

CARES Act – Finally Some Relief to the Hospitality Industry

By Ronald R. Martinez, Senior Manager

The reduction of revenues or lack thereof has caused enormous strain on the owners of hotels, restaurants, and catering facilities. The provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020, provides owners of hotels and restaurants the opportunity to obtain working capital either through:

- Economic Injury Disaster Loans (EIDLs), or the
- Paycheck Protection Program (PPP)

EIDL versus PPP

Both programs are administered by the Small Business Administration (SBA). A company can qualify to obtain either or both loans, if it has fewer than 500 employees or meets the annual receipts thresholds that apply to your specific type of hospitality business, as set forth in the SBA size standards.

The following is a brief overview and comparison of the two programs:

	EIDL	PPP
Loan size	Up to \$2,000,000, as determined by the SBA	Lesser of \$10 million or 2.5x monthly average payroll costs (see below)
Eligible for loan forgiveness	No	Yes, see below for further details. Amount forgiven is <u>excluded from taxable income.</u>
Affiliation rules apply	Yes	No (waived for hotels and restaurants, entities operating under the NAIC code beginning with 72)
Interest rate	up to 3.75% for small businesses and up to 2.75% for nonprofits	up to 4.00%
Amortization period	up to 30 years	Up to 10 years for the amount not forgiven
Lender	SBA	Banks and lenders enrolled in the SBA 7(a) program, or any qualified lender, as determined by the SBA
Immediate advance	Up to \$10,000, does not have to be repaid even if the loan is denied	No
Eligibility requirements	<ul style="list-style-type: none"> • Located in a “Disaster Area” • Qualified small business (under SBA size standards) 	Companies with less than 500 employees per <u>physical location</u>
Personal guarantee	Waived for loans up to \$200,000	None
Ability to obtain credit elsewhere provision	Waived	None
Collateral	Waived	None

	EIDL	PPP
Allowable uses of loan proceeds	Ordinary and necessary business expenses	Payroll costs, interest on mortgage obligations, rent and utilities
Non-allowed uses of loan proceeds	<ul style="list-style-type: none"> • Refinancing existing debt • Payment of other federal agency loans • Paying federal, state or local tax penalties or fines • Repairing physical damage • Making distributions to owners other than <u>reasonable</u> remuneration 	Payment of salaries of employees making more than \$100,000
Can be transferred to a PPP Loan?	Yes	N/A

The capital needs and situation for each company may differ. A company should address the following questions in deciding which program best suits them. In general:

1. How much capital does the company need?
2. Does the company need a quick infusion of cash to cover current expenses?
3. When was the effective date of employee furloughs?
4. How many full time equivalents (FTEs) were there:
 - Prior to the closure of the hotel?
 - After the closure of the hotel?
5. Is there a plan to rehire the laid off employees? If yes:
 - When?
 - How many employees will be brought back after the facility re-opening?
6. Were the wages of the retained employees reduced? If yes,
 - By how much in percentage terms? and
 - Is it in excess of 25% per employee?

Further Details about the PPP Loan

An entity is limited to one PPP loan per location. Each PPP loan will be registered under a Taxpayer Identification Number at SBA to prevent multiple loans to the same entity. A company can qualify for both PPP and EIDL. An entity that obtains an EIDL between February 15, 2020 and June 30, 2020 can refinance that loan into a PPP loan.

The PPP defines payroll costs to:

- **include**
 - salaries, wages, tips;
 - vacation, medical or sick leave health and retirement benefits, and
 - state and local wage taxes.
- **exclude**
 - annual compensation over \$100,000 for any individual employee
 - compensation of employees whose principal place of residence is outside of the United States
 - qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act

Employers are eligible for a 50 percent refundable payroll tax credit on wages paid up to \$10,000 per employee during the crisis. It would be available to employers whose businesses were disrupted due to

virus-related shutdowns and firms experiencing a decrease in gross receipts of 50 percent or more when compared to the same quarter last year. The credit is available for employees retained but not currently working due to the crisis for firms with more than 100 employees, and for all employees for companies with 100 or fewer employees. However, the credit is not available for those taking a PPP loan.

The CARES Act also allows employers to significantly defer the deposit of the employer's share of social security taxes (but not Medicare taxes). Specifically, all employer social security taxes, otherwise required to be deposited between March 27, 2020 and December 31, 2020, are not required to be deposited on the normal deposit schedule. Instead, half of such taxes would be required to be deposited by December 31, 2021. The remaining deferred social security taxes would be required to be deposited by December 31, 2022. A company can elect to utilize this deferral option; however, this deferral provision will not apply if the company obtains a PPP loan, and the PPP loan is then forgiven.

PPP Loan Forgiveness

The PPP loan can be forgiven if the proceeds from the PPP loan are used to pay:

- Payroll costs
- Interest and certain mortgage obligations
- Rent and utilities

The PPP loan amount that can be forgiven is based on the ratio of:

$$\frac{\text{Average Number of FTEs per month from the loan date to June 30, 2020}}{\text{Average Number of FTEs per month from February 15, 2019 to June 30, 2019}^*}$$

* A borrower can alternatively choose to use the period January 1, 2020 to February 29, 2020

The PPP loan amount that can be forgiven is reduced by any wage reductions in excess of 25% per employee, and the temporary reduction in head count made between February 15, 2020 and April 26, 2020 will not reduce forgiveness if corrected by June 30, 2020.

An entity must apply for forgiveness of the PPP loan to its PPP loan lender. In this application, the entity must include:

- Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings.
- Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities.
- Certification from a representative of the entity that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the PPP's guidelines for use.

Any loan amounts not forgiven at the end of one year are carried forward as an ongoing loan. Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the PPP loan.

Other Matters

Most of the hotels and restaurant companies sponsor retirement plans. We encourage you to refer the following PKF O'Connor Davies' recent articles as these may be of assistance:

- [Employee Benefits Update](#)
- [The CARES Act and Qualified Retirement Accounts](#)

The CARES Act has various provisions that can also help entities with regard to income taxes. Stay tuned to future articles that we will be issuing. For now, we recommend that you review the following matters relative to your hospitality business:

- Unused or limited NOLs from 2018 or estimated amount up to 2019
- An excess business loss limitation from 2018
- Large 2019 overpayments that would be credited to 2020 estimated tax obligations
- Qualified improvement property placed in service in 2018 or 2019
- Unused business AMT credits
- 2019 business interest expense limitation

Contact Us

We invite you to visit our [COVID-19 Resource Center](#) for information on various business matters related to the pandemic.

If you have any questions on the topics discussed in this bulletin as they pertain to the hospitality industry, please do not hesitate to reach out to any of the below. We are here to help.

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