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Dear Clients and Friends,

As we navigate these unprecedented times in recent history, the US legislature has implemented various new tax laws to help businesses stay afloat and retain employment of all those currently ordered to stay home. A major part of the Federal assistance for businesses comes in the form of a Paycheck Protection Program Loan (PPP loan), an Economic Injury Disaster Loan (EIDL) related to COVID-19, as well as the emergency EIDL grant program. There are rules for who qualifies, as well as some major differences in these programs, including total cash available, repayment, and process to apply. This summary is designed to help you determine which program you qualify for and which provides the most benefit to you and your business.

	Paycheck Protection Program (PPP)	**Economic Injury Disaster Loan (EIDL)**
Uses	Payroll Expenses Employee Salaries Mortgage Interest Rent and Utilities Interest on debt incurred before 2/15/20	Payroll Fixed Debts Accounts Payable Other expenses unpaid
Amount	Lesser of - 2.5X business's average monthly payroll OR $10 million	up to $2 million
Rate	Fixed 1.0% APR	3.75% APR
Terms	No payments for first 6 months Then a 2-year term	up to 30 years
Forgiveness	up to 100% with approval	None

Paycheck Protection Program Loan

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law by the President on March 27, 2020. A major portion of the CARES Act includes relief to small businesses across the country in the form of up to approximately

$350 billion in aggregate loans to be administered by the Small Business Administration (SBA) and its network of lending financial institutions.

These loans are referred to as Paycheck Protection Loans. Each loan is intended to be used to cover an eligible borrower's payroll, mortgage interest, rent, leases and utilities expenses for up to eight weeks from origination of the loan. If an eligible borrower uses the loan for the aforementioned qualifying expenses while maintaining its workforce, some or all of the loan amount can be forgiven without negative credit or tax consequences. The loan could be used for other business-related expenses, like inventory, but that portion of the loan would not be eligible for forgiveness.

Who is eligible?

As a general rule, the loans are available to companies with 500 or fewer employees that were operational on February 15th, 2020. For purposes of determining if a borrower employs no more than 500 employees, individuals employed on a full-time, part-time, or other basis are included. The borrower also certifies that the loan is necessary to support the business' ongoing operations amidst the uncertainty of current economic conditions.

Some other special notes on eligibility:

- Consult the SBA's employee-based size standard for industries that can still qualify with more than 500 employees
- Businesses designated as Accommodation or Food Services (NAICS code 72), like restaurants or hotels may have 500 or fewer employees *per location* to qualify
- Tribal businesses, 501(c)(19) veteran organizations, and 501(c)(3) nonprofits, including religious organizations, qualify (nonprofits are subject to SBA's affiliation standards)
- Sole proprietors, independent contractors, gig economy workers (i.e. Uber), and self-employed individuals are eligible

How much can I borrow? Is there a maximum?

The maximum amount a business can borrow is the lesser of $10 million or the average monthly payroll costs times a factor of 2.5. For those taxpayers that already received "EIDL" funding after January 31, 2020, these loans may be refinanced under subsection 36 of the Act and converted to the Paycheck Protection Loan.

The calculation of the average monthly payroll costs is as follows:

- For most employers, use the one-year period prior to the loan disbursal date
- For seasonal employers, choose the 12-week period starting February 15, 2019, or elect the period between March 1, 2019 through June 30, 2019.
- If not in business between February 15, 2019 and July 30, 2019, use the payroll costs incurred during the period beginning January 1, 2020 and ending on February 29, 2020.

Businesses with Employees:

For the above calculation of average payroll costs, payroll costs for businesses with employees are defined as follows: employee salaries, wages and commissions; payment of cash tips; payment of vacation; parental, family, medical or sick-leave; allowance for dismissal or separation; payment required for group health benefits (including insurance premiums); payment of retirement benefits; or payment of state or local tax assessed on employee compensation.

Self-Employed/Sole Proprietors:

For self-employed businesses or sole proprietors, the costs to include for the calculation are payments of any compensation to or income of an independent contractor that is wage, commission, income, or net earnings from self-employment. This amount cannot exceed $100,000 in one year, as prorated for the covered period.

Please note that payroll costs **exclude**: compensation of an individual person in excess of $100,000 (as prorated for the period); Federal employment taxes imposed or withheld taxes (such as social security or Medicare taxes); compensation to an employee whose principal residence is outside of the U.S.; and qualified sick leave or qualified family leave wages for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act.

What are the terms of the loan?

Loans are available for up to a 2-year term (amortized) at a maximum of 1 percent interest, with six months deferral of principal and interest payments. Notably, certain SBA requirements are waived such as the need to certify inability to obtain other sources of credit and zero loan fees.

Covered loans will be non-recourse and the lender will have no recourse against any individual shareholder, member or partner of an eligible recipient of a covered loan for non-payment, except the extent that the proceeds are used for a purpose not authorized pursuant to the Act. During the covered period with respect to a covered loan, no personal guarantee will be required, and no collateral shall be required to secure the covered loan. Additionally, there is no prepayment penalty on these covered loans.

What is the application process?

Eligible entities may file applications with an SBA-approved lender. Lenders have been delegated authority to make loans without SBA review. More information on the application process will be issued later this week to existing SBA lenders. Additionally, they will be adding additional lenders to the approved list to help process the volume of applications anticipated.

Applicants will need to certify that the loan is necessary, and will be used to retain workers and pay eligible expenses. Applicants will further need to certify that no other application for a loan for the same purpose is pending and that the entity has not received any other loan for the same purposes through December 31, 2020.

Payment Deferral and Loan Forgiveness

During the covered period, impacted borrowers with a covered loan will have complete payment deferral between 6 months and one year. SBA is required to provide additional guidance to lenders on this process within 30 days after the enactment of the CARES Act.

Section 1106 outlines forgiveness of loans obtained under the Act. All amounts forgiven will be treated as canceled indebtedness by a lender authorized under Section 7(a) of the Small Business Act (15 USC 636(a)). For purposes of the Internal Revenue Code of 1986, as amended, amounts forgiven will not be treated as income to the borrower. The amount of loan forgiveness cannot exceed the principal amount of the financing made available under the applicable covered loan. Please note that we do not have any guidance yet on state treatment of the loan forgiveness associated with these loans. The states will need to provide guidance in the future, and it should not be assumed at this time that the forgiven loan amounts will not be subject to state income tax.

The forgiven amount will be equal to the amount incurred and paid for payroll costs, salaries, benefits, rent, utilities and mortgage interest during the eight weeks following disbursement of the loan. Additional wages paid to tipped employees under Section 3(m)(2)(A) of the Fair Labor Standard Acts may also be forgiven. The covered period may start as early as February 15, 2020. If the full principal of the PPP loan is forgiven, then no interest accrued in the 8-week period will need to be repaid.

To verify the forgiveness amount, the borrower will submit to the originating lender documentation verifying full time equivalents (FTEs) and payroll rates, including:

- (i) payroll tax filings and state filings and payment receipts for mortgage, rent and utilities,
- (ii) breakdown of how the loan amount was utilized among employee retention, mortgage, rent and utilities and
- (iii) certification from an officer that the amount for which forgiveness is requested was used to retain employees, make payments on covered rent obligations or make covered utility payments.

The forgiveness amount is subject to reduction if there is a workforce reduction or a reduction in the salary or wages of an employee. Reductions in workforce, salaries and wages that occur from February 15, 2020 to April 26, 2020 will be disregarded for purposes of reducing the forgiveness amount so long as the reductions are eliminated by June 30, 2020.

Important Restrictions to Consider:

There are restrictions on businesses who receive the loans under Section 4003(c)(2)(F). These businesses may not issue dividends or make other capital distributions with respect to the common stock of the business for up to a year after the loan is no longer outstanding and must retain 90% of employment levels as of March 24 "to the extent practicable" through September 30, 2020. There are also compensation limitations on owners and officers of the affected businesses and restrictions on repurchase of equity security for those listed on a national securities exchange or that of a parent company.

Economic Injury Disaster Loan

For those areas suffering substantial economic injury as a result of the Coronavirus (COVID-19), the SBA issued an Economic Injury Disaster Loan declaration as provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act enacted on March 6, 2020.

Who is eligible?

At this time, small business owners in all U.S. states and territories are eligible to apply for a low-interest loan due to COVID-19.

Please note, if you are a business that also qualifies for the PPP loan:

A business that receives an EIDL between January 31, 2020 and June 30, 2020 as a result of a COVID-19 disaster declaration is eligible to apply for a PPP loan if the business refinances their EIDL into a PPP loan. Additionally, a borrower who has an EIDL loan *unrelated to COVID-19* may apply for a PPP loan (with an option to refinance the EIDL loan into the PPP loan). In either case, the emergency EIDL grant award of up to $10,000 discussed later would be subtracted from the amount forgiven under the Paycheck Protection Program.

How much can I borrow? Is there a maximum?

EIDLs are loans of up to $2 million and intended to help small businesses overcome the temporary loss of revenue due to COVID-19. The total loan amount is determined by the SBA after the application is processed.

What are the terms of the loan?

These loans carry interest rates up to 3.75 percent for companies and up to 2.75 percent for nonprofits. The loans may be used to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses. To keep payments affordable, the loans offer up to a maximum of 30 years repayment. Terms are determined on a case-by-case basis based upon the determined ability to repay.

What is the application process?

The SBA website now shows a streamlined EIDL application process with a reduced amount of information that initially need to be submitted. The application is a five step process, which includes –

1) Disclosures – why you qualify
2) Business information – what you do
3) Business owners information – who you are
4) Additional information and disclosures – other disclosures, who helped you, and how to access the EIDL grant
5) Summary page

The estimated time for completing this entire application is about two hours.

Payment Deferral and Loan Forgiveness

There is the potential of principal and interest deferment for up to 4 years, if the SBA approves. There is no loan forgiveness possibility for these loans.

Emergency Economic Injury Grants

The CARES Act provides $10 billion in funding for a provision to provide an advance of $10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL) within three days of applying for the loan. Eligible grant recipients must have been in operation on January 31, 2020. The grant is available to small businesses, private nonprofits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses.

The business must apply for an EIDL and then request the advance through December 31, 2020. The EIDL grant does not need to be repaid, even if the grantee is subsequently denied an EIDL, and may be used to provide paid sick leave to employees, maintaining payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.

The SBA website references the streamlined application process for the EIDL, which includes both the loan and the advance request.

Conclusion

The US legislation has worked this month to ensure US businesses continue to operate after this health crisis and have thus far provided various tax reform in an effort to do so. The Paycheck Protection Program loans, the Economic Injury Disaster Loans and the Emergency Economic Injury Grants are three assistance programs that business can utilize to this end. Each of these programs are not one size fits all and we want to ensure business owners are equipment with the details to make the necessary decisions for their business.

Our team is available to discuss these options with you and be of assistance as you embark on the various application paths alongside your lenders and other financial advisors. Do not hesitate to schedule a call so we can discuss these programs further. Please note that these are still very new programs and we will be issuing additional resources and guidelines as they become available.

Sincerely,

DUFFY KRUSPODIN, LLP