



# Financial and Insurance Considerations For Your Nonprofit in the Time of Covid

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# Today's Discussion

- CARES Act Loans and Other Relief
  - Paycheck Protection Program (PPP)
  - Economic Injury Disaster Loan (EIDL) Program
  - Main Street Loan Program
  - Express Loan Program
- Insurance Considerations

## Relief for Distressed Industries

- **Coronavirus Aid, Relief, and Economic Security Act (CARES Act)** provides direct financial aid to American families, payroll and operating expense support to small businesses, and loan assistance for distressed industries.
  - Paycheck Protection Program (PPP): federally backed loans for small businesses including possible loan forgiveness.
  - Economic Injury Disaster Loan (EIDL): expanded eligibility for existing borrowers and new emergency EIDL for companies that need immediate advances of funds.
  - Main Street Loans: loans, loan guarantees, and other investments to benefit small and medium sized businesses.
  - Express Loans: loans or revolving line of credit for working capital for small businesses

## Other Relief for Businesses and Employees

- **Deferral of Employer Payroll Taxes** – for employer-paid portion of Social Security taxes from March 27-December 31, 2020. Must pay 50% by 12/31/2021 and remaining 50% by 12/31/2022. *Not available to PPP borrowers that have had their indebtedness forgiven.*
- **Employee Retention Credit** – refundable payroll tax credit for 50% of wages paid or incurred from March 13-December 31, 2020, for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. *Not available to PPP borrowers that have had their indebtedness forgiven.*
- **Expanded Unemployment Insurance** – additional \$600 per week for up to four months, and an additional 13 weeks of unemployment benefits (through December 31, 2020). Also expanded coverage to independent contractors, among others.

# The Paycheck Protection Program

- Title I authorizes \$349 billion for small businesses through federally backed loans under a modified Small Business Administration (SBA) 7(a) loan guaranty program
- Qualifying businesses apply to SBA-approved lenders for loans up to 2.5 times their average monthly payroll costs (up to \$10 million)
  - 2 year term; 1% interest
- Each business can receive the lesser of \$10 million or the sum of 2.5 times the average total monthly payroll costs for the prior year
- Loan proceeds may be used for qualified payroll costs, rent, utilities, and interest on mortgage and other debt obligations
- Loan forgiveness is only available for funds used to pay for payroll costs, rent, utilities, and interest on mortgage for the first 8 weeks after the loan originates
  - At least 75% must be used for payroll
- All payments (including interest) will be deferred for 6 months
- No collateral or personal guarantee is required

## Who Qualifies for Relief?

- Qualifying businesses include
  - Small business concerns as defined by the SBA's size standards.
  - Businesses, 501(c)(3) nonprofit organizations, veterans organizations, and tribal business concerns with up to 500 employees or which meet the applicable employee size standard for the industry as provided by SBA's existing regulations.
  - Businesses in the accommodation and food services industries with more than one physical location but no more than 500 employees at each location.
  - Eligible independent contractors and sole proprietors.
- Certain SBA affiliate rules waived.

## Waiver of SBA Affiliation Rules

- Affiliation based on a number of factors – no bright-line rule.
  - Ownership percentage
  - Control arising under stock options, convertible securities and agreements to merge
  - Management control
  - Control via franchise or license agreements
- CARES Act waiver for:
  - Businesses with < 500 employees that have a NAICS code beginning with 72 (Accommodation and Food Services)
  - Businesses operating as a franchise that are assigned a franchise identifier code by the SBA
  - Businesses that receive financial assistance from a company licensed under Section 301 the Small Business Investment Act of 1958 (15 U.S.C. 681) – i.e., small business investment companies (SBICs).

## How Much Relief is Available?

- Lesser of \$10 million or 2.5 times the average total monthly payroll costs for the prior year
- Payroll Costs:
  - Salary, wages, commissions, or tips (up to \$100,000 annualized per employee);
  - Employee benefits including vacation, parental, family, medical, or sick leave costs; allowance for separation or dismissal; payments required for group health care benefits including insurance premiums; and payment of any retirement benefit;
  - State and local taxes assessed on compensation; and
  - Payments to independent contractors
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, up to \$100,000 on an annualized basis for each employee.



## How Must Relief be Used?

- Businesses can use funds from the Program loans to cover expenses including:
  - Payroll costs, including compensation to employees; payments for vacation, parental, family, medical or sick leave; severance payments; payments required for group health care benefits (including insurance premiums), retirement benefits, and state and local employment taxes
  - Interest payments on any mortgage obligations or other debt obligations incurred before February 15, 2020 (but not any payments or prepayments of principal)
  - Rent and Utilities
- The money cannot be used for:
  - compensation of individual employees, independent contractors, or sole proprietors in excess of an annualized salary of \$100,000;
  - compensation of employees with principal place of residence outside the U.S.; or
  - leave wages already covered by the Families First Coronavirus Response Act.

# Loan Forgiveness

- Borrowers may apply for loan forgiveness for certain eligible expenses:
  - Payroll costs
  - Rent payments
  - Utility payments
  - Interest on mortgage payments
- Per recent Treasury/SBA guidance, 75% of the amount forgiven must be used to cover payroll costs
- Borrowers must apply for loan forgiveness to their lenders by submitting required documentation and will receive a decision within 60 days.

# Reductions to Loan Forgiveness

- **Reductions in FTE:** Reduction in number of full-time equivalent employees (FTEs) in 8-week period after origination of loan.
  - Period for calculating FTEs is average number from either (A) February 15, 2019 to June 30, 2019 or (B) January 1, 2020 to February 29, 2020.
  - Number of FTEs determined by calculating average number of FTEs for each pay period falling within a month.
- **Reductions in Payroll:** Reduction in pay of any employee making less than \$100,000 by more than 25% - compared to last complete calendar quarter
  - No limit to amount reduction in pay of employees who make over \$100,000.

# Benefits of Rehiring

- No penalty for lay-offs from February 15, 2020 to April 26, 2020 if employees are re-hired by June 30, 2020.
  - Employee count is based on number of FTEs as of June 30, 2020 being equal to number of FTEs as of February 15, 2020.
  - Example: Company A has 100 employees as of February 15, 2020, but it laid off 50 employees on April 1, 2020. If Company A has at least 100 employees as of June 30, 2020, there will be no penalty regarding the amount of loan forgiveness.

# Repairing Reductions in Payroll

- No penalty for salary reductions from February 15, 2020 to April 26, 2020 if salaries restored to original amount by June 30, 2020.
  - Example: On February 15, 2020, Company A decreased the salaries of employees making \$75,000 to \$50,000. If Company A increases the salaries of those employees back to \$75,000 by June 30, 2020, there will be no penalty regarding the amount of loan forgiveness.
- Keep in mind that this possible reduction in loan forgiveness only applies to employees who make less than \$100,000 per year.

## What are Other Key Program Benefits?

- No personal guarantee required
- No collateral needs to be pledged
- No requirement that the borrower cannot obtain credit elsewhere
- Payments of principal and interest will be deferred for 6 months
- Interest rates at 0.5%
- No fees for borrowers from the SBA or lenders
- All prepayment penalties are waived
- No recourse against any borrower for non-payment of the loan, except where the borrower has used the loan proceeds for a non-allowable purpose.

# Economic Injury Disaster Loan (EIDL)

- Normally available to small business concerns (as determined by the SBA size standards), private nonprofit organizations, and others which are located in an area affected by a disaster.
- Under the CARES Act, eligible entities also include a business concern, cooperative, ESOP, or tribal small business concern with no more than 500 employees; sole proprietors; and independent contractors.
- SBA affiliation rules apply – i.e. determination of size includes affiliates.
- Not available to PPP borrowers.

## EIDL Terms

- Loans are available for up to \$2 million, with an interest rate of 3.75% or 2.75% for nonprofits (currently).
- The loans may be used to pay fixed debts, payroll, accounts payable, and other bills that can't be paid because of the impact of COVID-19.
- Terms of the loans are determined on a case by case basis, based on the borrower's ability to repay, but the maximum term is 30 years.
- Waives requirement that borrower cannot obtain credit elsewhere.



# EIDL Advance

- The CARES Act provides for an emergency EIDL Grant, which allows eligible borrowers to receive a \$10,000 advance within 3 days of applying for an EIDL loan.
- These advances are subject to the eligibility requirements of the CARES Act.
- If the borrower is subsequently denied an EIDL loan, it does not have to repay the \$10,000.

# Main Street Lending Program

- Federal Reserve has created two credit facilities; up to \$600B
- For U.S. companies with up to 10,000 employees and 2.5 billion in revenue
- Available to borrowers who may have also received PPP loans
- Establishes two facilities: “New Loan” and “Expanded Loan”
  - New loan sizes from \$1 million up to \$25 million
  - Expanded loan sizes from \$1 million up to \$150 million
- Loan terms:
  - 4 year unsecured term loans
  - SOFR (the overnight rate published daily by RB-NY ) + 2.50% to 4.00%
  - No prepayment penalty
- Restrictions on compensation, stock repurchases, and distribution apply

# Express Loans

- **SBA Express Loans** are another type of SBA 7(a) loans that provide working capital for small businesses in the form of a term loan or revolving line of credit
- There is a faster turnaround time than for other SBA loans: SBA will respond within 36 hours.
- The borrower then works with an SBA-approved lender, including negotiating the interest rate, which cannot exceed a maximum set by the SBA. SBA guarantees 50% of the loan.
- Maximum loan amount is usually \$350,000, but, under the CARES Act, this amount has been increased to \$1 million through December 31, 2020
- Lenders need not require collateral for loans up to \$25,000.

# Express Loans

- Eligibility is the same as all 7(a) loans, including that the business must be (a) an operating business, (b) organized for profit, (c) located in the United States, (d) be a small business under SBA Size Regulations, including affiliates, and (e) be able to demonstrate a need for the desired credit
- Use of proceeds can include: working capital, expansion or renovation, new construction, purchase of land or buildings, purchase of equipment, fixtures, lease-hold improvements, refinancing debt for compelling reasons, seasonal line of credit, inventory, or starting a business.
- SBA Express Loans are not eligible for forgiveness under the CARES Act.

## Next Steps

- Reach out to and coordinate with your bank
- Review your business to determine the best loan for you
- Prepare materials needed to apply
- Implement procedures to manage use of loans
- Document use of funds in preparation for loan forgiveness application
- Keep all documentation used to support your application, in the event of an audit
- When in doubt about any submission, especially borrower certifications, seek legal guidance

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# Insurance Considerations

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## Types of Policies

- Property Policy
- Builder's Risk Policy
- Environmental Policy

*Put your insurer on notice of your claim, even if you don't know what your losses are yet*

# Business Interruption

- Coverage Clause: Three Elements
  - Loss (physical)
  - To covered property
  - From specifically named perils, or all risks not excluded



# Business Interruption

- What is physical? Can be perceived by 5 senses.
- *Gregory Packaging, Inc. v. Travelers*: “Property can sustain physical loss or damage without experiencing structural damage.”
- Instead, generally requires that property be “uninhabitable” or “unusable.”

# Exclusions

- Virus and Bacteria

We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

# Exclusions

- New Legislation
- Seven states (LA, MA, NJ, NY, OH, PA and SC) have introduced legislation that would require insurers to cover business interruption claims for small businesses for the duration of the public health emergency, even in the face of a specific virus exclusion.

## Civil Authority

- Extra coverage under Business Interruption
- Loss of business income, extra expense and contract penalties
- Caused by “action of civil authority” that prohibits access to your site
- Do you need a physical loss?

# Environmental Policy

- Manuscript/specifically tailored
- “Pollution Condition”
- Coverages
  - Business Interruption
  - Decontamination
  - PR and Crisis Management

## Practical Considerations

- Notice Notice Notice
- Keep good records
- Be aware of sublimits
- Be aware of protective safeguards in your policy or other conditions (secure your site)
- Be aware of policy terms that govern inactivity or abandonment

# COVID-19 Resources

Explore our collection of timely and relevant alerts, webinars, and news.

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[www.Venable.com/COVIDCFS](http://www.Venable.com/COVIDCFS)

[www.Venable.com/covid-19](http://www.Venable.com/covid-19)

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# Questions?



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