

With the dire economic contractions occasioned by the rapid spread of COVID-19 nationally and globally, many businesses are quickly running short of capital to make payroll, pay rent, cover other critical overhead and remain in operation. In response, the U.S. Small Business Administration (SBA) is offering small businesses and certain nonprofits federal disaster relief in the form of low-interest loans for specific working capital purposes. These loans may, in some cases, allow businesses to bridge this period of uncertainty, giving them the ability to pay their employees, restock inventory and generally withstand their loss of revenue. Note this emergency lending program is separate and distinct from the SBA guaranteed payroll loans authorized under the CARES Act. At this writing, the CARES Act has not yet passed Congress. Nothing in this alert constitutes a recommendation to apply for an SBA loan. That decision should be made after consideration of each company's circumstances and in consultation with its advisers.

### **Specific Eligibility Requirements – Disaster Loan Program**

These loans are intended to be repaid. The SBA will review an applicant's credit history and will require a proven ability to repay the loan. The SBA's diligence may be more lenient than commercial lenders, however. Each applicant must be a "small business" as determined by federal regulations. Information to determine whether a business qualifies as a small business can be found [here](#).

### **Terms of the Loans**

- *Amount:* Loans will be available in amounts up to \$2 million.
- *Use of Funds:* Loans will be available to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of COVID-19. Please note that these loans are not intended to replace lost profits and are not for expansion.
- *Interest Rates:* 3.75% for small businesses; 2.75% for nonprofits.
- *Payments:* Deferred for one year.
- *Term:* Determined on a case-by-case basis, based upon each borrower's ability to pay, up to a maximum of 30 years.
- *Collateral:* Collateral will be required for loans over \$25,000. Based on the SBA's other disaster loan programs, we anticipate some flexibility in this requirement.
- *Delivery of Funds:* Targeted within 5 days after execution of loan documents.

### **Other SBA Loans**

Applicants with existing SBA loans (other than loans advanced under the CARES Act) still can qualify for COVID-19 assistance; however, multiple loans cannot be consolidated. Moreover, the SBA has announced that deferments of existing SBA disaster loans will be implemented automatically, meaning those borrowers do not have to contact the SBA to request a deferment.

### **Refinanceable with CARES Act Payroll Protection Loans**

The CARES Act, assuming it is signed into law (which seems likely as of the writing of this alert), provides for a "Payroll Protection Program." This program will be the subject of a forthcoming COVID-19 alert. The CARES Act allows SBA disaster loans to be refinanced as a federally guaranteed loan. The refinanced loan proceeds become subject to all the conditions and limitations of the Payroll Protection Program. For companies that are in need of cash immediately, it may make sense to obtain a disaster loan now and refinancing it when the Payroll Protection Program is established and making loans.

### **Restrictions Under Existing Commercial Loans**

Many companies are already borrowers of loans or issuers of notes or other debt securities. The loan documents that govern this existing debt frequently contain covenants that restrict borrowers' ability to

incur additional debt, whether secured or unsecured. Companies also may be guarantors of their parent entity's existing debt and may therefore be subject to the same restrictions. Financial covenants, permitted debt definitions, permitted investments and other terms of loan documents may need modifications to allow borrowers to access this government relief without technical defaults. Companies in this position should talk to their legal counsel and their lenders now about any necessary amendments or waivers of their loan documents to allow this or any other federal emergency loan. Many existing lenders will be supportive of these requests, and many may actually encourage their portfolio borrowers to apply for SBA support.

### **Necessary Forms**

The following basic forms will be required during the application process:

- Completed SBA loan application (SBA Form 5; Form 5c for sole proprietors and home-based businesses).
- IRS Form 4506-T. This form must be completed and signed by each applicant business, each principal owning 20% or more of the applicant business, each general partner or managing member and any owner who has more than a 50% ownership in an affiliate business. (Note that affiliates include a parent company, subsidiaries and/or businesses with common ownership or management.)
- Completed copies of the applicant's most recent federal income tax return.
- Schedule of Liabilities (SBA Form 2202).
- Personal Financial Statement (SBA Form 413D). This form must be completed by each principal owning 20% or more of the applicant business or each general partner or managing member, if applicable.

The following set of forms will likely be requested during the application process and should be obtained prior to applying for a more streamlined process:

- Completed copy, including all schedules, of the most recent personal federal income tax returns for each principal owning 20% or more of the applicant business, each general partner or managing member, and each affiliate.
- If applicant businesses do not have completed 2019 business tax returns, submit a year-end profit and loss statement and balance sheet for 2019.
- Current year-to-date profit and loss statement.
- Monthly sales figures (SBA form 1368).

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