Lowndes

Insights

SBA Reopens EIDL Loan and Grant Applications for Disaster Relief

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As of June 15, the Small Business Administration (SBA) again began accepting Economic Injury Disaster Loan (EIDL) and EIDL grant (Grant) applications from qualifying small businesses in addition to agriculture businesses. (More details can be found here.) Prior to COVID-19, eligible businesses located in a declared disaster area that suffered a substantial economic injury due to the declared disaster could apply for an EIDL. The Coronavirus Aid, Relief, and Economic and Security Act (CARES Act) expanded the EIDL program to aid businesses affected by COVID-19.

Although the expanded EIDL program provides financial relief for many businesses, the myriad of regulatory requirements that businesses must meet to receive an EIDL caused confusion among many small business owners.

Qualifying Businesses

The CARES Act expanded which businesses can apply for an EIDL for a certain period of time. From January 1, 2020 to December 31, 2020 (the "covered period"), businesses, tribal businesses, cooperatives and employee stock ownership plans each with no more than 500 employees can apply for an EIDL. Further, any individual operating as a sole proprietor or as an independent contractor, private non-profit organizations and small agriculture cooperatives are also eligible to apply for an EIDL.

Businesses that were eligible prior to the CARES Act, including small business concerns, small agricultural cooperatives and private nonprofit organizations, will remain eligible after December 31, 2020. The eligible entities that can apply for an EIDL may also apply for a Grant during the covered period. The SBA provides a checklist to determine whether your business qualifies.

EIDL Terms

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The EIDL interest rate for small businesses is 3.75% and for non-profits is 2.75% with a loan term that can be up to 30 years. Only for EIDL amounts greater than $25,000 must a business provide the SBA collateral to secure the repayment of the EIDL. In addition, if the EIDL amount is $200,000 or less, businesses will not be required to provide personal guarantees.

Use of Proceeds

Once a business receives an EIDL, it must continue to comply with the EIDL terms as non-compliance may lead to criminal prosecution or civil or administrative action. There are specific regulations on how a business can use the EIDL proceeds.

Businesses can use EIDL proceeds only on the following items:

- Working capital necessary to carry the business concern until the business resumes normal operations; and
- Expenditures necessary to alleviate the specific economic injury, which cannot exceed that which the business could have provided had the injury not occurred.

The CARES Act further expands the EIDL program to allow eligible businesses to apply for a Grant in the amount of $10,000. Businesses can use the Grant proceeds for the items referenced above as well as:

- Providing paid sick leave to employees unable to work due to the direct effect of COVID-19;
- Maintaining payroll to retain employees;
- Meeting increased costs to obtain materials unavailable from the applicant's original source because of interrupted supply chains;
- Making rent or mortgage payments; and
- Repaying obligations that cannot be met due to revenue losses.

Importantly, businesses cannot use their EIDL or Grant proceeds to:

- Refinance indebtedness incurred prior to the disaster event;
- Make payments on loans owned by another federal agency (including the SBA) or a Small Business Investment Company;
- 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; and
- 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 concern.

PPP Loan & EIDL & Grant

The laws regarding the Paycheck Protection Program (PPP) interplay with the EIDL and Grant program. Businesses may still apply for a PPP loan if they previously received an EIDL. If a business (i) received its EIDL after January 31, 2020 and before April 3, 2020 and (ii) used its EIDL for payroll costs, the business must use its PPP loan to refinance its EIDL. Further, a PPP loan applicant must certify that it will not use its PPP loan proceeds for the same purposes as its EIDL proceeds. Lastly, the money received from a Grant will be deducted from the loan forgiveness amount of the PPP loan.

If you think you are eligible for an EIDL or Grant, do not hesitate to contact an attorney to discuss questions you may have regarding your eligibility and use of the EIDL or Grant proceeds.