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Assessing Your Organization's Stimulus Program Options

The COVID-19 pandemic is impacting every business sector in the United States. The federal government and the Commonwealth of Pennsylvania have announced various stimulus programs to assist eligible businesses to receive certain economic benefits. Babst Calland's Corporate and Commercial attorneys are following new and existing stimulus programs currently being offered.

This is a time-sensitive opportunity to consider how these programs may apply to your business. Various programs are summarized below for your convenience. Together, we can help you navigate this crisis and prepare your organization to continue thriving in the months and years ahead. ***To schedule a private conversation to help you evaluate whether these programs are right for your company, contact Moore Capito at 304.552.8986 or mcapito@babstcalland.com.***

ECONOMIC INJURY DISASTER LOAN

Description

An Economic Injury Disaster Loan (***EIDL***) is a long-term, low-interest loan that provides small businesses with working capital of up to $2 million directly from the U.S. Treasury. The intent of this federal program is to provide six months of working capital to qualified applicants.

In response to the impacts of the COVID-19 pandemic, the U.S. Small Business Administration (***SBA***) has lifted certain requirements to make it easier for small businesses to receive an EIDL.

Who is eligible to receive it?

Small businesses and sole proprietors in all 50 states, Washington, D.C., and U.S. territories may apply for an EIDL, so long as they do not exceed the size standard for the industry in which they operate. For a list of the size standards per industry, click here. Eligibility is also based on a series of factors set forth on the application.

What are the terms of the loan?

An EIDL has a maximum 30-year term, with a 3.75% interest rate for small businesses and 2.75% interest rate for non-profit businesses, with no fees or closing costs. Normally, an EIDL requires collateral for any loans over $25,000, but this requirement has been waived due to the COVID-19 pandemic.

A small business can expect to receive funds roughly 25 to 30 days after submitting the loan application.

What can the loan be used for?

The funds can be used to pay fixed debts, real estate payments, payroll, accounts

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payable, and other bills that cannot be paid because of the disaster's impact, as well as be used to purchase equipment and machinery. The loan proceeds cannot be used to refinance long-term debt.

How to apply?

The application can be submitted online through the SBA's website here. An applicant should expect to provide the following:

- Business Loan Application (Form 5)
- Tax Information Authorization (IRS Form 4506T)
- Complete copies of most recent federal income tax returns
- Personal Financial Statement (SBA Form 413)
- Schedule of Liabilities listing all fixed debts (SBA Form 2202 may be used)

These forms will apply to the applicant, principals owning 20% or more of the business, general partners, and/or managing members. Applicants should be prepared to provide two to three years of tax returns, prior year financial statements, year-to-date financial statements, property leases, and working knowledge of business and personal credit scores.

PAYCHECK PROTECTION PROGRAM

Description

The Paycheck Protection Program (***PPP Loan***), enacted as part of the Coronavirus Aid, Relief, and Economic Security Act (***CARES Act***), is a $350 billion federal program designed to provide loan assistance to qualifying small businesses to retain workers, maintain payroll, and cover other qualifying expenses such as mortgage interest payments, group health benefits, rent payments, lease obligations, utility expenses, and interest on any other debt incurred before the Cover Period (as defined below). PPP Loans are 100% federally guaranteed loans and forgivable in certain instances. If forgiven, the loan is not taxable. PPP Loan proceeds can be used to pay payroll expenses, debt obligations, and other qualifying expenses during an eight-week period between February 15, 2020 to June 30, 2020 (***Covered Period***).

Who is eligible to receive it?

Any small business, 501(c)(3) nonprofit, 501(c)(19) veterans organization, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act that employs 500 employees or fewer, or the applicable size standard for the industry as provided by the Small Business Act, if higher, is eligible to receive a PPP Loan.

Restaurants, hotels, and businesses that fall within the definition of "Accommodation and Food Services" according to the North American Industry Classification System (***NAICS***) code 72 are eligible if each physical location employs 500 or fewer employees.

Sole proprietors, independent contractors, gig economy workers, and other self-employed individuals are also eligible for a PPP Loan.

Note, a qualifying business may not take out an Economic Injury Disaster Loan (***EIDL***) and PPP Loan for the same purpose, however, an EIDL may be refinanced into a PPP Loan subject to certain terms and provisions.

How much money can be borrowed?

Generally, the maximum amount a qualified applicant may borrow under this program will be 2.5 times the average total monthly "Payroll Costs" for the one-year period before the PPP Loan is made. However, under no circumstances can any applicant borrow more than a maximum amount of $10 million. Note, separate calculations designed to address seasonal employers or employers that did not exist prior to June 30, 2019 are provided for in the CARES Act.

How to apply?

Applicants can apply directly to lending institutions that are already approved SBA lenders or that have been recently approved by the U.S. Department of Treasury. An applicant need not contact the SBA or any other governmental entity to apply. To locate an SBA-approved lender in your area, use the Lender Match online referral tool on SBA's website (click here). There is no fee to apply for a PPP Loan.

Applicants may apply for a PPP Loan anytime during the Covered Period.

How much of the loan is forgiven?

The amount of principal that may be forgiven is determined by the expense and time frame in which the expense occurred. Only expenses related to payroll costs, interest payments on mortgages, rent payments, lease payments, and utility agreements are eligible for forgiveness. While funds may be used to pay other expenses or obligations, those amounts will not be forgiven.

Payroll costs include salaries (up to an annual rate of pay of $100,000), hourly wages and tips, paid or medical leave, and health insurance premiums. For mortgage interest, rent, and utility expenses to be forgiven, the related agreements must have been effective before the start of the Covered Period.

The amount of principal to be forgiven may be reduced if not all employees are retained at the same monthly average compensation as during the previous 12-month period. In other words, if a business keeps all its employees, the entirety of the loan will be forgiven. The amount forgiven will be proportionately reduced based on the percentage decrease in workforce. Additionally, if payroll costs (associated with workers making less than $100,000 annually) decreases more than 25%, the amount forgivable will be proportionately reduced by a number equal to the percentage decrease. Finally, decreases related to reduction in workforce and/or payroll costs will not affect the amount of forgiveness if the employees are reinstated and/or costs are restored by June 30, 2020.

The lender is required to render a decision on the amount of principal to be forgiven within 60 days of receiving an application for forgiveness. If the full principal of the loan is forgiven, there is no interest due to the lender for the eight-week period. If less than the entire amount is forgiven, the interest due to the lender is governed by the terms entered into by the borrower and the lender.

COVID-19 WORKING CAPITAL ACCESS PROGRAM

Description

Pennsylvania Governor Tom Wolf announced that $60 million in funding has been made available to provide working capital loans to small businesses located in the Commonwealth of Pennsylvania through the COVID-19 Working Capital Access Program (***CWCA***). The intent of the CWCA is to provide working capital to eligible Pennsylvania businesses. The CWCA is administered by the Pennsylvania Industrial Development Authority (***PIDA***).

It is anticipated that these funds will be in high demand. Demand will most likely exceed the funding available. Eligible small businesses in need of assistance should begin compiling the necessary paperwork and documentation to obtain funding immediately.

Who is eligible to receive it?

Businesses located in Pennsylvania having 100 or fewer full-time employees worldwide at the time of application are eligible to apply for a CWCA loan.

What can the loan be used for?

The CWCA loan proceeds must be used for operational working capital needs. The loan proceeds cannot be used to pay expenses relating to fixed assets or to acquire production machinery and equipment. In addition, the loan proceeds cannot be used for loan repayments, dividend distributions, financing a project located outside of the Commonwealth, or for future or projected costs.

What are the terms of the loan?

A CWCA loan has a three-year term. No payments are due during the first year. Principal and interest, if applicable, will be due monthly for years two and three, and a balloon payment will be due and payable at the end of the third year. Interest rates are 0%, except for agricultural producers, which loans will be subject to a fixed 2% rate during the life of the loan. No matching investment is required, except for retail/service enterprises, and there are no job retention or creation requirements. For retail/service enterprises, the CWCA program can finance 50% of eligible working capital costs up to $100,000.

How to apply?

Loan applications are submitted to the Certified Economic Development Organization (***CEDO***) that services the county where the business is located (see the full list of CEDOs here). Applicants are required to provide a Project Narrative, Company Profile Sheet, W-9 Form, Certification Sheet, Debt Schedule, Cash Flow Analysis Statement, Personal Financial Statement, and other additional information, including financial statements and a credit report. The CEDO will review the application and forward completed applications to PIDA. Applicants will be responsible for direct costs associated with the application process, such as costs associated with obtaining a credit report and submitting financial filings.

Eligible small businesses in need of assistance should begin compiling the necessary paperwork and documentation immediately to obtain funding given the limited resources available.

PENNSYLVANIA SHARED-WORK PROGRAM

Description

The Pennsylvania Shared-Work Program (**Shared-Work Program**) allows employers to temporarily reduce the work hours of a group of employees, and those in the "group" become part of a "shared-work plan". When the reduction occurs, those employees in the shared-work plan are eligible to receive unemployment benefits associated with the hours that they lost due to the reduction. The goal of the Shared-Work Program is to keep employees on companies' payrolls rather than laying them off completely. In short, employees receive "shared-work" unemployment compensation benefits during the reduction period, and employers retain their skilled workforce during a temporary slowdown.

Who comprises a shared-work group?

At least two participating employees in one affected unit or a department, shift or other organizational unit defined by the employer. Generally, all employees in the affected unit are required to participate in the shared-work plan, except for employees employed for less than three months or employees who work 40 hours or more a week.

How does it work?

Employees participating in a shared-work plan will have their work hours reduced by at least 20% but not more than 40%. This reduction percentage must be the same for all employees participating in the shared-work group. The employees receive a percentage of their maximum allowable unemployment compensation equal to the reduction percentage (i.e., if the employees' hours are reduced by 25%, then they would receive 25% of their maximum permitted unemployment compensation).

The shared-work plan will automatically terminate upon the expiration date provided for in the plan, or an employer may terminate the plan prior to the expiration date by providing written notice to the Office of UC Benefits Policy.

What are the qualifications and restrictions?

An employer may participate in the Shared-Work Program if it has filed all unemployment compensation tax reports and paid all amounts due under Pennsylvania unemployment compensation law, has a positive reserve account balance (for contributory employers), and has paid wages for the last 12 consecutive quarters.

While enrolled in the Shared-Work Program, an employer agrees not to hire new employees in, or transfer employees to, the unit affected by the shared-work plan during the effective period. The employer also agrees to not lay off participating employees during the effective period or reduce a participating employee's hours by more than the reduction percentage, except during holidays, designated vacation periods, equipment maintenance or similar circumstances. Any change in the reduction percentage needs to be approved by the Department of Labor and Industry (***Department***) as part of a modified plan. Fringe benefits need to continue to be available to participating employees not covered by a collective bargaining agreement.

How to apply?

Applicants must complete a Pennsylvania Unemployment Compensation Shared-Work Plan application, which can be started online here. The application should include the following:

- The name of the applicant and the affected unit that will be subject to the shared-work plan;
- The reduction percentage of shared-work employees' hours;
- The beginning date of the reduction in hours;
- The end date of the reduction in hours;
- Any period that the hours of work will be reduced by more than the reduction percentage due to holidays, vacations, equipment maintenance or similar circumstances;
- All participating employees' names, Social Security numbers, normal weekly hours and reduced hours; and
- The union's approval of the proposed plan, if participating employees are covered by a collective bargaining unit.

Applications will be reviewed within 15 days of receipt. The decision to approve a shared-work plan is within the Department's discretion and is not appealable. If denied, employers are permitted to submit new applications.

For more information from the Office of Unemployment Compensation, click here.

For more information on any of the programs above or for assistance in applying for any the programs, please contact Babst Calland Attorneys Moore Capito at 304.552.8986 or mcapito@babstcalland.com, Christian Farmakis at 412.394.5642 or cfarmakis@babstcalland.com, or Andrew Terranova at 412.773.8717 or aterranova@babstcalland.com.