Understanding Your Financial Options and How to Comply with Changing Laws: Federal Stimulus Package and SBA Loan Webinar

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Not Legal Advice

• This Webinar is being broadcast at 4:00 PM on April 6, 2020. Subsequent legislation or agency guidance/rules may modify some of the information provided.
• This presentation provides general information regarding recent developments in the law.
• The general information provided may not apply to your matter/situation.
• If you have questions about specific circumstances, please consult an attorney who can take such circumstances into account.
Federal Relief Options

- Payroll Protection Plan (PPP)
- Economic Impact Disaster Loan (EIDL)
- Employee Retention Tax Credit (ERTC)
- Unemployment Benefits
- Interplay between some Options

Key Considerations / Tips

- Find lender now to accept and process your loan
- You should consult with your payroll company, CPA and attorney to determine which Loan/Program is best for you
- PPP guidance is still being drafted and is changing everyday
- If your trusted partners are not on top of this issue, consider a change
- Lots of misinformation – ask to see back-up documents relied upon by your consultant; if sounds too good to be true, then challenge
- If you get a PPP or EIDL – open a new bank account to receive the PPP or EIDL loan and to track all payments from that account; keep back-up documents and info to prove how you spent the money to expedite loan forgiveness for PPP loan
The Coronavirus Aid, Relief, and Economic Security (CARES) Act

PPP – Initial Questions

• First Question – Are you a small business in operation on 2/15/2020?
  • LLC, S Corp, C Corp, Partnerships, etc.
  • 501c3 included
  • Sole proprietorships, self-employed and ICs qualify
  • Veteran organizations and tribal entities qualify
  • Special rules for certain franchises (Hotel/Restaurants)

• Second Question – Can you say yes to following?
  • We (applicant and 20%+ owner) are not in a bankruptcy
  • Applicant and no 20%+ owner indicted or in jail
  • In the last 5 years, we have not been convicted or plead guilty, etc. to a felony
  • We are not doing anything illegal under federal, state or local law (e.g., Marijuana)
  • We are not in default on current SBA loan
  • We have not been denied the right to participate in this or a similar transaction by a government agency
PPP – Loan Highlights

• If eligible then you can apply if harmed by COVID-19 between 2/15/20 and 6/30/20
• Lenders now accepting applications for all small businesses and sole proprietorships
• April 10 = application acceptance date for self-employed and ICs
• Zero-fee, non-recourse, non-collateral, federally guaranteed SBA loan
• 2-year loan at 1% interest
• For the 1st 6 months, all payments and interest deferred
• No prepayment penalty

How is the PPP Loan Size Determined?

• If you were in business between 2/15/19 – 6/30/19:
  Max loan is lesser of $10M or 250% of your average monthly payroll costs for the year prior to the loan application. Exception for businesses with seasonal workers (if that is you, call us).

• If you were not in business between 2/15/19 – 6/30/19:
  Max loan is lesser of $10M or 250% of your average monthly payroll costs between January 1, 2020 and February 29, 2020.

• If you took out an Economic Injury Disaster Loan (EIDL) between 2/15/20 – 6/30/2020, you can refinance that loan into a PPP loan by adding the outstanding loan amount to the payroll sum, but the EIDL loan is not forgiven (and may not be used for the same purpose as a PPP loan)
PPP – Payroll Inclusions

• Calculate loan amount by including the following:
  1. Salaries, wages, commissions, or any other similar compensation;
  2. Cash tips paid to employees;
  3. Payment for vacation, parental, family, medical, or sick leave (under any of your benefit programs including AZ paid sick leave);
  4. Monies paid to employees as a severance or in connection with a separation agreement;
  5. Payments made for group health care benefits (insurance premiums paid by the company – employer portion only);
  6. Payments for retirement benefits (e.g., 401k matching contributions);
  7. Payments for state and local taxes assessed on employee compensation (e.g., AZ income tax payments);
  8. Payments made to independent contractors or sole proprietors (as a wage, commission, or similar compensation) for services provided, not to exceed $100,000.

What Costs are Not Eligible for “Payroll”?

• Employee / Owner compensation over $100,000 (e.g., if Employee A had a salary of $110,000 from 4/1/19-3/31/2020, the first $100,000 are included when determining how much to borrow. The $10,000 excess is ignored for purposes of this calculation);
• Taxes imposed or withheld under Chapters 21, 22, and 24 of the IRS Code (i.e., income tax and FICA)
• Compensation for employees whose principal place of residence is outside of the U.S.
• Qualified sick and family leave for which a credit is allowed under Sections 7001 and 7003 of the Families First Coronavirus Response Act (FFCRA).
What are Allowable Uses of Loan Proceeds?

- Payroll costs (as noted previously)
- Costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
- Payments of interest on any mortgage obligation (shall not include any prepayment of or payment of principal on a mortgage obligation)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period

PPP – Loan Forgiveness

- Loan can be converted to a grant
- Loan forgiveness of up to 8 weeks of payroll and other costs conditioned on employee retention and salary levels
- Door #1 - Retroactive to February 15, 2020 in order to help bring workers who may have already been laid off back onto payrolls
  - If you laid-off anyone between 2/15/20 and 4/26/20, then you have until 6/30/20 to rehire to the same FTEs as 2/15/20; otherwise will not get 100% forgiveness
- Door #2 - Loan forgiveness reduced by any meaningful reductions in employee wages (in excess of 25% for most employees) or layoffs during covered period
  - Look at FTEs during 8-week fund loaning period
  - Divide by FTEs during one of 2 time periods at ER’s discretion: (1) 2/15/19 to 6/30/19 or (2) 1/1/20 to 2/29/20
How do I get forgiveness on a PPP loan?

- Apply through your lender for forgiveness. In the application, you must include:
  - Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings
  - Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities
  - Certification from a representative of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program’s guidelines for use.

What happens after the forgiveness period?

- Principal and interest will continue to be deferred, for a total of 6 months after disbursement of the loan.
- Any loan amount not forgiven is carried forward as an ongoing loan with a 2-year amortization at 1% interest.
Other Considerations

- An entity is limited to one PPP loan – each loan is registered under a Taxpayer Identification Number

- All current SBA 7(a) lenders are eligible lenders for PPP.

- Borrowers may qualify for other SBA financial assistance, including EIDLs, 7(a) loans, 504 loans, and microloans, and also receive investment capital from Small Business Investment Corporations

EIDL

Eligibility:
- As of 3/21/2020, all small business in all 50 States qualify
- Must have been in business since January 31, 2020
- Loan expires on 12/31/2020

Terms:
- Loan up to $2M to help small businesses with temporary lost revenue
- No collateral required and no guarantee unless > $200k
- Applicant can seek an advance $10k grant
- Uses: pay fixed debts, payroll, accounts payable and other bills (CAREFUL – cannot use for same purpose of PPP)
- Interest rate is 3.75% for small businesses and 2.75% for non-profits
- Maximum Term = 30 years

Apply directly with SBA at https://disasterloan.sba.gov/ela

Latest Info: sba.gov/disaster or call SBA Customer Service Center at (800) 659-2955
Employee Retention Tax Credit (ERTC)

- Lesser known benefit of the CARES Act
- Employer is eligible for ERTC if:
  - (1) entity, including 501c3, carries on trade or business during 2020
  - (2) business has been partially or fully suspended due to a COVID-19 government order; or
  - (3) business lost gross receipts of 50%+ in any given quarter of 2020
- Once you qualify, ER may continue to take the credit until its gross receipts = 80%+ vs. same quarter last year
- If payroll tax credit amount exceeds applicable ET taxes owed, then ER gets an overpayment subject to a tax refund
- ERTC applies to all qualified wages (plus allocable qualified health plan expenses) paid after March 12, 2020 and before January 1, 2021
- The credit is equal to 50% of “qualified wages” of all eligible employees to a limit of 10K per employee (so a max 5,000 credit per employee)
- “Qualified wages” has a different meeting depending on size of business (+/- 100 employees)
  - Business 100+ EE, then qualified wages = amount paid to EEs on furlough only (i.e. not working)
  - Business < 100 EEs, then qualified wages = amount paid to all employees, whether working or not
- Importantly, employers that have taken out Payroll Protection Program (PPP) loans are not eligible for this tax credit

Furloughs and Layoffs
Furloughs

- Definition – short-term reduction in hours, pay or both
- Furlough must be structured to maintain compliance with the Fair Labor Standards Act (FLSA)
- Arizona Shared Work Unemployment Compensation Program
- CARES Act Implications – Federal Stimulus dollars for UnET
- Potential WARN Act requirements for furloughs

Furloughs

- ER usually has discretion on who to furlough
- Exceptions
  - Union employees
  - Employees with written contract
  - Binding policies or handbook
- First – owners should take pay cut; easier to get EE buy-in
- Second – restrict hourly EE first
- Third – restrict exempt EE (beware of FLSA considerations)
- Determine eligibility for continued benefits and how to handle EE portion of benefits costs while on leave or reduced schedule
- Routinely check in with furloughed EE
- When able to return to full-work schedule, email / recall furloughed EE – if they refuse then UnET denial defense
**Layoffs**

- Definition = temporary or permanent elimination of 1+ jobs usually with expectation to rehire
- Strongly recommend you create a layoff plan
- Identify essential jobs and conduct adverse impact analysis
  - Avoid discrimination claims
  - Help solidify business reasons for decisions
- Consider if you will offer severance and general releases
  - If so, must comply with ADEA and OWBPA
  - If group, then need to give 45 days to consider separation and have to give list of EEs laid off and those retained
- Consider whether to waive non-compete provisions
- Arrange for return of property
- Terminate employee access to building and computers

**Other Common Questions**