

>> COVID-19 ALERT

U.S. Federal Government Proposes Various Changes to SBA Loan Programs to Assist Small Businesses Affected by Coronavirus

THE BOTTOM LINE

- >> To alleviate the economic hardships of COVID-19 on small businesses, the President signed into law the Coronavirus Preparedness and Response Supplemental Appropriations Act, which increased funding for the SBA's Economic Injury Disaster Loan Program and declared COVID-19 a disaster for which Economic Injury Disaster Loans may be provided.
- >> The federal government is considering various additional proposals to amend the existing SBA loan programs, as well as to create new loan and grant programs to protect small businesses.
- >> D&G will continue to monitor the legislation in this area as it becomes signed into law.

In light of the economic impact of the COVID-19 pandemic, the federal government has taken steps to expand the availability of, and streamline the process for, obtaining loans administered by the U.S. Small Business Administration (SBA). In addition, further changes are expected as part of a sweeping stimulus package, which is currently under negotiation in Congress.

It is important to note that while a business must satisfy multiple requirements to be eligible for SBA loans, the threshold determination is whether the business qualifies as a small business pursuant to the SBA size standards. For additional information on eligibility requirements and the terms of certain loans provided by the SBA, including loans provided under the Economic Injury Disaster Loan Program (EIDL) and the 7(a) Loan Program, please refer to [our SBA Flyer](#).

ENACTED LEGISLATION

The Coronavirus Preparedness and Response Supplemental Appropriations Act (the Act), which was signed into law on March 6, 2020, addresses the EIDL. Through the EIDL, the SBA provides eligible small businesses with working capital loans of up to \$2 million in the event of substantial economic injury due to a declared disaster.

In response to the economic injury suffered by small businesses in the United States due to COVID-19, the Act:

- >> Declared COVID-19 a disaster for which Economic Injury Disaster Loans (EIDL) may be provided and
- >> Provided an additional \$20 million to the SBA for administrative expenses to carry out the EIDL.

In addition, the SBA administrator issued relaxed criteria for states seeking economic injury declarations, including making available disaster assistance loans statewide following an economic injury declaration (whereas previously injury declarations were required on a county by county basis).

An up-to-date listing of the states for which disaster declarations have been made can be found [here](#).

PROPOSED CHANGES AS OF MARCH 23, 2020

As part of the federal government's COVID-19 stimulus package, proposals have been made in the Senate, the House of Representatives and by the White House to provide greater economic relief to small businesses. These proposals seek to amend the terms of the SBA's existing loan programs and create new programs and policies to provide small businesses with additional financial relief. To date, the Senate introduced draft legislation and the leaders of the House of Representatives have announced an intention to prepare a competing bill. While it is unlikely that all of the proposals will be passed by Congress and signed by the President, some elements of these proposals have been endorsed by members of both the Senate and the House.

The proposals have included the following:

Potential Changes to the EIDL Program

In addition to the changes made by the Act, the pending and/or announced plans have included proposals that would:

- 1) Utilize balances from other disaster subsidies for COVID-19-related EIDLs to prevent the need for the federal government to appropriate additional funds to the EIDL Program and

- 2) For EIDLs not exceeding \$350,000, allow the SBA to rely solely on an applicant's credit score for purposes of determining the ability to repay EIDLs and eliminate the SBA's requirement that an applicant exhaust other credit options.

Potential Changes to the SBA 7(a) Loan Program

Plans from both the Senate and the House have also addressed the 7(a) Loan Program, including proposals that would:

- 1) Increase the amount of loans available by \$300 billion;
- 2) Temporarily permit businesses with 500 or fewer employees to be eligible to receive 7(a) loans regardless of whether such business qualifies as a small business under the SBA size standards;
- 3) Increase the maximum loan amount from \$5 million to \$10 million;
- 4) Expand the permitted uses of proceeds to include payroll support, paid sick leave, mortgage payments, rent payments and servicing existing debt;
- 5) Temporarily waive upfront and annual servicing fees that are

charged to borrowers and lenders;

- 6) Temporarily permit the SBA to guarantee up to 100 percent of the loan amount (regardless of the loan size);
- 7) Increase the maximum loan amount for SBA Express Loans from \$350,000 to \$1 million; and
- 8) Temporarily provide forgiveness of certain 7(a) loans in an amount equal to the cost of maintaining payroll continuity for a prescribed period.

Recovery Grants

Announced proposals would permit the federal government to provide grants of up to \$50,000 to small businesses that:

- 1) Are denied an EIDL;
- 2) Employ between two and 50 employees; and
- 3) Can demonstrate losses of at least 50 percent for a period of at least one month as a result of the pandemic.

The proceeds of these grants can be used for any purpose permissible under the EIDL Program, including for paid sick leave, maintaining payroll and repaying existing obligations.

Small Business Debt Relief

To relieve the burden of current SBA loans on small businesses, the announced proposals would:

- 1) Provide existing SBA borrowers with relief from SBA loan payments (i.e., principal, interest and fees) for six months;
- 2) Permit banks to extend the duration of existing loan terms; and
- 3) Provide an extension on certain reporting requirements.

Small Business Resiliency

One announced proposal would allow businesses already approved for EIDL to borrow an additional 20 percent to pay for business continuity and resilience improvements to ensure that these businesses are better equipped to handle any new economic disturbances.

Direct Lending Program

Plans also include proposals for an additional lending program under which the SBA would loan money directly to small businesses impacted by COVID-19.

The proposed direct lending programs would:

- 1) Provide \$100 billion of zero interest and zero fee loans of up to \$2.5 million, with ten year terms and no repayment obligations for the first year;
- 2) Allow loan proceeds to be used to pay off or refinance existing debt, provide employee benefits, for payroll purposes and to purchase technology to promote business continuity during the pandemic;
- 3) Restrict the SBA from declining to make a loan due to insufficient collateral; and
- 4) Forgive up to 50 percent of the loan value if the borrower retains the same number of employees on December 31, 2021 as when they received the loan.

FOR MORE INFORMATION

Justin R. Pollak
Partner
212.468.4889
jpollak@dglaw.com

Lara E. Cohen
Associate
212.468.4983
lcohen@dglaw.com

Julie M. Makowski
Associate
212.468.4924
jmakowski@dglaw.com

or the D&G attorney with whom you have regular contact.

Davis & Gilbert LLP
212.468.4800
1740 Broadway, New York, NY 10019
www.dglaw.com

© 2020 Davis & Gilbert LLP