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Memorandum - Small Business Administration Loans Under CARES Act

The 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act made available two Small Business Administration (SBA) loan programs for many small businesses: the SBA 7(a) Paycheck Protection Program (PPP) and the Economic Injury Disaster Loan (EIDL) Program. This memorandum has been revised to summarize the key details of these programs as they currently stand after the enactment of the “Consolidated Appropriations Act, 2021” on December 27, 2020 and the SBA’s revised guidance that followed on January 6, 2021. Future updates to the information provided in this memorandum will be posted to ACA’s [COVID-19 resource page](#).

Major Developments Following the Consolidated Appropriations Act, 2021

The Consolidated Appropriations Act, 2021 provided an additional \$284 billion of funding for the PPP and made the following notable changes to the program:

- Business expenses paid for with forgiven PPP loan funds are tax deductible, which reverses the IRS’s interpretation in its April 30, 2020 Notice (No. 2020-32).
- Second PPP loans are available to previous PPP borrowers if they have fewer than 300 employees and have suffered severe reductions in revenue. Second PPP loan amounts are capped at \$2 million.
- PPP borrower eligibility is expanded to include additional types of businesses, including partnerships and certain additional non-profit entities. Publicly traded companies are now ineligible for PPP loans going forward, as are businesses that are controlled by individuals in certain high-level political positions or their spouses.

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- Eligible expenses under the PPP are expanded to include:
 - COVID-related worker protection and facility modification expenses;
 - certain essential expenditures to suppliers; and
 - specified operating costs, including software and cloud-computing expenses.
- A simplified forgiveness procedure is established for loans of \$150,000 or less.
- PPP borrowers that receive advances from the EIDL program are no longer required to deduct that amount from their maximum available PPP loan amount.

The Consolidated Appropriations Act, 2021 provided additional funding for forgivable advances under the EIDL program and extended the application deadline for EIDL loans through December 31, 2021. The new EIDL advances are available only to eligible businesses that are located in low-income communities and have suffered severe reductions in revenue.

Paycheck Protection Program (PPP) Overview

The PPP program provides for loans to assist qualifying small businesses with payroll and other eligible costs. PPP loans are up to 100% forgivable if used during the statutory coverage period in accordance with forgiveness eligibility rules. For more detailed information on the PPP, please visit the SBA’s PPP website [here](#) and the U.S. Treasury Department’s website [here](#).

Key highlights of the PPP include:

- **PPP Eligibility:**
 - First-time borrowers generally are eligible for PPP loans if they have fewer than 500 employees, but paint and coatings manufacturing companies (NAICS code 325510) may qualify if they have fewer than 1,000 employees. Note that the SBA has detailed “affiliation” rules that can impact how company size is calculated for the purposes of SBA loans like the PPP.
 - Borrowers that already received a PPP loan may be eligible for a second loan if they have fewer than 300 employees and have experienced at least a 25% reduction in gross receipts during any 2020 calendar quarter relative to that same quarter in 2019. Such second-time borrowers must have used or expect to use all of their first-draw PPP loan funds before the expected disbursement date for the second PPP loan.
 - PPP loans are available only to businesses that were in operation on February 15, 2020, with some exceptions for seasonable businesses. Among other things, all PPP applicants must also certify that “current economic uncertainty makes this loan request necessary to support the [applicant’s] ongoing operations.”

- **PPP Loan Amounts:**

- For first-time borrowers, the maximum PPP loan amount available is the lesser of (i) \$10 million, or (ii) 250% of average total monthly payroll costs, with employee compensation capped at \$100,000 on an annualized basis for each employee and excluding any compensation paid to employees whose principal place of residence is outside of the United States.
- For second-time borrowers, the maximum PPP loan amount available is the lesser of (i) \$2 million, or (ii) 250% of average total monthly payroll costs, with employee compensation capped at \$100,000 on an annualized basis for each employee and excluding any compensation paid to employees whose principal place of residence is outside of the United States. First-time PPP borrowers that returned part or all of the PPP loan proceeds or did not accept the full amount of an approved PPP loan may reapply for the previously foregone loan amounts.
- New PPP borrowers may now choose one of the following periods for determining the benchmark payroll costs that are used to calculate maximum loan amounts:
 - calendar year 2019;
 - calendar year 2020; or
 - the precise one-year period before the loan disbursement date.

- **Use of PPP Loan Funds:**

- At least 60% of loan funds must be used for payroll costs, which generally include:
 - wages, salaries, and benefit costs for most employees (including any payments made to furloughed employees and bonuses or hazard pay provided to employees), with wages/salaries capped at \$100,000 on an annualized basis for each employee;
 - payment for the provision of employee benefits consisting of group health care coverage, including insurance premiums and retirement;
 - payment of state and local taxes assessed on compensation of employees; and
 - payments to employees for vacation, family/parental, and medical/sick leave, except for those leave wages covered by the Families First Coronavirus Response Act.
- The remainder of the loan funds may be used for other enumerated purposes, which notably include:
 - rent and utilities;

- mortgage interest obligations;
 - interest on debt incurred prior to February 15, 2020;
 - refinancing an EIDL made between January 31, 2020 and April 3, 2020;
 - payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses;
 - expenditures to suppliers that are essential to the recipient's current operations and are made pursuant to a contract or order made prior to the covered period, or for perishable goods, during the covered period;
 - worker protection expenses and facility modification expenditures necessary to comply with COVID health and safety guidelines established after March 1, 2020 by federal, state, or local governments; and
 - costs relating to property damage, vandalism, or looting due to public disturbances in 2020 that were not covered by insurance or other compensation.
- **PPP Loan Forgiveness:** Loan forgiveness is based on the extent to which the small business maintains employee headcounts and salary levels. Loan forgiveness can be up to the full principal amount of the loan and any accrued interest.
 - Forgiveness is potentially available for documented use of loan proceeds during the covered period, which is calculated from the origination date of the loan and ends on any date chosen by the borrower between 8 and 24 weeks after the loan disbursement date.
 - Loan forgiveness will be reduced if either:
 - Less than 60% of loan proceeds are used for eligible payroll costs during the covered period;
 - any employee's compensation during the covered period is less than 75% of the benchmark levels set forth in the CARES Act, excluding any employees with annual compensation greater than \$100,000; and/or
 - average full-time employee headcount during the covered period declines relative to benchmark levels, as set forth in the CARES Act and the PPP Flexibility Act.
 - There is no penalty for reduction of employment or wages occurring between February 15, 2020 and April 26, 2020, if employees are rehired and wage/salary levels are restored by December 31, 2020. There are two exceptions that excuse

an employer's failure to restore employee headcount for the purposes of calculating loan forgiveness:

- The first exception is if the employer can document in good faith (i) an inability to rehire individual employees who were employed on February 15, 2020, and (ii) an inability to hire similarly qualified employees for such unfilled positions on or before December 31, 2020.
 - The second exception is if the employer can document an inability to return to the same level of business activity as the level on February 15, 2020, due to the need to comply with standards set by designated federal agencies relating to sanitation, social distancing, or worker safety.
 - Borrowers that receive a loan of \$150,000 or less are subject to a streamlined one-page forgiveness application.
- **PPP Loan Terms:** Those PPP loan amounts that are not subject to loan forgiveness will carry a minimum 5-year term with an interest rate of 1%, which is calculated on a noncompounding, non-adjustable basis. If a borrower timely submits a loan forgiveness application within 10 months following the end of the borrower's chosen forgiveness covered period, payments of interest and principal on a PPP loan may be deferred until the date on which the SBA remits the loan forgiveness amount to the lender (or notifies the lender that no loan forgiveness is allowed for the loan). PPP loans have no prepayment penalty and do not require any application fees, collateral, or personal guarantees.
 - **How to Apply for PPP Loans:** Loans are available on a first-come, first-served basis through participating lenders, which typically include all FDIC institutions and federally insured credit unions. Applications must be submitted by lenders to the SBA by March 31, 2021 and are subject to fund availability. The SBA's application form for first-time borrowers is available [here](#) and for second-time borrowers is available [here](#).

Economic Injury Disaster Loan (EIDL) Program Overview

The CARES Act greatly expanded EIDL eligibility for qualifying small businesses to obtain longer-term loans with favorable borrowing terms. The CARES Act also introduced a loan advance feature where applicants can immediately obtain up to a \$10,000 advance that does not need to be repaid. The application deadline for the EIDL program has been extended to December 31, 2021; however, funding limitations may affect availability of EIDL loans and/or advances before that date. The Consolidated Appropriations Act, 2021 provided additional funding for EIDL advances, but only to businesses located in low-income communities that have suffered a severe reduction in revenue. Please check the SBA's [EIDL webpage](#) for the most up-to-date information on loans and advances through the EIDL program.

Key highlights of the EIDL program include:

- **EIDL Eligibility:** EIDL loans are generally available to small businesses with fewer than 500 employees that have experienced a substantial economic injury as a result of the COVID-19 crisis. Most small businesses with fewer than 500 employees are eligible, but paint and coatings manufacturing companies (NAICS code 325510) may qualify if they have fewer than 1,000 employees.
- **Relaxation of EIDL Application Requirements:** The CARES Act relaxes certain application requirements, including waiving:
 - the requirement for a personal guarantee for loans of \$200,000 or less;
 - the “credit elsewhere test” used to assess whether the applicant can obtain loan funds from other sources; and
 - the requirement that the applicant be in business for a year, so long as the applicant was in operation on January 31, 2020.
- **EIDL Amounts:** EIDL loans for COVID-19 relief may be issued for an amount equal to up to six months of the applicant’s working capital/operating expenses.
- **EIDL Loan Advance:** Subject to eligibility requirements, borrowers may receive an advance of up to \$10,000. The advance is not subject to repayment.
- **Use of EIDLs:** EIDLs may be used for payroll, accounts payable, and many other payment obligations that cannot be met due to the impact of the COVID-19 crisis.
- **EIDL Terms:** EIDL interest rates are fixed at 3.75% for for-profit small businesses and 2.75% for nonprofits. EIDLs may have up to a 30-year term and amortization.
- **Overlap of EIDL and Paycheck Protection Program (PPP):** Although there is an overlap in eligibility for certain costs under both loan programs, EIDL applicants may not receive loans for costs already covered by a PPP loan.
- **How to Apply for EIDL:** EIDLs are available solely through applications filed directly with the SBA. To apply, please visit the [SBA’s website](#). You may also contact the SBA disaster assistance customer service center at 1-800-659-2955 (TTY: 1-800-877-8339) or by email at disastercustomerservice@sba.gov.