 100% through December 31, 2020
- ▶ No personal guarantee or collateral required; waives all fees and requirement for no credit elsewhere
- ▶ Allows complete deferment of 7(a) loan payments for six months
- ▶ Covered period: February 15-June 30, 2020
- ▶ Duplicative EIDLs are refinanced into PPP Loans

# PAYCHECK PROTECTION PLAN: FORGIVENESS

- ▶ Possible forgiveness equal to the amount spent by the borrower during an **8-week period** after the origination date of the loan on all covered costs (payroll, rent, utilities etc).
- ▶ The amount of forgiveness **cannot exceed the principle of the loan amount.**
- ▶ Treasury anticipates that **not more than 25%** of the forgiven amount may be for **non-payroll costs**. SBA Interim Final Rule indicates this restriction may extend to loan proceeds generally.
  - ▶ A business with \$1 million in monthly payroll, and \$1 million in other eligible costs the amount forgiven can only be **\$2.5 million** even though the total costs in the 8 weeks were \$4 million.
    - ▶ Potentially a violation of the loan terms generally

# PAYCHECK PROTECTION PLAN: FORGIVENESS

- ▶ Covered costs for forgiveness limited to
  - ▶ Payroll costs
  - ▶ Interest on a pre-existing mortgage obligation
  - ▶ Rent
  - ▶ Covered utilities
- ▶ Costs not eligible for forgiveness
  - ▶ Insurance premiums
  - ▶ Interest on pre-existing debt (aside from mortgages)

# PAYCHECK PROTECTION PLAN: FORGIVENESS

- ▶ Loan forgiveness is tied to **full-time equivalent (FTE)** employee retention and salary levels.
  - ▶ Amount forgiven reduced by reduction in FTEs in eligible 2019 period compared to covered period
  - ▶ Forgiveness reduced also by any reduction in FTEs salary greater than 25% compared to 2019
    - ▶ Portions of salaries in excess of \$100,000 not included
  - ▶ Can remedy employment levels and salaries by June 30, 2020 but only 25% of the forgivable amount may be for non-payroll costs.

# PAYCHECK PROTECTION PLAN: FORGIVENESS

- ▶ With maximum forgiveness:
  - ▶ \$2.5 million loan = \$2 million in payroll costs + \$.5 million in other eligible costs. With \$4 million in eligible costs over the period this leaves \$1.5 million not covered by the loan.
  - ▶ Can technically reduce payroll by 25% without a reduction. In this calculation \$2.5 million loan = \$1.5 million in payroll costs + \$1 million in other eligible costs. This leaves \$1 million not covered by the loan.
  - ▶ HOWEVER, based on treasury guidance **only 25% of the forgiven portion may be for non-payroll expenses**. Since the payroll costs are \$1.5 million here, the maximum amount that could be spent on other eligible costs is \$500,000 for a maximum forgivable amount of \$2 million. (25% of \$2 million is \$500,000).
  - ▶ IN ADDITION, new SBA guidance suggests that **regardless of forgiveness only 25% of the loan amount may be used for non-payroll expenses**.

# PAYCHECK PROTECTION PLAN: FORGIVENESS EXAMPLES

*Example: Borrower obtains \$2.5 million loan. Borrower uses \$1.75 million of loan proceeds to pay payroll costs, \$200,000 to pay rent, and \$50,000 to pay utilities. It uses the remaining **\$500,000** to pay down **pre-existing debt**.*

\$2.5 million (loan principal) - \$2 million (amount used for forgivable costs) = \$2 million forgiven

- ▶ Payroll/All eligible costs = \$1.75 million/\$2 million. The \$250,000 in eligible costs is less than 25% of the forgivable amount so the \$2 million can be forgiven.

Pre-existing debt is not eligible for forgiveness but is an approved use of the loan funds.

# PAYCHECK PROTECTION PLAN: FORGIVENESS EXAMPLES

*Example: Borrower had average full time employees/equivalents (FTEs) of 300 employees per month from February 15-June 30, 2019, and average FTEs of 250 employees per month from January 1-February 29, 2020. The borrower obtains a \$2.5 million loan and uses all of the loan proceeds to pay for forgivable expenses. During the eight-week period following the loan, the borrower employ an average of 150 FTEs per month. Employer elects January 1-February 29, 2020 baseline period. Forgiveness on the loan is reduced as follows:*

- ▶  $150 \text{ Covered Period FTEs} / 250 \text{ Baseline Period FTEs} = \mathbf{0.6}$
- ▶  $\$2.5 \text{ million} \times \mathbf{0.6} = \$1.5 \text{ million}$  forgiven as long as payroll costs are at least \$1.125 million (75% of forgivable amount).

## PAYCHECK PROTECTION PLAN: FORGIVENESS EXAMPLES

*Same Example: Borrower has a baseline of 250 FTEs and lays off 100 FTEs on March 1, 2020. Average FTEs over the eight-week period is 150, but the borrower **rehires 75 FTEs on June 15, 2020.***

- ▶  $225 \text{ Covered Period FTEs} / 250 \text{ Baseline Period FTEs} = \mathbf{0.9}$
- ▶  $\$2.5 \text{ million} \times \mathbf{0.9} = \$2.25 \text{ million}$  forgiven provided 75% of the forgivable amount (\$1.687 million) is attributable to payroll costs.

# PAYCHECK PROTECTION PLAN: FORGIVENESS EXAMPLES

*Example: Borrower obtains a \$2.5 million loan and uses all of the loan proceeds to pay for forgivable expenses. During the eight-week period following the loan, the borrower **reduces pay of hourly employees by 50 percent**, resulting in a total reduction in compensation of **\$1,500,000**. The borrower also **reduces the pay of its five officers, all of whom earn more than \$100,000, by 50 percent but each still earns more than \$100,000**. The reduction in officer pay produces a savings of **\$500,000**. **No reduction in FTEs occurs**. Forgiveness on the loan is reduced as follows:*

- ▶ *\$2.5 million - **\$750,000** (comp. **reduction in excess of 25 percent to employees earning less than \$100,000**) = \$1.75 million forgiven. Provided payroll costs are still 75% of the forgivable amount, or \$1.3 million.*

*(Remaining \$750,000 principal must be repaid at applicable interest rate over remaining term of loan)*

## PAYCHECK PROTECTION PLAN: FORGIVENESS EXAMPLES

*Example: Borrower obtains a \$2.5 million loan and uses all of the loan proceeds to pay for forgivable expenses. On **March 15, 2020**, the borrower **reduces pay of hourly employees by 50 percent**, and reduces the pay of its five officers, all of whom earn more than \$100,000, by 50 percent. No reduction in FTEs occurs. On **June 15, 2020**, the borrower **restores all hourly employees to full pay**.*

- ▶ **No reduction** in forgiveness eligibility; amount determined based on payroll costs.

# PAYCHECK PROTECTION PLAN: APPLICATION

- ▶ **Starting April 3, 2020**, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders. A sample application form can be viewed at <https://www.sba.gov/funding-programs/loans/paycheck-protection-program-ppp>
- ▶ **Starting April 10, 2020**, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.
- ▶ Other regulated lenders will be available to make these loans as soon as they are approved and enrolled in the program.

# PAYCHECK PROTECTION PLAN: APPLICATION

- ▶ Borrower must certify that the (1) loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; (2) they will use the funds to retain workers and maintain payroll, lease, and utility payments; and (3) are not receiving duplicative funds for the same uses from another SBA program.
  - ▶ Provides a limitation on a borrower from receiving this assistance and an economic injury disaster loan through SBA **for the same purpose**. However, it allows a borrower who has an EIDL loan unrelated to COVID-19 to apply for a Paycheck Protection Loan, with an option to refinance that loan into the PPP loan.
- ▶ Lenders will look at (1) whether a business was operational on February 15, 2020, and (2) had employees for whom it paid salaries and payroll taxes, or a paid independent contractor. Repayment ability not considered.

# PAYCHECK PROTECTION PLAN: APPLICATION

- ▶ Applicants should gather the following documents:
  - ▶ Personal financial statements
  - ▶ Business financial statements
  - ▶ Ownership information
  - ▶ Business licenses
  - ▶ Loan records
  - ▶ Personal and business tax returns
  - ▶ Personal resumes
  - ▶ History of the business

### (2) EIDL LOAN

- ▶ Offers up to \$2 million for businesses that have suffered substantial economic injury (business is unable to meet its obligations and to pay its ordinary and necessary operating expenses) and be located in a declared disaster area.
  - ▶ The entire country has been declared a disaster area for COVID-19
- ▶ Funds used to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. Loan amount will be based on actual economic injury and company's financial needs.
- ▶ \$10,000 EIDL Grant/Advance option available



# EIDL: ELIGIBLE BUSINESSES

- ▶ Small businesses, small agricultural cooperatives, private nonprofit organizations, and entities considered small for the industry in which they operate.
- ▶ “Small business,” includes companies with no more than 500 employees
  - ▶ Affiliation rule waiver for Sector 72 **does not apply here.**

### EIDL: TERMS

- ▶ Interest rate not to exceed 4% (3.75% for small businesses; 2.75% for nonprofits).
- ▶ Repayment term not to exceed 30 years; determined by ability to repay the loan.
- ▶ During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere shall not apply to a covered loan.
- ▶ Personal guarantee on advances and loans of not more than \$200,000 are waived during the covered period.
- ▶ Covered period: January 1, 2020-December 31, 2020

# EIDL: EMERGENCY GRANT

- ▶ Applicant is allowed to request an advance, separate from the loan, in an amount not to exceed \$10,000 within three days after SBA receives an application. An advance may be used to maintain payroll, provide sick leave related to COVID-19, and meet costs due to interrupted supply chains, among other provisions.
- ▶ **An applicant shall not be required to repay any amounts of an advance provided, even if subsequently denied a loan.**
- ▶ Advance amount must be considered when determining certain loan forgiveness if the applicant transfers into a Paycheck Protection loan program

# EIDL: APPLICATION

Applications available online now at:

<https://www.sba.gov/funding-programs/disaster-assistance>

Applicants should gather the following documents:

- ▶ Completed SBA loan application (SBA Form 5)
- ▶ Tax Information Authorization (IRS Form 4506T) for the applicant, principals and affiliates
- ▶ Complete copies of the most recent Federal Income Tax Return
- ▶ Schedule of Liabilities (SBA Form 2202)
- ▶ Personal Financial Statement (SBA Form 413)



# TREASURY LOANS

- (1) GENERAL REQUIREMENTS
- (2) MID-SIZED AND NON-PROFIT BUSINESSES
- (3) MAIN STREET

### (1) GENERAL REQUIREMENTS

- ▶ \$454 billion is available in loans, loan guarantees, or other investments for financial institutions loaning to eligible businesses, with interest rates to be determined by the Treasury Secretary.
- ▶ Businesses are eligible to apply for this program if **they have not received adequate economic relief from other loan programs provided in the stimulus bill**
- ▶ Covers businesses that incurred losses as a result of COVID-19
- ▶ **Clarifications and application details still being developed**

### INTERSECTION WITH SBA LOANS

- ▶ Based on new information from Treasury, we are revising our initial interpretation that receiving SBA assistance would preclude you from receiving additional Treasury loans in the future. We have now learned that the Treasury Department intends for their loan programs to fill in any gaps in assistance and may also be extended to companies that got SBA loans but need additional relief. While this is not confirmed, it is possible that even if you receive a loan through the SBA, you may also be eligible to apply for a loan through the Treasury Department if you need additional assistance later. The loan parameters for Treasury loans and loan guarantees have not yet been announced.

### **DISTRESSED SECTOR LOAN: ELIGIBLE BUSINESSES**

- ▶ Loans for “Distressed Sectors” of the Industry

We are not talking about so-called bailouts for firms that made reckless decisions. Nobody is alleging a moral hazard here. None of these firms—not corner stores, not pizza parlors, not airlines—brought this on themselves. We are not talking about a taxpayer-funded cushion to companies that made mistakes. **We are talking about loans**, which must be repaid, **for American employers whom the government itself—the government itself—is temporarily crushing for the sake of public health.**

—Mitch McConnell

### **DISTRESSED SECTOR LOAN: ELIGIBLE BUSINESSES**

- ▶ Businesses are eligible to apply for this program if they have not received adequate economic relief from other loan programs provided in the stimulus bill and have incurred losses as a result of COVID-19.
- ▶ Loans, loan guarantees, and other investments are only eligible for businesses that are created or organized in the U.S., or under the laws of the U.S., and have significant operations in and a majority of its employees based in the U.S.

### **DISTRESSED SECTOR LOAN: TERMS**

All businesses receiving loans, loan guarantees, or other investments must agree to abide by the following conditions:

- ▶ No stock buybacks while the loan is outstanding and for one year after the loan has been repaid;
- ▶ No dividends until a year after the loan has been repaid; and
- ▶ Restrictions on compensation for executives earning more than \$425,000 or more than \$3 million.

The Treasury Secretary can waive these requirements; if he does, he must testify before Congress as to why the waiver was issued.

### **DISTRESSED SECTOR LOAN: TERMS**

- ▶ The Treasury Secretary has broad discretion regarding terms of the loans including any terms and conditions, covenants, representations, warranties, and requirements (including requirements for audits).
- ▶ The rate of any loan will be based on the risk and current average yield on comparable instruments. The risk of each loan or loan guarantee must be commensurate with the compensation to the government.
- ▶ NATO will share information with members as soon as we have it.

## (2) MID-SIZED BUSINESSES

- ▶ CARES Act describes special program for mid-sized and non-profit businesses
- ▶ Offers direct loan not to exceed 2% interest
- ▶ Deferred principle and interest payments for 6 months
- ▶ Retention and other requirements



### MID-SIZE BUSINESS: ELIGIBILITY

- ▶ Businesses with 500-10,000 employees
  - ▶ TBD: relevant date for calculating employee head count
- ▶ Includes non-profits "to extent practicable"

# MID-SIZE BUSINESS: CONDITIONS

Borrower must certify:

- ▶ The loan is necessary to support the ongoing business due to economic uncertainty;
- ▶ The funds will be used to retain at least 90% of their workforce with full compensation and benefits until September 30, 2020;
  - ▶ **TO BE DETERMINED:** As of the date of enactment, the date of application or the date of disbursement
- ▶ They intend to restore not less than 90% of their workforce that existed on February 1, 2020 and to restore all benefits and compensation to employees not less than 4 months after a public health emergency is declared over;
- ▶ They are domiciled in U.S. with significant operations and employees located in the U.S.;
- ▶ They are not a debtor in a bankruptcy proceeding; and
- ▶ Will not pay stock dividends while the loan is outstanding.

# MID-SIZE BUSINESS: EMPLOYEE RETENTION EXAMPLE

Take a business with **1000 employees on February 1** and **100 employees on the eligible date** (enactment/application/disbursement).

- ▶ The loan would require the business to retain 90% of the current workforce, or **90 employees**, through September 30, 2020.
- ▶ The borrower would also have to certify intent to restore not less than 90% of the February 1 workforce, or **900 employees**, not less than four months after the public health emergency is declared over.

## (3) MAIN STREET BUSINESSES

- ▶ Nothing in this subparagraph shall limit the **discretion** of the Board of Governors of the Federal Reserve System **to establish a Main Street Lending Program** or other similar program or facility that supports lending to small and mid-sized businesses on such terms and conditions as the Board may set . . . including any such program in which the Secretary makes a loan, loan guarantee, or other investment under subsection (b)(4).
- ▶ Potentially possible to do Main Street and SBA if not duplicative



AMERICAN

RETURN

WE

SHALL

**THANK YOU!**

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