



MEMORANDUM

FROM: Miller Canfield Paddock and Stone, PLC

RE: **Financial Assistance Available to Nonprofits with 500 or Fewer Employees:
Understanding the Essentials**

DATE: **Updated** April 9, 2020

Through the recently enacted Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), the U.S. government will be providing over \$2 trillion in financial aid to the U.S. economy. The CARES Act provides two major programs for nonprofit organizations with 500 or fewer employees*: *Economic Injury Disaster Loans (EIDLs)* and *Paycheck Protection Program Loans (PPP loans)*. This memorandum focuses on nonprofits with fewer than 500 employees. For organizations with more than 500 employees, the CARES Act instructs the Treasury Secretary to develop other loan facilities with loans not higher than 2% per year and no payments due for the first six months, which are still under development and will be addressed in a separate memorandum.

| | Economic Injury Disaster Loans | Paycheck Protection Program Loans |
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| <i>Eligibility Requirements</i> | <ul style="list-style-type: none"> • “Private nonprofit organizations” (receiving tax exemption under sections 501(c), (d) or (e) of Internal Rev Code) • In operation by Jan 31, 2020 • 500 or fewer employees (including full-time, part-time, and employees of affiliates)* • Not eligible if credit available elsewhere • Located in “eligible area”, listed here, currently the entire U.S. | <ul style="list-style-type: none"> • 501(c)(3) and 501(c)(19) [war veterans] tax-exempt organizations • In operation before Feb 15, 2020 • Paid (i) employee salaries and payroll taxes or (ii) independent contractors reported on 1099-MISC • 500 or fewer employees (including full-time, part-time, and employees of affiliates) [in the U.S.]* • Not required to show inability to borrow elsewhere |
| <i>Disqualifiers</i> | <ul style="list-style-type: none"> • Certain applicants listed on SBA site: link | <ul style="list-style-type: none"> • The applicant is ineligible or excluded from participation by any federal department or agency • The applicant has been in default on a direct or guaranteed loan from the SBA or other federal agency in the past 7 years |
| <i>Amount Available</i> | <ul style="list-style-type: none"> • Up to \$2 million | <ul style="list-style-type: none"> • 250% of the amount of the average monthly Payroll Costs (over 12 month period prior to application) • “Payroll Costs” means amounts paid employees (whose principal place of residence is in the U.S.) for: <ul style="list-style-type: none"> • wages, salaries, commissions, tips, similar comp (subject to \$100k cap per employee) • vacation, sick leave, parental or family leave • severance or dismissal payments • health care benefit costs, retirement benefits, state and local taxes assessed on employee compensation • Amounts to be <u>excluded</u> from “Payroll Costs”: <ul style="list-style-type: none"> • compensation of employees with principal residence outside the U.S. • federal payroll taxes, social security taxes |

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| | | <ul style="list-style-type: none"> • qualified sick leave wages or qualified family leave wages for which a credit allowed under Families First Coronavirus Response Act • payments to independent contractors • Outstanding amount of EIDL made between Jan 31, 2020 – Apr 3, 2020 to be refinanced, minus EIDL advance, increases loan amount • Maximum of \$10 million |
| <i>Restrictions on Use of Loan Proceeds</i> | <ul style="list-style-type: none"> • General working capital necessary until resumption of normal operations and to alleviate economic injury • Fixed debts, payroll, accounts payable or other bills that cannot be paid due to COVID-19 outbreak • Covered period is Jan 31, 2020 – Dec 31, 2020 | <ul style="list-style-type: none"> • Payroll Costs from Feb 15, 2020 – June 30, 2020 • Mortgage interest payments, rent on property or equipment leases and utility payments • Interest on debt incurred before Feb 15, 2020 • Applicant must represent that to the extent feasible it will purchase only US-made equipment and products • At least 75% of loan proceeds must be used for Payroll Costs |
| <i>Interest Rate</i> | <ul style="list-style-type: none"> • 3.75% per annum | <ul style="list-style-type: none"> • 1.00% per annum fixed |
| <i>Repayment</i> | <ul style="list-style-type: none"> • Up to 30 years • No payments in 1st year | <ul style="list-style-type: none"> • 2 years • No payments for 6 months (interest accrues from draw date) • No prepayment fees or penalties |
| <i>Loan Forgiveness Possibilities</i> | <ul style="list-style-type: none"> • No. Loan amounts not subject to forgiveness at this time | <ul style="list-style-type: none"> • Amount paid during the 8-weeks beginning on the date the first disbursement is made on the loan for Payroll Costs, mortgage interest, rent and utilities (per agreements in effect before Feb 15, 2020) eligible for forgiveness. • Forgivable amount reduced if: <ul style="list-style-type: none"> • average monthly number of FTE employees from Feb 15, 2020 - June 30, 2020 is less than the average monthly number (at the borrower's election) during either (i) the period from Feb 15, 2019 through June 30, 2019 or (ii) Jan 1, 2020 through Feb 29, 2020 (different rules if not in operation at that time or if seasonal employees); or • total compensation for FTE employees earning less than \$100,000 reduced by more than 25% from the last full quarter in which employee was employed immediately prior to the date the loan is funded. • But these forgiveness reductions can be reversed by rehiring and restoring payroll by June 30, 2020 • Reduced by amount of any EIDL Advance Grant • Total forgiveness amount may not include more than 25% of non-Payroll Costs |
| <i>Personal Guarantees or Collateral</i> | <ul style="list-style-type: none"> • None for loans less than \$200,000 • Loans over \$200,000 must be guaranteed by each 20% owner | <ul style="list-style-type: none"> • None |
| <i>Expedited Advance of \$10,000 Grant</i> | <ul style="list-style-type: none"> • Any organization applying for an EIDL can also apply for an expedited grant of \$10,000 (available within three days) • Any organization is eligible, but the SBA will approve the grant solely on basis of applicant's credit score • No requirement to repay any advance payments, even if later denied an EIDL • Advance may only be used for (1) | <ul style="list-style-type: none"> • No advances available |

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| | <p>providing sick leave to employees due to COVID-19, (2) maintaining payroll, (3) meeting increased costs due to supply chain disruptions, (4) rent or mortgage payments, and (5) repaying obligations that cannot be met due to revenue losses</p> <ul style="list-style-type: none"> • Advance reduces aggregate loan available for forgiveness under PPP loan | |
| <i>How to apply</i> | <ul style="list-style-type: none"> • Online with Small Business Administration at this link • Or at local SPA district office | <ul style="list-style-type: none"> • Contact bank or lender that handles SBA 7(a) loans • Click here to obtain the Paycheck Protection Program Application Form • Click here to obtain the Paycheck Protection Program Information Sheet • Lenders to make available their applications shortly |

IMPORTANT FAQS

****In counting number of employees, do I need to add employees of affiliates, subsidiaries and parent?***

Yes, subject to the next FAQ below, in counting the number of employees for qualification, the summary of the SBA affiliation rules ([here](#)) requires that you count all employees employed on a full-time, part-time or other basis, including employees of the applicant’s foreign and domestic affiliates. (Special rules apply if there are seasonal employees or professional employer organization (PEO) workers.) The SBA rules required that the number of employees for these purposes be determined by calculating (i) the average number of employees for each pay period in the preceding completed 12 months, or (ii) the average employment over the same time periods as apply to the calculation of average payroll.

****In counting number of employees, do I include foreign employees or just U.S. employees?***

The SBA has recently issued new guidance on PPP loan program ([here](#)) that indicates that an applicant can still be eligible for a PPP loan if it, combined with its affiliates, has “500 or fewer employees whose principal place of residence is in the United States”. Such guidance suggests that the foreign employees of an applicant and its affiliates might not need to be included in the employee count. It is to be noted that such guidance, which appears in both the Interim Final Rule and a SBA FAQ dated April 8, 2020, conflicts with the way employees are counted under the affiliation rules in 13 CFR Section 121.301, subject to certain statutory waivers. It is unclear whether the SBA will issue clarifying guidance on this issue.

Can I apply for both an EIDL and a PPP loan?

You can apply for a PPP loan if you received an EIDL between Jan 31, 2020 – Apr 3, 2020. If the EIDL loan was used for Payroll Costs, it must be refinanced with the PPP loan. If the EIDL was not used for Payroll Costs it does not affect your eligibility for a PPP loan. The CARES Act does not expressly address whether you may apply after April 3, 2020 for both an EIDL and a PPP loan. Further clarification on this issue is expected, but we currently anticipate that a business that has applied for an EIDL may be able to apply for a PPP loan ONLY if it will not duplicate its use of the EIDL.

When should my organization apply?

Because demand will be great, and the applications are processed on a first-come, first-served basis, if your organization will need funding, you should apply as soon as possible. There are no application fees, guarantee fees, servicing fee or prepayment fees, and no obligation to accept the loan. You can only apply for one PPP loan. Applications for EIDL are available now and can be submitted online with the SBA. Applications for PPL loans must be submitted by June 30, 2020.

Are there any additional certifications and acknowledgement my organization will need to make?

Yes, for the PPP loan program the applicant will need to certify:

- applicant was in operation on Feb 15, 2020 and had employees paid salaries and payroll taxes or paid independent contractors as reported on Form 1099-MISC
- current economic uncertainty makes the loan request necessary to support ongoing operations
- loan proceeds will be used to retain workers and fund payroll, mortgage interest, lease and utility expenses, acknowledging that the U.S. government may pursue criminal fraud charges if loan funds are used for unauthorized purposes
- documentation will be provided to lender to verify number of employees, Payroll Costs, mortgage interest payments, rent and utility payments for the 8 week period following loan disbursement
- loan forgiveness will be provided for documented Payroll Costs and covered mortgage, lease and utility payments, and not more the 25% of the forgiven amount may be for non-Payroll Costs
- between Feb 15, 2020 - Dec 31, 2020 applicant has not and will not receive another PPP loan
- all information and supporting documents are true and accurate
- acknowledgement that lender will confirm the loan amount on the basis of documents submitted and an affirmation that the tax documents provided to the lender are identical to those provided to the IRS and that the lender can share the tax information provided within the SBA

What if I already laid off some workers or reduced compensation? Can I re-hire employees?

Your organization is still eligible for the loans under both programs, but it may affect how much of the PPP loan will be forgiven: the PPP loan amount subject to forgiveness will be reduced in proportion to the monthly average number of fewer FTE employees you employed during the 8 week period following the funding of the PPP loan as compared to the monthly average number of such workers employed (at your election) during either (i) the period from Feb 15, 2019 through June 30, 2019 or (ii) Jan 1, 2020 through Feb 29, 2020. Likewise, the amount of the PPP loan forgiven is reduced by any reduction in excess of 25% for any employee as compared to the first full quarter immediately prior to the loan funding date in which the employee was employed. However, if you reduced your workforce or payroll between Feb 15, 2020, and Apr 26, 2020, the amount of PPP loan forgiveness for which are eligible will not be reduced according to the formulas above if, not later than June 30, 2020, you eliminate the reduction (see below), as compared to Feb 15, 2020, in the number of full-time equivalent employees and/or wages of 1 or more employees.

What does it mean to “eliminate the reduction” for purposes of PPP loan forgiveness?

While not entirely clear, and additional guidance on this question is expected, current SBA guidance implies that, no later than June 30, 2020, the applicant must eliminate the reduction in the number of its full-time equivalent employees, as well as reverse salary reductions of its employees. Also note that employees brought back must be maintained on payroll for at least 8 weeks following their return to work date.