

MEMORANDUM

By: Ramsay M. Whitworth; Mark Edelson; Steve Leitess; Ilona Shparaga; and Michael J. Levin
Date: April 3, 2020
Re: COVID-19 Financial Relief Programs (Federal and Maryland)

COVID-19 has impacted every business in America no matter the size or region. The federal and state governments have responded with a myriad of programs to help businesses stay on their feet during this rapidly changing time and to recover once the situation stabilizes. We hope this memorandum will help your business navigate these available relief programs. This memorandum is separated into two parts: the first half discusses the business response of the federal government and the second half discusses Maryland's response. We recognize these programs are rapidly evolving and, to that end, we have created a specially designated forum on our website to help keep you advised of all relevant updates and newly available resources.

I. THE FEDERAL RESPONSE

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was enacted, which provides a \$349 billion lending program to be administered through the Small Business Administration (SBA). Unlike traditional SBA loans, however, these loan funds may be forgiven in whole or in part if they are used for specific business expenses, including most importantly payroll costs. In addition, there is no requirement that the borrower post any collateral to secure the loan.

1. PAYCHECK PROTECTION PROGRAM (PPP) LOANS

Who is eligible?

- Any "small business concern" currently eligible to participate in SBA Section 7(a) loans;
- Any business with up to 500 employees (both part time and full time);

- Sole proprietors, independent contractors, and self-employed workers;
- If your business has more than 500 employees, you may still qualify if your business does not have more than the standard number of employees for your particular industry as established by the SBA;

What is the Maximum Loan Amount?

It depends on your payroll. The maximum loan amount is calculated as the lesser of: (a) the average monthly payment for payroll costs during the 1-year period before the date on which the loan is made multiplied by 2.5; or (b) \$10 million.

What is a “Payroll Cost?”

- Any compensation paid to employees as a salary, wage, commission, or similar employment-based compensation;
- Cash tips or equivalent;
- Vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation pay;
- Payments towards group health care benefits, including insurance premiums;
- Payments towards retirement benefits;
- State or local payroll taxes; and
- Income of a sole proprietor or independent contractor that is properly categorized as a wage, commission, income, net earnings from self-employment, or similar compensation.

What is not a “Payroll Cost?”

- Compensation paid to an individual employee earning a salary of more than \$100,000 (as prorated between February 15, 2020 and June 30, 2020);
- Taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 between February 15, 2020 and June 30, 2020;
- Compensation of employees whose principal place of residence is outside the United States;
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (Public Law 116-127); or
- Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (Public Law 116-127).

What can you use a Paycheck Protection Program Loan for?

PPP Loan Funds may only be used for:

- Payroll costs;
- Costs related to group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries, commissions, or similar compensations;
- Payments of interest on any mortgage obligation (which cannot include any prepayment of or payment of principal on a mortgage);
- Rent (including rent under a lease agreement);
- Utilities; and
- Interest on any other debt obligations that were incurred before February 15, 2020.

Will a Payroll Protection Program Loan be forgiven?

Yes, in whole or in part - but with certain restrictions. Even though loan proceeds may be used for any of the permitted purposes listed above, only those amounts spent on the following costs will be eligible for loan forgiveness:

- On April 2, 2020, the SBA, in consultation with the Treasury announced that the spirit of the CARES ACT requires that 75% of the loan amount should be spent on payroll costs in order to qualify for forgiveness (Note: the SBA will be issuing further guidance soon);
- Mortgage interest payments for a mortgage that was incurred before February 15, 2020;
- Rent payments for any lease agreement in force before February 15, 2020; and
- Utility payments for electricity, gas, water, transportation, telephone or internet for which service began before Feb. 15, 2020. *See* CARES Act § 1106(a) and (b).

The amount of eligible loan forgiveness will be reduced if the borrower decreases the number of employees or cuts employee wages by more than 25%.

What is the Interest Rate and Loan Repayment Schedule?

On April 2, 2020, the SBA issued Interim Guidance to Lenders on the PPP declaring that the maximum rate of interest allowed under a PPP loan is 1%, the maturity date of

the loan must be 2 years, and the borrower must be permitted to defer the initial repayment of principal, interest and fees for 6 months from the date the funds are advanced. (Note: that under the CARES Act, the maximum interest rate allowable was 4%, the maximum maturity date was 10 years, and the maximum amount of repayment deferral was 1 year).

How do you apply?

The CARES Act directs the SBA and U.S. Treasury Department to increase the number of lenders who can make Paycheck Protection loans. If you wish to begin preparing your application, you can download a copy of the PPP borrower application at the website below to see the information that will be requested from you when you apply with a lender:

<https://www.sba.gov/document/sba-form--paycheck-protection-program-borrower-application-form>

2. ECONOMIC INJURY DISASTER LOANS (EIDL)

Any business with up to 500 employees is eligible for an Economic Injury Disaster Loan (“EIDL”). The eligibility requirements are similar to those applicable to PPP Loans apply, *e.g.*, businesses with up to 500 employees, independent contractors and sole proprietors are also eligible.

The following factors are considered by the SBA in approving an EIDL loan:

- Character, reputation, and credit history of the applicant (and the operating company, if applicable), its associates, and guarantors;
- Experience and depth of management;
- Strength of the business;
- Past earnings, projected cash flow, and future prospects;
- Ability to repay the loan with earnings from the business;
- Sufficient invested equity to operate on a sound financial basis;
- Potential for long-term success;
- Nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and
- The effect any affiliates may have on the ultimate repayment ability of the applicant.

In response to COVID-19, the SBA has relaxed some of the requirements typically applicable to EIDL loans. If the loan is \$25,000 or less, the SBA will not require the borrower to pledge collateral. Similarly, so long as the business was in operation as of January 31, 2020, the requirement that the business be operational for one year prior to the disaster will be waived. Notably, the personal guaranty requirement for loans of up to \$200,000 is also waived.

Permitted Uses of EIDL Funds. Generally speaking, the loan proceeds may be used to pay any financial obligations and operating expenses that would have been met had the disaster not occurred. The specific SBA loan approval for your EIDL with set out precisely the permitted use of loan proceeds.

Is there loan forgiveness?

No. Unlike the Paycheck Protection Program Loan, there is no loan forgiveness for an EIDL. However, if you apply for and receive a \$10,000 Emergency EIDL Grant advance, repayment of that Grant will not be required, as discussed below.

What is the interest rate?

The interest rate is 3.7% for small businesses. Terms are available up to 30 years, determined on a case-by-case basis based upon each borrower's ability to repay.

How do you apply?

The application is available at <https://covid19relief.sba.gov/#/business-info>.

Are EIDL Grants available?

Yes. You can apply for a COVID-19 Emergency EIDL Grant of up to \$10,000. An applicant for an EIDL loan may ask the SBA for an advance of up to \$10,000 within 3 days after the SBA receives the loan application. An Emergency EIDL Grant must be used to pay for the following:

- Providing paid sick leave to employees unable to work due to the direct effect of COVID-19;
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains;
- Making rent or mortgage payments; and

- Repaying obligations that cannot be met due to revenue losses.

An EIDL applicant will not be required to repay the Emergency EIDL Grant even if subsequently denied an EIDL loan. If an applicant receives an Emergency EIDL Grant and is approved for a PPP Loan, the amount of Emergency EIDL Grant will be reduced from the loan forgiveness amount for the payroll costs of the PPP Loan.

3. ADDITIONAL SBA ASSISTANCE

All small businesses formed or principally doing business in Maryland are eligible for SBA assistance. Funding programs offered by the SBA include:

- **7(a) program** offers loan amounts up to \$5,000,000. The uses of proceeds include: working capital; expansion/renovation; new construction; purchase of land or buildings; purchase of equipment, fixtures; lease-hold improvements; refinancing debt; seasonal line of credit; inventory; or starting a business.
- **Express** loan program provides loans up to \$350,000 for no more than 7 years with an option to revolve. The uses of proceeds are the same as the standard 7(a) loan.
- **Community Advantage** loan pilot program allows mission-based lenders to assist small businesses in underserved markets with a maximum loan size of \$250,000. The uses of proceeds are the same as the standard 7(a) loan.
- **504** loan program is designed to foster economic development and job creation and/or retention. The eligible use of proceeds is limited to the acquisition or eligible refinance of fixed assets.

Government Contracting:

- **8(a) Business Development and Women-owned Small Business** programs apply to small businesses owned by socially and economically disadvantaged people or entities.
- **HUBZone program** offers eligibility assistance every Thursday from 2:00-3:00 p.m. ET at 1-202-765-1264; access code 63068189#. Members of the HUBZone team answer questions to help firms navigate the certification process. For specific questions regarding an application, please contact the HUBZone Help Desk at hubzone@sba.gov.

II. MARYLAND SMALL BUSINESS RELIEF PROGRAMS

The Maryland Small Business COVID-19 Emergency Relief Loan Fund is a \$75 million loan fund offering small business loans with an initial 1 year deferral of repayment of principal and interest. If you are an existing business with fewer than 50 employees that has been impacted by COVID-19, you may be able to access no-collateral loans of up to \$50,000 with no payments for 12 months followed by 2% payments for the remaining 36 months. This loan program is intended to provide working capital to support payroll expenses, rent, mortgage payments, utility expenses, or other similar expenses that occur in the ordinary course of operations.

This program is subject to various credit requirements and proof of disruption caused by the pandemic such as: notices from tenants closing operations, inability to pay rent or make loan payments due to reduced sales, suspended operations, increased costs related to COVID-19 prevention measures, and disrupted supply networks leading to shortage of critical inventory or materials. More information is available here:

<https://marylandcommerce.wufoo.com/forms/small-business-covid19-emergency-loan-relief-fund/>

1. EMERGENCY GRANTS FOR SMALL BUSINESSES

Maryland has made available a \$50 Million grant program offering grants up to \$10,000 (or an amount not to exceed 3 months of demonstrated cash operating expenses for the first quarter of 2020). These emergency grants are available to businesses and non-profits who employ 50 people or fewer.

You may apply here: <https://marylandcommerce.wufoo.com/forms/small-business-covid19-emergency-grant-relief-fund/>

2. LAYOFF AVERSION FUND

The COVID-19 pandemic has forced many businesses to shut down as result of the State's mandatory social distancing and stay-home policies. The Layoff Aversion Fund provides funding of up to \$50,000 for businesses with 500 or fewer employees who are up-to-date on Unemployment Insurance taxes and are in good standing with the Comptroller of Maryland and Department of Labor Licensing and Regulation.

The funds are available to:

- Purchase remote access equipment like computers, phones, printers, and other technology to allow workers to work from home.
- Purchase software programs or apps to allow remote work.

- Purchase sanitization supplies and services to allow on-site work to continue.
- Pay for additional liability insurance for restaurants forced to convert to delivery during the emergency.
- Other creative approaches that allow businesses to remain in operation.

This program applies to specific types of businesses such as non-profit and community-based organizations, industry associations, labor unions, and two and four-year institutions of higher learning and others. There are important restrictions on the use of the funds. For instance, the funds cannot be used for hazard pay, or to provide childcare, lodging, transportation or meals.

You may apply here: LaborCOVID19.layoffaversion@maryland.gov.

3. EMERGENCY MANUFACTURING OF PERSONAL PROTECTIVE EQUIPMENT (PPE)

The Covid-19 Emergency Relief Manufacturing Fund has created a \$5 Million incentive fund program for qualified businesses to produce PPE.

4. RELIEF FOR INDIVIDUALS AND TAXPAYERS

- Maryland business and individual income taxpayers will be given a 90-day extension for tax payments. No interest or penalty for late payments will be imposed if 2019 tax payments are made by July 15, 2020.
- Business-related tax filing deadlines extended to June 1.
- Businesses who paid their Maryland Sales & Use Taxes for March early may request a refund of their payments.
Email taxpayerrelief@marylandtaxes.gov or by call 410-260-4020.
- The federal tax filing deadline has been moved to July 15.

5. EMPLOYER AND WORKER ASSISTANCE

The Maryland Department of Labor's Division of Labor and Industry enforces the Maryland Health Working Families Act, also known as Safe and Sick Leave, which may be useful for employees who need to take off from work due to COVID-19.

- If a business experiences a temporary or permanent layoff, the Division of Unemployment Insurance's Bulk Claim Services can open unemployment insurance claims for all affected employees.

- To determine if your business is eligible, you may visit <http://labor.maryland.gov/employment/uibulkclaimfaqs.shtml>
- The Division of Workforce Development and Adult Learning enforces the Rapid Response System, which works to minimize the impact of economic disruptions caused by layoffs and shut-downs.
- The Maryland Insurance Administration has shared insight into Business Interruption Insurance on their website. MIA has also put together an FAQ addressing insurance-related questions about coronavirus.

6. LICENSING AND PERMITTING

All licenses, permits, registrations, and other authorizations issued by the state, its agencies or any political subdivision that would have expired during the current state of emergency will be extended automatically until at least the 30th day after the state of emergency is lifted. The DLLR's Division of Occupational and Professional Licensing (O&P) is temporarily extending license expiration dates until May 1, 2020, which is subject to being extended as the response to COVID-19 evolves. Businesses that are licensed and regulated by Maryland DLLR's Office of the Commissioner of Financial Regulation can email DLFRFinReg-LABOR@maryland.gov with any questions or concerns they may have about licensing requirements.