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MEMORANDUM

**TO:** Business Clients  
**RE:** SBA Economic Injury Disaster Loans for COVID-19  
**DATE:** Thursday, April 23, 2020

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This memorandum is designed to provide general advice to employers seeking federal financial assistance via the federal Economic Injury Disaster Loan Program in order to respond to the global COVID-19 Pandemic. This situation is dynamic and negotiations are already underway on a fourth congressional stimulus bill to address the financial needs of Americans in response to this crisis. **Each situation is unique; therefore, we recommend that you contact our office to discuss your individual concerns.**

**UNDERSTANDING THE FEDERAL RESPONSE TO COVID-19**

To date Congress passed three stimulus bills to address the myriad health and financial consequences related to COVID-19. This memo addresses one component of the federal response in the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) known as *Economic Injury Disaster Loans*.

***A. Economic Injury Disaster Loans (EIDLs) \$10 Billion Available***

Congress has expanded the Small Business Administration’s Economic Injury Disaster Loan (“EIDL”) program in response to the COVID-19 pandemic. Under the CARES Act, Congress has appropriated \$10 billion of additional funding for EIDLs.

Unlike the Paycheck Protection Plan, which is administered by the Small Business Administration but provided to borrowers through an approved SBA lender, **EIDLs are made directly by the SBA without involving a third-party lender.**

EIDL loans may be in amounts not exceeding \$2 million, and payments of principal and interest under all new and existing EIDLs will automatically be entitled to deferment through the remainder of 2020.

***1. What types of businesses and entities are eligible to participate?***

Companies in all 50 states, the District of Columbia, and some U.S. territories are eligible for EIDL loans relating to economic injury caused by the COVID-19 pandemic.

**NOTE: The legal implications of COVID-19 are evolving rapidly, and every employer’s situation is unique, please contact our office to discuss your plans, questions and concerns.**

The Small Business Act's definition of "small business" is a business that:

- is organized for profit;
- has a place of business in the United States;
- operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
- is independently owned and operated;
- is not dominant in its field on a national basis; AND
- does not exceed size standards established, and updated periodically, by the SBA.

The CARES Act has expanded eligibility criteria above to also include any business with less than 500 employees. The business may be a sole proprietorship, partnership, corporation, or any other legal form.

## ***2. What are lenders looking for from borrowers?***

Details regarding application and approval may change, however, what we do know is that the SBA is foregoing some of its ordinary requirements to speed up the application process.

It appears that EIDL loans of \$500,000 or less will rely on the applicant to certify that it is a small business concern. The SBA will not require prior year tax returns to be included in the application.

The CARES Act authorizes the SBA to approve EIDLs based solely on an applicant's credit score or "alternative appropriate methods" for determining the applicant's ability to pay.

## ***3. What the SBA is NOT looking for from borrowers?***

The SBA is waiving its credit-elsewhere test, meaning that small businesses with credit available elsewhere remain eligible for loans under the EIDL program. The previous EIDL requirement that an applicant be in business for one year prior to date it applies for an EIDL also is waived, so long as the business was in operation by January 31, 2020.

Personal guarantees will not be required for loans of less than \$200,000.

For EIDL amounts in excess of \$200,000.00 the SBA will require personal guarantees by owners of more the 20% of the borrower.

Unless changed by the SBA, it appears that the requirement for **collateral** on EIDL loans over **\$25,000** would still apply, and, in processing a borrower's application, the SBA must make a determination that the applicant has the ability to repay the loan.

## ***4. How much can my business borrow using an EIDL?***

To qualify for an EIDL under the CARES Act, the applicant must have suffered "substantial economic injury" from COVID-19. EIDL loans under the CARES Act are based on a company's

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actual economic injury determined by the SBA (less any recoveries such as insurance proceeds) **up to \$2 million.**

***5. What are the allowable uses of proceeds from an EIDL?***

EIDL proceeds may be used for:

- Any purpose allowable under Section 7(b)(2) of the Small Business Act which includes:
  - ✓ Providing paid sick leave to employees unable to work due to the direct effect of the 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.

***6. How fast can I receive funds from an EIDL?***

In an effort to get necessary funds into the hands of businesses suffering as a result of COVID-19 as quickly as possible, the CARES Act provides an advance of \$10,000 to small businesses and nonprofits that apply for an EIDL within three days of applying for the loan.

This advance need not be repaid even if the applicant is subsequently denied an EIDL. However, while this advance basically operates as a grant from the SBA, the amount of the advance must be deducted from any loan forgiveness amounts under the SBA Paycheck Protection Program (PPP) loan.

*\*For additional information regarding PPP, see The Bethany Law Center, LLP Memo entitled "SBA Emergency Paycheck Protection Program for COVID-19," dated March 31, 2020.\**

***7. How do I apply for a PPP loan?***

The EIDL program is administered exclusively by the federal Small Business Administration.

Borrowers need to visit <https://covid19relief.sba.gov/#/> to directly apply for an EIDL.

***8. Will any of the EIDL loan be forgiven?***

No.

While there are no loan forgiveness provisions applicable to EIDL loans, companies that have already applied for or received EIDLs due to economic injury attributable to the COVID-19 pandemic can seek to refinance their EIDL loans under the SBA Paycheck Protection Program ("PPP") to take advantage of the PPP's loan forgiveness provisions.

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Until additional guidance becomes available on this Program, we are unable to provide details as to how a borrower would refinance an EIDL into a PPP loan.

While borrowers may be eligible for loans under both programs, they are unable to seek recovery under the EIDL loan for the same costs that are covered by a PPP loan.

*\*For additional information regarding PPP, see The Bethany Law Center, LLP Memo entitled "SBA Emergency Paycheck Protection Program for COVID-19," dated March 31, 2020.\**

***9. What are the repayment terms for an EIDL?***

Borrowers receiving EIDL assistance under the CARES Act are allowed payment deferment through December 31, 2020 "to help borrowers during this unprecedented time."

The CARES Act requires lenders to provide "impacted borrowers" adversely affected by COVID-19 complete payment deferment relief on a covered loan for not more than one year if the borrower was in operation on February 15, 2020, and has an application for a covered loan approved or pending approval on or after the date of enactment.

The interest rate on EIDL loans is 3.75% fixed for small businesses and 2.75% for nonprofits.

The EIDL loans have up to a 30-year term and amortization (determined on a case-by-case basis).

***10. Is there coordination among the various SBA loan programs with EIDL?***

YES! Borrowers may apply for Economic Injury Disaster Loans (EIDLs), 7(a) loans, 504 loans, and microloans, PPP loans, including and receive investment capital from Small Business Investment Corporations (SBICs).

NOTE: Borrowers cannot use the EIDL loan for the same costs that are covered by a PPP loan during the same period.

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