



KROKIDAS & BLUESTEIN LLP

CLIENT ALERT

**SBA LOAN PROGRAMS
AVAILABLE TO FOR-PROFIT BUSINESSES
AND NONPROFIT ORGANIZATIONS**

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act includes provisions designed to help small businesses and nonprofit organizations that have been harmed by the COVID-19 pandemic and the governmental measures in response to the pandemic. This alert discusses the eligibility requirements for two loan options that are available through U.S. Small Business Administration (SBA) programs: the Paycheck Protection Program and the Economic Injury Disaster Loans. These loan programs are available to both for-profit businesses and nonprofit organizations.

Paycheck Protection Program (PPP)

This program authorizes SBA-approved lenders (banks, credit unions, and other financial institutions) to make low-interest, unsecured loans that are fully guaranteed by the SBA for specified payroll and other operational costs. The amount of these loans is based upon the calculated amount of an employer's average monthly qualified payroll costs (capped at the lesser of 250% of such monthly average or \$10 million). The loan proceeds are to be used only for payroll costs and to pay other operational expenses such as health insurance, rent, mortgage interest, and utilities. The whole or a portion of the principal amount of the loan may be forgiven to the extent it is used for such qualifying expenses during the eight week period following receipt of the loan, which makes this a very attractive option for eligible borrowers. Loan forgiveness might depend on the extent to which payroll is maintained or restored prior to June 30, 2020. See [Borrower Information Fact Sheet](#) posted by the Treasury Department.

In addition to any business that already qualifies as a "small business concern" under existing SBA rules, PPP loans are available to (a) any business concern, nonprofit organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code (the "Code"), veterans organization exempt under Section 501(c)(19) of the Code, or Tribal business concern that was in business on February 15, 2020, provided that such entity (b) employs not more than the greater of (i) 500 employees, (ii) if applicable, the size standard in number of employees established by the SBA for the industry in which the entity operates, linked [here](#), or (iii) for accommodation or food service business concerns (NAICS code 72) with multiple locations, not more than 500 employees per location. Sole proprietorships, independent contractors, and self-employed individuals are also eligible. Note that the [SBA affiliation rules](#) apply and generally require businesses and organizations under common control or otherwise affiliated to aggregate

the number of their employees for purposes of determining whether the business satisfies the applicable limitation on number of employees.

Nonprofit organizations described in Section 501(c)(3) of the Code are eligible for PPP loans to the same extent as small businesses, provided they otherwise satisfy the requirements of the program. This means that a variety of nonprofit organizations will be eligible for this funding, including certain educational institutions, foundations, social service organizations, health care providers and affordable housing developers and operators.

To qualify, an eligible borrower (and each 20% or greater owner) must make a number of good-faith certifications, including certifications that (i) current economic uncertainty makes the loan necessary to support the ongoing operations of the borrower, and (ii) the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments. It appears that merely having access to other sources of financing to support ongoing operations may not interfere with making the required certification if it is otherwise true and accurate. It is not clear, however, whether having substantial cash on hand to support ongoing operations will affect such certification. The lender's underwriting guidelines may address the scope of documentation required in connection with the required certifications. The SBA has released a sample form of application [here](#).

The PPP is subject to a funding cap, and is available on a first-come, first-served basis beginning April 3, 2020, for small businesses (including sole proprietorships) and nonprofit organizations, and beginning April 10, 2020, for independent contractors and self-employed individuals. Parties who are interested in this loan program should contact their lending institutions as soon as possible.

Economic Injury Disaster Loans (EIDL)

The SBA is now accepting applications under the EIDL program from prospective borrowers located in Massachusetts. These low-interest loans (capped at 3.75% for small businesses and 2.75% for nonprofit organizations) are made directly by the SBA to provide working capital loans in amounts of up to \$2 million to eligible entities suffering substantial economic injury due to the COVID-19 pandemic. The actual amount of the loan is limited to the economic injury as determined by the SBA. See [SBA Information Fact Sheet for Massachusetts](#).

Small businesses with 500 or fewer employees and nonprofit organizations of any size that have been in operation since January 31, 2020, and have suffered substantial economic injury due to COVID-19 are eligible for these loans. An applicant has suffered "substantial economic injury" when it is unable to meet its financial obligations, pay ordinary and necessary operating expenses, or has a reduction in working capital. Applicants must have a credit history acceptable to the SBA, demonstrate the ability to repay the loan, and, for loans of over \$25,000, provide collateral to the extent available. Applicants may apply online [here](#).

The CARES Act established an emergency grant to allow an eligible borrower who has applied for an EIDL to request an advance on that loan of not more than \$10,000, which the SBA must distribute within three days. If the application for an EIDL is denied, recipients are not

required to repay the emergency advance. The emergency advance can be used for payroll costs, increased materials costs, rent or mortgage payments, and for repaying obligations that cannot be met due to revenue loss.

Note that the CARES Act limits a borrower from receiving a PPP loan and an EIDL for the same purpose.

Note also that before applying for one of these loans, a borrower should confirm whether such loan would be permitted by the indebtedness and financial covenants under its existing financing arrangements.

If you have questions about these loan programs, or need assistance with a loan application or documentation, please contact Attorneys Elizabeth C. Ross (eross@kb-law.com), Kathryn C. Murphy (kmurphy@kb-law.com), Anthony L. Leccese (aleccese@kb-law.com), Elka T. Sachs (esachs@kb-law.com), Sheryl A. Howard (showard@kb-law.com), Kathleen O. Burgener (kburgener@kb-law.com), or Gabriel Balzano-Brookes (gbalzano-brookes@kb-law.com).