Obtaining SBA Loans for Physicians and Other Providers under the CARES Act

Tuesday, April 7, 2020 | 12:30 PM Eastern
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All attendees may type your questions into the “Question Box” on your control panel, either during or after the presentation. We will leave approximately 30 minutes for a Q&A session towards the end of the webinar.
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The Panel

• Speakers:
  • James (Jim) Daniel, Partner, Hancock, Daniel, & Johnson, P.C., Richmond, VA
  • Chrissy Legget, Senior Manager, HORNE LLP, Hattiesburg, MS

• Moderator:
  • A. Jay Chauhan, DO, FAOCO, President, Chicago Medical Society, Chicago, IL
Objectives

• Participants will understand the assistance provided by the SBA as a result of negative economic conditions created by the Coronavirus
• Participants will understand the eligibility criteria, including the SBA affiliation rules under 13 CFR § 121.301 applicable to SBA assistance
• Participants will understand the requirements, if any, imposed upon receipt of funds under these assistance programs
• Participants will understand the consequences of providing false, misleading or fraudulent information in an application for SBA assistance.
SBA Funding Options

• Paycheck Protection Program (PPP) – Section 7(a)

• Economic Injury Disaster Loan (EIDL) – Section 7(b)

• EIDL Loan Advance

• SBA Express Bridge Loans

• Small Business Debt Relief Program
Paycheck Protection Program (PPP)

- Section 1102 of the CARES Act
- Section 7(a) Covered Loan through the SBA
  - Maximum loan amount of $10 million
  - 1.0% interest rate
  - 2 year repayment period (with 6-month deferral)
  - 100% guarantee by SBA (forgiveness component)
  - No collateral required
  - No credit history/repayment review – no personal guarantee required
  - No borrower or lender fees payable to SBA
  - Lender/Reviewer – Financial Institutions
Paycheck Protection Program (PPP)

Eligibility Criteria:
- Small business with <500 employees
- Small business that otherwise meets SBA’s size standard
- 501(c)(3) with <500 employees (See Slide 23)
- Individual who operates as a sole proprietor
- Individual who operates as an independent contractor
- Individual who is self-employed who regularly carries on any trade or business
- Tribal business concern that meets SBA size standard
- 501(c)(19) Veterans Organization that meets SBA’s size standard
- Operating on February 15, 2020
- Had employees receiving salaries and payroll taxes (or independent contractors) on February 15, 2020
- Use of Funds: payroll, rent/lease, mortgage interest, other
Paycheck Protection Program (PPP)

• Special Eligibility Rules:
  • The <500-employee rule is applied on a per physical location basis for businesses in the accommodation and food services sector (NAICS 72).
  • The normal affiliation rules do not apply for businesses operating as a franchise or receiving financial assistance from an approved Small Business Investment Company.

Note: The 500-employee threshold includes all employees, including full-time, part-time, temporary, seasonal, etc.
Affiliation

- For purposes of determining the number of employees of an applicant to the Paycheck Protection Program, the applicant is considered together with its affiliates.
- Concerns and entities are affiliates of each other when one controls or has the power to control the other or a third party or parties controls or has the power to control both 13 CFR § 121.301(f).
- Control does not have to be exercised.
- Four affiliation tests under 13 CFR § 121.301(f).
Tests for Affiliation

• Affiliation based on ownership, 13 CFR § 121.301(f)(1)
• Affiliation arising under stock options, convertible securities, and agreements to merge, 13 CFR § 121.301(f)(2)
• Affiliation based on management, 13 CFR § 121.301(f)(3)
• Affiliation based on identity of interest, 13 CFR § 121.301(f)(4)
Ownership

• An entity is affiliated if it owns or has the power to control more than 50% of the applicant’s voting equity
• A minority shareholder can be found to be in control if that entity can prevent quorum or otherwise block action by the board of directors or shareholders
Stock Options, Convertible Securities and Agreements to Merge

- Treats such options, securities and agreements though the rights have been granted
- Agreements to open or continue negotiations at some later date are not given present effect
- Instruments subject to conditions precedent which are incapable of fulfillment or extremely remote probability of the transaction or exercise occurring will not be given present effect
Affiliation Based on Management

- Affiliation arises where the CEO or other individuals controlling the management of one concern also controls the management of one or more other concerns.
- Affiliation arises where a single individual, concern or entity that controls the board or management of one concern also controls the board or management of one or more concerns.
- Affiliation arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.
Affiliation Based on Identity of Interest

- Individuals or firms that have identical or substantially identical business or economic interests may be treated as one party:
  - Close relatives - spouse; a parent; or a child or sibling, or the spouse of any such person, 13 CFR § 120.10
Significant Developments

• 4/2/20 – SBA published Interim Final Rule for PPP loan
  • Applicants are subject to affiliation rules under 13 CFR §121.301(f) unless waived in the Act;
  • Noted intent to promptly issue additional guidance regarding applicability of affiliation rules at 13 CFR §§ 121.103 and 121.301 to PPP loans
Significant Developments

- 4/3/20 – SBA published Interim Final Rule for PPP loan
  - Reaffirmed affiliation rules for borrowers citing 13 CFR §121.301
  - Prior to CARES Act non-profit entities were not eligible for assistance under 7(a) of the Small Business Act
  - CARES Act made non-profit entities eligible for assistance and subjected them to the SBA affiliation standards
  - There is confusion created by Act regarding which set of SBA affiliation rules govern non-profits, 13 CFR 121.103 (government contracting) or 13 CFR 121.301 (financial assistance)
  - Exempts affiliations between faith-based organizations if the affiliation is based on a religious teaching or belief or otherwise constitutes a part of the exercise of religion.
Significant Developments

- Four tests apply to participants in the Paycheck Protection Program
  - Affiliation based on ownership
  - Affiliation arising under stock options, convertible securities and agreements to merge
  - Affiliation based on management
  - Affiliation based on identity of interest
Special Issues in Healthcare

a) 501(c)(3)’s
b) Private Equity “Roll Ups”
c) Hospital Subsidiaries (NFP+FP)
d) Ambulatory Surgery Center and other Joint Ventures
e) Management agreements
Private Equity and Venture Capital Firms

- PPP Affiliation Rules apply to the number of employees
- Common methods by which the PE/VC Firm is an Affiliate of the Portfolio Company (any one is sufficient unless the waiver applies):
  - Ownership
  - Negative Control
  - Economic Dependence
  - Identity of Interest
  - Totality of the Circumstances
Paycheck Protection Program (PPP)

- Lenders will require good faith certification that:
  - The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
  - The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments.
  - Borrower does not have an application pending for a loan duplicative of the purpose and amounts applied for under PPP.
  - From February 15, 2020 to December 31, 2020, the borrower has not received a loan duplicative of PPP.
    - There is an opportunity to fold EIDL made between January 31, 2020 and April 3, 2020 into a new PPP loan.
  - For independent contractor, sole proprietor, or self-employed individual, lenders will also request certain documents such as payroll tax filings, Forms 1099-MISC, and income and expenses from the sole proprietorship.
False Statement

- Each applicant certifies that the information provided in the application and all supporting documents is true and accurate in all material respects.
- Application states knowingly making a false statement is punishable by:
  - 18 USC 1001 and 3571
    - Imprisonment of not more than 5 years
    - Fine up to $250,000
  - 15 USC 645
    - Imprisonment of not more than 2 years
    - Fine up to $5,000
  - 18 USC 1014 (if submitted to a federally insured institution)
    - Imprisonment of not more than 30 years
    - Fine up to $1,000,000
Paycheck Protection Program (PPP)

• Maximum Loan Amount = 2.5 x average total monthly payroll costs incurred during the year prior to the loan date (not to exceed $10M)

• For Businesses not Operational in 2019 = 2.5 x average total monthly payroll costs incurred for January and February 2020

• For Seasonal Employers = 2.5 x average total monthly payments for payroll costs for the 12-week period beginning February 15, 2019 or March 1, 2019 and ending June 30, 2019
Paycheck Protection Program (PPP)

• Payroll Cost **Includes:**
  • **For Employers:** The sum of payments of any compensation with respect to employees that is a:
    • Salary, wage, commission, or similar compensation
    • Payment of cast tip or equivalent
    • Payment for vacation, parental, family, medical, or sick leave
    • Allowance for dismissal or separation
    • Payment required for the provisions of group health care benefits, including insurance premiums
    • Payment of any retirement benefit
    • Payment of state or local tax assessed on the compensation of the employee
Paycheck Protection Program (PPP)

• Payroll Cost **Includes**:  
  • **For Sole Proprietors, Independent Contractors, and Self-Employed Individuals**: The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation **and** that is in an amount that is not more than $100,000 in one year, as pro-rated for the covered period.
Paycheck Protection Program (PPP)

• Payroll Cost **Excludes:**
  • Compensation of an individual employee in excess of an annual salary of $100,000
  • Payroll taxes, railroad retirement taxes, and income taxes
  • Any compensation of an employee whose principal place of residence is outside of the United States
  • Qualified sick leave wages for which a credit is allowed under Section 7001 of the Families First Coronavirus Response Act (FFCRA); or qualified family leave wages for which a credit is allowed under Section 7003 of the FFCRA
Paycheck Protection Program (PPP)

- Potential Loan Forgiveness:
  - Section 1106 of CARES Act
  - Equal to the amount the borrower spent on the following items during the 8-week covered period, which begins on the date of loan origination:
    - Payroll costs
    - Interest on mortgage obligation incurred in the ordinary course of business
    - Rent on a leasing agreement
    - Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
    - For borrowers with tipped employees, additional wages paid to those employees
Paycheck Protection Program (PPP)

- **Limits on Amounts of Forgiveness:**
  - The loan forgiveness cannot exceed the principal.
  - Not more than 25% of the forgiven amount may be for non-payroll costs (at least 75% must be used for payroll costs)
  - Reduction based on Reduction in Number of Employees
    - Payroll Cost x Average # of FTEs per Month for 8-week Covered Period divided by one of the following:
      - Option 1: Average # of FTEs per month from February 15, 2019 to June 30, 2019 (This option applies to Seasonal Employers.)
      - Option 2: Average # of FTEs per month from January 1, 2020 to February 29, 2020
  - Reduction based on Reduction in Salaries and Wages
    - For any employee who did not earn during any pay period in 2019 wages at an annualized rate more than $100,000, the amount of any reduction in wages that is greater than 25% compared to their most recent full quarter.
Paycheck Protection Program (PPP)

• **Limits on Amounts of Forgiveness:**
  • Reductions in employment or wages that occur during the period beginning on February 15, 2020 and ending 30 days after enactment of the CARES Act (which was enacted on March 27th) shall not reduce the amount of loan forgiveness **IF** by June 30, 2020, the borrower eliminates the reduction in employees or reduction in wages.
Paycheck Protection Program (PPP)

- $349 Billion for PPP
- 100% guarantee by SBA
- Application Periods:
  - April 3rd – small businesses and sole proprietors
  - April 10th – independent contractors and self-employed individuals
- Applicant to submit SBA Form 2483 (Paycheck Protection Program Application Form) and Payroll documentation to lender
- SBA will pay lender fees for processing – not borrower

**NOTE:** Apply quickly because there is a funding cap!
Economic Injury Disaster Loan (EIDL)

- Section 7(b) Covered Loan through the SBA
  - Maximum loan amount of $2 million
  - 3.75% interest rate (2.75% for non-profits)
  - Up to 30 year repayment period
  - Lender/Reviewer – SBA
    - Apply directly with SBA through streamlined online process
    - Very little information required during initial application process
    - SBA will request additional information and documentation following initial online application process
  - No forgiveness component – must be paid back to SBA
    - Except for up to $10,000 Emergency Injury Grant
Economic Injury Disaster Loan (EIDL)

• Eligibility Criteria:
  • Small business with <500 employees
    • Includes: sole proprietorships, independent contractors, self-employed individuals
  • Cooperatives, ESOPs, tribal small business concerns, and 501(c)(19) veterans organizations with <500 employees
  • Agricultural cooperatives, aquaculture enterprises, nursery, or producer cooperative that otherwise meet SBA’s size standards
  • Private non-profits that are non-governmental agencies or entities
  • Small business that otherwise meets SBA’s small business size standards (employees and revenue) based on NAICS codes
    • Ex. – For healthcare entities (NAICS Sector 62 – Health Care and Social Assistance), no employee size standard listed so entity must have <500 employees and meet the revenue standard listed for applicable NAICS code.
  • Directly affected by the COVID-19 disaster or offer services directly related to businesses in the declared disaster area
Economic Injury Disaster Loan (EIDL)

- Information Requested for Online Application:
  - Business Information
  - Gross Revenues for 12 months prior to date of disaster
  - COGS for 12 months prior to date of disaster
  - Information specific to Rental Properties, Non-Profits, and Secular Social Services provided by Faith-Based Entities
  - Compensation from other sources received as result of disaster
  - Number of Employees
  - Owner Information
  - Information of person assisting with application completion
  - Box to mark for EIDL grant funds consideration
  - Bank account information
  - SBA will request additional information following application submission, such as financial statements and projections of revenue and expenses.
EIDL Emergency Advance

- EIDL Emergency Advance
  - Up to $10,000 loan advance
  - Check box within online EIDL application to apply
  - Eligibility: any small business with <500 employees (including sole proprietorships, independent contractors, self-employed individuals) & businesses in certain industries with >500 employees if they meet the SBA’s size standards for those industries
  - The advance funds will be made available within days of a successful application.
  - This loan advance **will not have to be repaid**, even if the loan application is denied.
    - The advances are backdated to January 31, 2020 to allow those who have already applied for EIDLs to be eligible to also receive a grant.
SBA Express Bridge Loans

• Up to $25,000 for small businesses who currently have a business relationship with an SBA Express Lender
  • SBA Express Bridge Loan Pilot Program – allows SBA Express Lenders to deliver expedited SBA-guaranteed financing on an emergency basis for disaster-related purposes to eligible small business, while the small businesses apply for and await long-term financing.

• Fast turnaround

• Can be a term loan or used to bridge the gap while applying for an EIDL
  • Will be repaid in full or in part by proceeds from EIDL loan
Small Business Debt Relief Program

- Provides immediate relief to small businesses with non-disaster SBA loans
- Eligible SBA Loans:
  - 7(a) loans (not made under PPP)
  - 504 loans
  - Microloans
- SBA covers all loan payments for 6 months, including principal, interest, and fees
- Available for new borrowers who take out loans within 6 months of the CARES Act signed into law
- Disaster loans are NOT eligible.
Small Business Debt Relief Program

- **7(a) loans (not made under the PPP)**
  - Up to $5 million for borrowers who lack credit elsewhere
  - Banks share portion of risk of the loan with SBA
  - Many different types of 7(a) loans available

- **504 loans**
  - Up to $5.5 million to approved small businesses with long-term, fixed-rate financing used to acquire fixed assets (such as real estate, buildings, machinery) for expansion or modernization
  - Apply through a Certified Development Company

- **Microloans**
  - Up to $50,000 to help small businesses and certain not-for-profit childcare centers start up and expand
  - Average microloan is $13,000
  - Delivered through mission-based lenders
The SBA provides a number of options for assistance as a result of the economic conditions created by the Coronavirus – PPP, EIDL, Bridge Loan and Debt Relief Assistance.

Applicants must meet eligibility criteria, including the SBA affiliation rules pursuant to 13 CFR § 121.301, to qualify for SBA assistance.

Applicants may have additional requirements regarding the use of the proceeds from an SBA loan.

Applicants providing false, misleading or fraudulent information to the SBA can be subject to imprisonment and/or fines.
For more information

James (Jim) Daniel
Partner
Hancock Daniel
801.357.6933
jdaniel@hancockdaniel.com

Chrissy Leggett, CPA/ABV, CVA
Senior Manager
HORNE LLP
601.620.5107
chrissy.leggett@hornellp.com

A. Jay Chauhan, DO
President
Chicago Medical Society
312.670.2550
cmspresident@cmsdocs.org
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