

## **CRA Virtual Town Hall Meeting 3/31/2020**

### **COVID-19: Small Business Stimulus through the CARES Act**

**Speakers:** Torben Welch and Rachel Farr, attorneys with Messner Reeves

#### **Key Takeaways:**

- You can begin the process of applying for PPP loans today by pulling together the documents that lenders will need to verify. These include:
  - Documents showing your payroll costs (salary, wages, commission, tips, employee benefits, sick leave payments, separation allowances, retirement benefits)
  - Proof of group health insurance payments
  - Proof of state and local tax payments assessed on employee wages – note: Federal Payroll Taxes/FICA should NOT be included.

The more documentation you can provide, the faster lenders will be able to process and approve your application. We anticipate that these applications can start being accepted by the end of the week.

**\*\*\*\*UPDATE: On April 1, 2020 the Department of Treasury (“DOT”) confirmed that applications will be accepted beginning on April 3, 2020.**

- You can begin the process of applying to EIDL loans by visiting [SBA’s website](#).
- You can apply for both PPP loans and EIDL loans, but you can’t use the funds for the same purpose.

#### **Cares Act: A small business stimulus**

- The Act was signed into law last Friday. Some details remain unclear, as we are waiting for some guidance to be issued by the federal departments.
- This program is the first of its kind; it works to directly support small businesses through this crisis period.
- As we wait to get that guidance, this outline can offer businesses some practical advice to consider as they look into their relief options.

#### **Paycheck Protection Program (PPP)**

Applying for the PPP loans

- The PPP is intended as a short-term solution for small businesses. It offers relief to businesses for 8 weeks.
- The PPP is intended to allow employers to retain and keep their employees and continue their business operations through the COVID-19 crisis.

- These funds are specifically targeted towards small business owners with fewer than 500 employees. If you are a franchise, and you have more than 500 employees throughout the state, you can take advantage of these loans at each individual location so long as each location has fewer than 500 employees.
- Although the PPP program is not issuing SBA loans, it will be administered by the SBA program and convert into an SBA 7(a) loan if not forgiven.
- The federal government has streamlined this process, so it should be simple and easy to access these funds. We anticipate that SBA approved lenders will be ready to begin accepting and processing these loan applications by the end of this week. Once loans are approved, we anticipate businesses can receive their loan amount in as little as 3 business days for the \$10,000.00 grant/emergency loan and a similar period for the PPP loan. **\*\*\*UPDATE: Applications will be accepted beginning on April 3, 2010**
- This program will allow you to borrow 10 weeks of payroll costs. Your loan amount will be calculated by averaging your monthly payroll costs of the past year and multiplying that by 2.5. Be prepared to show payroll documentation for each month of 2019.
- As you prepare to apply for these loans, gather all documentation that shows your payroll costs. The better prepared you are, the faster your lender can process your application and issue you your loan amount. To do this, consider and provide documentation for all your payroll costs over the past year. This can include salary, wages, commission, tips, payments for employee benefits, allowance made for dismissal/separation, group health insurance premiums, retirement benefits, and state and local tax payments assessed on employee wages.
- There are some payroll expenses that you are not permitted to include in this calculation. These include any salaries above \$100,000 per year and any qualified sick leave wages for which a tax credit is allowed under the FFCRA bill. If you have an individual on your payroll whose primary residence is not in the USA, then they are exempted from this calculation too. Example: you have an accountant or IT support that lives outside the United States. **\*\*\*UPDATE: DOT confirmed that salaries for employees earning above \$100,000 per year CAN BE included in the calculation, but are capped at the pro-rata of \$100,000 for the 8 week period (i.e. on \$16,666 will be included in the calculation).**
- Once they are provided with the necessary documents, it is up to the banks and lenders to calculate what the maximum amount of your loan will be.
- This program is not a collateral-based loan. You do not need a personal guarantee to receive these loans as they are approved and issued based on a business' need rather than an ability to re-pay the loan amount. Your need will be related to the impacts of the COVID-19 spread and subsequent closures.
- Although the federal government has issued guidance around this program, ultimately the banks and lenders will be processing these applications. This means that each one may request different documents from you, and each one may issue you a different loan amount. We encourage you to shop around to find the best fit for your business.

#### PPP Loan Forgiveness

- PPP loans can be forgiven up to 100% of the loan amount, and any forgiven amount will not be treated as income. \*\*\*UPDATE: DOT has informed that not more than 25% of the forgiven amount may be for non-payroll costs.
- To be granted loan forgiveness, you are required to only use the loan for payroll costs, rent payments, mortgage interest payments, utilities, and interest on any other outstanding debt you had before the loan was issued. You have 8 weeks to utilize these funds on those required items and apply for forgiveness.
- In most cases, these loans will be 100% forgiven assuming you utilize the proceeds as intended. It is very likely in your best interest to apply for these loans.
- If you decide that you need to use any portion of your loan amount towards any needs outside the prescribed purposes you are allowed to do so, but that amount spent towards outside purposes will not be forgiven. That amount will then operate like any other SBA loan with an interest rate of no more than 4%. \*\*\*\*\***UPDATE: DOT has informed that not more than 25% of the forgiven amount may be for non-payroll costs; in addition, the DOT has set the interest rate at 0.5%. \*\*\*\*\*Update 4/3/20: The interest rate is set at 1%**
- This program intends to employ the same or more employees as you did last year. We understand that many businesses have furloughed or laid off many of your previous employees already. This is a great opportunity to invite those employees to come back and be paid their average wages.
- When calculating the loan forgiveness amount, the SBA is not concerned about having the same individuals on your payroll as you did last year, rather, the SBA will be looking to see if you have the same number of employees on your payroll as last year and the same salary amounts. If some employees are not willing or able to come back, you can hire new individuals in their place.
- If your 8 week loan period has concluded and you were not able to bring back the same staffing levels that you had compared to last year, then your loan forgiveness will be proportionally reduced. Example: If you are only able to bring your staffing levels up to 75% of the comparative levels from last year, your forgiveness amount will likely be proportionally reduced by 25%.
- These funds can also be used to normalize employee wages and bring them back up to their usual amount if their wages have been reduced during the crisis.
- Ultimately, the goal of the PPP is to allow businesses to build and maintain their staffing levels so that they have the infrastructure in place so that they can hit the ground running once business resumes as usual.

### **Economic Injury Disaster Loan (EIDL) Program**

- The EIDL loans can be issued through December 30 this year.
- Businesses can be approved for loans up to \$2 million, with low-interest rates between 3.75-4%.
- EIDL loans have very similar eligibility to PPP with 500 or fewer employees being the main criteria.

- The EIDL loans can offer business loan advances of up to \$10,000 within 3 business days for qualified applicants. If you are approved for one of these grants, you are not required to repay that amount even if later you are not approved for the loan.
- To approve applicants, the SBA will be looking at credit scores to understand re-payment eligibility as with a standard loan, though we believe the ability to repay requirement will but one of the criteria and not the sole criteria.
- Similar to PPP, personal guarantees are waived for loans under \$200,000, and individuals are not required to prove they are unable to obtain credit elsewhere.
- These loans may be used to cover sick leave, payroll costs, any increased costs due to economic injury, health insurance, and rent.
- The statute states that applicants can apply to both programs so long as they do not use the funds from both programs towards the same purpose – no double-dipping! Example: A business may use its PPP for payroll costs, and they can use EIDL loans for rent payments and accounts payable.
- EIDL loans can be refinanced into traditional SBA or even PPP loans (if refinanced into the PPP, the advance amount is deducted from the loan forgiveness amount). You can review your options with your lender to decide which work best for you.
- To begin the process of applying to EIDL loans, you can apply online [here](#).

### **Other resources**

Entrepreneurial grants: The federal government issued almost \$300 million in grants to small business centers across the country. These centers are historically underutilized, but they can offer a wealth of resources to small businesses and offer guidance. You can check out [SBA's website](#), which has a list of these small business centers and their locations. These are great resources and can provide valuable information and guidance to businesses during this time.

The CARES ACT also offers \$17 billion in funds to encourage lenders to work with individuals to modify their loans and defer existing payments. SBA can directly pay interest and fees on these loans so long as lenders agree to work with their existing borrowers.

The SBA has also modified and lifted regulations surrounding bankruptcy procedures. In doing this, they have provided broader access and simpler proceedings for small businesses.

### **Q&A**

**How should we include tips for the calculation of tipped employees? What if employees don't claim their tips? What backup do you need?**

- Cash and credit card tips that are reported can be included. If there are unreported tips, you need to identify a way to prove what those were. Most lenders need a record to understand what they should be including in the calculation.

**My staff has already been laid off, and I have nothing for them to do because of closures. Should I still bring them back?**

- The design of these programs is to keep people employed, but the statute doesn't require that the staff be given things to do. The relief package is intended to bring employees back on to the payroll, even if they are not doing the same duties they were previously through the crisis period.

**Does this mean that I don't even have to require my employees to come back to my restaurant to work? Or can they be put back on the payroll and then stay home and not do anything?**

- They just have to be employed. There is nothing in the statute that dictates their duties.

**How do you calculate full-time and part-time employees?**

- They are treated the same when calculating their average payroll amounts. Two part-time employees (20 HOURS/WEEK) (define this as in hours) are equivalent to a full-time employee for forgiveness purposes. For example, if you had 20 full-time employees in April 2019, forgiveness of the debt will require that you have an average of 20 FTE employees (which could be 10 full-time employees and 20 part-time employees) in 2020 to receive loan forgiveness.

**What if I haven't been in business for a full year?**

- There is an alternative calculation that can be used for businesses that haven't been in business for a full year. For these businesses, their payroll average will be calculated using the first two months you were open.

**If I have contract employees, can they be included in the payroll calculation?**

- Yes, 1099s are included in the payroll calculation. \*\*\*\*Update 4/3/20: 1099s may not be included in the payroll calculation.

**Can W-2 reports be used to calculate payroll?**

- Yes.

**Which taxes can I include in my loan calculation?**

- You can include state and local taxes assessed on employee compensation in the payroll cost. Federal taxes are not included. You can take all your payroll taxes, and then eliminate the federal payroll costs, leaving just state and local taxes. You cannot include any sales and use taxes in the calculation.

**What is the date range to figure out payroll costs?**

- For calculation purposes, it is the average monthly payroll costs for 2019, paying particular attention to the time period of February 15, 2019 through June 30, 2019. If you were not open in during this period in 2019, they will take the first two months that you were open in 2020 and paying payroll, particularly January 1, 2020 through February 29, 2020.

**If you have closed temporarily or permanently, do you have to be open and operating to receive these loans?**

- There is no requirement that you serve the public. The only requirement is that you use PPP towards approved costs to seek loan forgiveness. Nothing requires you to be fully or minimally operational. If you use the funds for an unapproved purpose, they will not be forgiven, and you will then pay them back as an SBA loan.

**If I am a single-member LLC, what can I apply for? Almost all of my expenses are personal.**

- PPP funds are still available, but lenders will need your personal tax returns to verify amounts. If you are taking a draw that would be a payroll amount, that could be included. But if you are a sole proprietorship and you haven't paid employment taxes or other federal costs, these will not qualify as payroll costs. If you don't have payroll expenses, you have to find alternative ways to prove your expenses. LLCs are also covered under the disaster loan programs, they just are not forgiven unless they are refinanced into a PPP loan and otherwise meet the loan forgiveness requirements.

**If I have several different costs under my rent agreement, can I use these funds towards those costs?**

- These funds can be used for rent and all other required payments outlined in your lease agreement.

**Do you have to prioritize payroll over rent under these programs?**

- No, you can use these funds however you like. If you are seeking loan forgiveness under PPP, then you may only use these funds in one of the approved ways. The payroll costs act as a calculation method, but you are not required to use the funds primarily for payroll.  
**\*\*\*UPDATE: DOT has informed that not more than 25% of the forgiven amount may be for non-payroll costs.**

**When do we have to have everyone back on the payroll?**

- You have to have a full staff roster by the last day of your 8 week loan period.

**Are furloughed employees counted as active employees?**

- If you are not currently paying them a salary, they would not count towards a full-time calculation. But if you add them back to the payroll, they will count towards the payroll amount.

**Do we need payroll costs for all of 2019 or just the first quarter?**

- The best practice is to get costs for all of 2019 to get a better average, but most lenders likely will only be looking at February, March, and April of 2019 to do their calculation.

**If I staff 75 out of 90 employees back on the payroll, how will my forgiveness be calculated?**

- The loan forgiveness will be proportionally reduced based on percentage difference when comparing current staffing levels to 2019 staffing levels. If you have 75% of staffing levels at the end of your 8 week loan period, then your loan forgiveness amount will be reduced by 25% towards the total loan.

#### **What if we are seasonal?**

- There is a different calculation for seasonal employees. For seasonal businesses, lenders will look at 2.5 times the average monthly payroll costs between either February 15 through June 30, 2019, or March 15 through June 30, 2019. The business may choose their preferred start date.

#### **How does an employee on unemployment transition to PPP? Are employers required to do anything to un-enroll them from unemployment?**

- When employees are re-hired, you will issue new employment documents to them. Then, they will be automatically removed from the unemployment roster once you issue those new employment documents to the state.

#### **What if we get approved for a loan and the shutdown ends? Can we continue to use that loan once things are back up and running?**

- You can still utilize benefits for 8 weeks under the PPP program, and you will still be forgiven so long as you use the loan amounts towards approved expenses. For EIDL loans, you can still use the funds after the crisis has passed.

#### **How do I approach banks? Should I just call around and ask which lenders are participating?**

- For PPP, all SBA lenders will be authorized to process and accept applications. SBA has a [list of those providers on its website](#). It doesn't hurt to go out and talk to several different banks to find the best terms available to you. Just as you would shop around for any other loan, you can do that here, but don't submit an application until you talk to the bank about interest rates, how quickly they can issue your loan to you, and how long they need to process your application. **\*\*\*UPDATE: DOT has stated that all PPP loans will be at 0.5% interest. \*\*\*Update 4/3/20: Interest rates are set at 1%.**

#### **Is there any benefit to waiting?**

- Whether you wait or not is a personal decision. The federal government has stated they will replenish any necessary funds and we don't believe the money will run out on this program, but we don't know what the future holds. If it were me, I would at least get the application done now, especially if you have expenses that you need to take care of to protect your business in the future. Some may decide to use PPP for April and May costs and then transition to disaster loans after that. **\*\*\*UPDATE: DOT is encouraging all applicants to file as soon as possible to avoid a backlog.**

**If I didn't previously have employees on my payroll, can I hire new ones using the PPP and have that amount forgiven?**

- No, forgiveness is based on your average employees in 2019 (if you were open in 2019) or January and February 2020.

**If your loans have not been forgiven under PPP, anything left over will be converted into a loan after 8 weeks?**

- Yes.

**Can I use both these programs?**

- Yes, but you need to use them for separate uses. It is possible to have both.

**If I own several restaurants, will I apply as a group or apply for each individual restaurant?**

- If you have more than 500 employees but separate restaurant operations, you can apply on a per restaurant basis to get coverage. If you have fewer than 500 employees in your group, you can do it as a group.

**How do you get the 10K grant amount?**

- The loan advance is based on what the borrower requests, it can be anything up to 10K. You must apply for EIDL loans to get this grant.

**What if you transferred money from an individual account to a business account? Will that be forgiven?**

- We are not sure. If you look at the intent of doing this, it could operate as a loan that was made by you to the company for payroll purposes and could, therefore, be considered as a debt that can be repaid. But this is a case by case scenario that hasn't been addressed and we have not seen guidance addressing this issue.

**I have already submitted for a disaster loan, can I rescind that to apply for PPP?**

- If you applied under FFCRA, that loan amount should be rolled into the amount that can be applied to the PPP program. The program looks back to applications made as of January 31 and rolls that into applicants' ability to use that towards the advance.

**Denver (and other local governments) is allowing businesses to apply for grants. Would that have an impact on these loans?**

- It would not impact the PPP, which is only calculated on payroll costs. Other grants may not affect your ability to obtain PPP, but it may impact your forgiveness. Look for opportunities for forgiveness, and use PPP funds toward PPP approved costs, and then other grants for outside costs.



**Are you aware of credit requirements for PPP?**

- For PPP, banks are intending to do a minimum credit requirement, so credit shouldn't be looked by lenders to issue these loans. That being said, some lenders may individually choose to have a minimum credit requirement. If that's the case, you may want to move on to another lender that understands the program better. EIDL applications will look at credit and repayment ability, but there is no guidance on what an acceptable credit score is.

**I want to bring my employees back, but some have childcare obligations because of school closures and can't return to work.**

- From a forgiveness perspective, you have to have equal staffing levels compared to what you had last year. Several employers are intending to hire employees at a full-time amount, and still allow them the time off for childcare. Otherwise, if the employee can't come back, find another employee to hire to fill that slot.

**What is the very latest date that I can re-hire my employees to qualify for loan forgiveness?**

- All employees need to be re-hired no later than June 30, 2020. If your 8 week loan period ends before June 30, 2020, best practices would be to have a full employment roster by the last day of your 8 week period.

**I am an owner and I take a salary, can my salary be included in the calculations?**

- Yes.

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