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We recently published an alert discussing the Paycheck Protection Program (the “Program”) provided in the *Coronavirus Aid, Relief, and Economic Security* or “*CARES Act*”. Additionally, businesses and private non-profit organizations can also apply for loans and emergency grants under the Economic Injury Disaster Loan Program (the “EIDL Program”). The EIDL Program is another useful resource for businesses and nonprofit organizations to obtain additional funds in lieu of and/or on top of Paycheck Protection Loans (“PPP Loans”). Like Section 7(a) small business loans under the Small Business Act (“SBA”), the EIDL Program is a preexisting program under the SBA that the CARES Act has expanded and/or temporarily modified due to COVID-19.

Purpose. *What is the purpose of an EIDL loan?*

An EIDL loan is a working capital loan that eligible entities and organizations can use to pay fixed debts, payroll, accounts payable, and other bills that could have been paid absent the disaster. Eligible entities may only use the loan proceeds for working capital necessary to carry their business until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred. In other words, you may not use EIDL funds to grow your business.

Impermissible Costs. *Are there any costs or expenses that I cannot use EIDL funds to pay?*

Yes. EIDL funds may not be used for the following expenses:

- Refinance indebtedness which was incurred prior to the COVID-19 emergency;
- Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;
- Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;
- Repair physical damage;
- Expansion or relocation expenses; or
- Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Eligible Entities. What types of entities are eligible for an EIDL loan under the CARES Act?

Below is a list of eligible entities:

- A business with not more than 500 employees;
- Sole proprietorships, with or without employees;
- Any individual who operates as an independent contractor;
- A cooperative with not more than 500 employees;
- An employee stock ownership plan (“ESOP”), as defined in 15 U.S.C.; 657a(b)(2)(C), with not more than 500 employees;
- A Tribal small business, as defined in 15 U.S.C.; 657a(b)(2)(C), with not more than 500 employees;
- Private nonprofit organizations, and
- Small agricultural cooperatives.

Eligible Nonprofits. What private nonprofit organizations are eligible?

Eligible private nonprofit organizations are set forth below:

- Entities exempt under Section 501(c) of the Internal Revenue Code of 1954 (the “Tax Code”), including trade associations, advocacy organizations, unions, and social clubs that are excluded from the Program;
- Organizations tax-exempt under Section 501(d) of the Tax Code, e.g. Apostolic organizations;
- Organizations tax-exempt under Section 501(e) of the Tax Code, e.g. cooperative hospital service organizations; and
- An entity with satisfactory evidence from the applicable state that said entity is a non-profit organized or doing business under applicable state law.

Loan Period. Is the covered period for EIDL loans the same as the covered period for PPP Loans?

No. The covered period for EIDL loans begins on January 31, 2020, and ends on December 31, 2020. All eligible entities may apply for an EIDL loan during the covered period.

Waived Requirements During the Covered Period.

Do I have to provide a personal guarantee for an EIDL loan?

Under the CARES Act, a personal guarantee is **not** required on EIDL loans of not more than \$200,000 during the covered period.

My business is fairly new, can I still apply for an EIDL loan?

Yes, as long as your business was in operation on January 31, 2020.

Is my business obligated to try and obtain credit elsewhere?

No. The CARES Act waives the requirement that a business or nonprofit show it is unable to obtain credit elsewhere during the covered period.

Does my business or nonprofit have to be in a state or county that has received an economic injury disaster declaration from the SBA?

No. EIDL loans and EIDL emergency grants in response to COVID-19 during the covered period do not require a separate declaration from the SBA.

Approval Process. *What documentation must my business submit to apply for an EIDL loan?*

An applicant may be approved for an EIDL loan based solely on the applicant's credit score. You are not required to submit a tax return. However, alternative appropriate methods may be used to determine an applicant's ability to repay an EIDL loan.

Loan Terms.

What is the maximum amount that my business or nonprofit can borrow in an EIDL loan?

EIDL loans are capped at \$2,000,000.

What is the interest rate on an EIDL loan?

The interest rate is capped at 4% by federal law. However, EIDL loans during the covered period carry an interest rate of 3.75% for businesses and 2.75% for nonprofits.

How long do I have to repay an EIDL loan?

EIDL loans offer long-term repayment options, up to a maximum of 30 years, based upon each borrower's ability to repay. The exact loan term is determined on a case-by-case basis.

EIDL Emergency Grants.

What is an EIDL emergency grant compared to an EIDL loan?

During the covered period, eligible entities may request an advance of up to \$10,000 on an EIDL loan in response to COVID-19.

Is there any verification process to obtain the advance?

Yes. The United States Small Business Administration ("SBA Administration") will verify that an applicant is an eligible entity by accepting self-certification from the applicant under penalty of perjury.

How soon can my business or nonprofit receive an advance?

Within three (3) days after the SBA Administration receives an application for an EIDL loan from the applicant.

What costs can my business pay using the advance?

In addition to those costs already allowed under the existing EIDL Program, an eligible entity can use an advance to pay:

- Paid sick leave to employees unable to work as a direct result of COVID-19;
- Maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- Increased costs to obtain materials unavailable from the entity's original source due to interrupted supply chains;
- Rent or mortgage payments; and
- Debt obligations that cannot be met due to revenue losses.

Will my business be required to repay the advance?

No. An applicant will **not** be required to repay any portion of the advance, even if the applicant is subsequently denied an EIDL loan. But the amount of any advance received by a borrower who subsequently receives a PPP loan will be subtracted from the calculation of the loan forgiveness amount of the PPP loan.