

Webinar: Bailey & Glasser CARES Act - Brown Bag Lunch & Learn

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Monday, April 20, 2020 | 12:00 PM - 1:00 PM ET

If you are a **District of Columbia restaurant or small business owner**, you are encouraged to join attorneys from Bailey & Glasser LLP for a webinar on provisions of the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.

This webinar is meant to be a follow-up to the Small Business Administration's (SBA) latest guidance issued on April 14, 2020.

Our attorneys will review provisions that may be relevant to your business and will answer any questions you have about the programs and how to apply.

Please click here to RSVP for the dial-in number and [please submit your written questions](mailto:events@baileyglasser.com) to events@baileyglasser.com.

CARES Act Overview

The CARES Act provides for two new SBA loan programs: (1) Economic Injury Disaster Loans ("EIDL") and (2) the Paycheck Protection Program ("PPP"). This discussion focuses on the PPP because certain aspects of the program are favorable to businesses in the food services industries (referred to by the SBA as "NAICS Sector 72" businesses) and the loans are forgivable (i.e., they don't need to be repaid) if the proceeds are used to cover payroll costs and other eligible business expenses.

We will discuss the following items and attempt to answer as many of the submitted questions as possible:

1. The program encourages maintaining salary and wages and retaining or rehiring employees adversely affected by the COVID-19 crisis.
2. Whether the loan is forgiven or must be repaid depends on maintaining staffing levels and wages and the type of costs paid using loan proceeds in the 8-week period after the loan is made.

3. You will have to apply to your lender for loan forgiveness so it's vital that you keep detailed and accurate records.
4. If you use the proceeds to cover anything other than payroll costs and certain other eligible expenses, your loan forgiveness will be reduced. The Interim Final Rule requires that at least 75% of the PPP loan proceeds must go to payroll.
5. Also, your loan forgiveness will be reduced if you decrease your full-time employee headcount or if you decrease salary and wages by more than 25% for any employees making less than \$100,000 in 2019.
6. The employee headcount and wages and salary levels required for full loan forgiveness is determined by comparison to the prior year's averages, from February 15, 2019, to June 30, 2019.
7. Borrowers have until June 30, 2020 to restore full-time employment and salary levels for any changes made between February 15, 2020, and April 26, 2020.
8. Additional wages paid to tipped employees (as defined in the Fair Labor Standards Act) may be included in payroll costs that are calculated into the amount of forgiveness.
9. The following categories of expenses qualify as payroll costs for loan forgiveness purposes:
 - The sum of payments of employees' salary or wages (only up to \$100,000 per individual employee);
 - Payment of cash tip or equivalent;
 - Payment of vacation, parental, family, medical, and/or sick leave;
 - Allowance for dismissal or separation of employment;
 - Payment required for the provisions of group health care benefits, including insurance premiums;
 - Payment of any retirement benefits; and
 - Payment of state and local taxes assessed on employee compensation.
10. In addition to payroll costs, other portions of the loan which may be forgiven include:
 - Funds used to pay interest on mortgage obligations incurred prior to February 15, 2020;
 - Rent and other lease payments under a lease entered into prior to February 15, 2020;
 - Utility costs.

11. Additional guidance on forgiveness is likely to be issued.
12. The maximum amount a business may borrow is the lesser of:
 - Two and a half months payroll or \$10 million
 - To calculate, average the total monthly payments by the business for payroll costs incurred during the 1-year period before the date on which the loan is made; multiply the monthly average by 2.5.
 - For seasonal employers, calculate the average total monthly payments for payroll during the 12-week period beginning February 15, 2019, or at the choice of the business, March 1, 2019, and ending June 30, 2019; multiply the weekly average by 2.5.
 - NOTE: You can only count an individual employee's salary and sick leave up to \$100,000 per year.
13. Companies that employ less than 500 employees are eligible for PPP and loan forgiveness.
14. SBA affiliation rules are waived for businesses in the food services industries (NAICS Sector 72 companies).
15. Businesses in the food services industries are eligible so long as there are less than 500 employees working in any given physical location. This means a business that employ more than 500 employees spread out over multiple locations is still eligible to take out a PPP loan.
16. Borrowers are not required to first look for alternate funding sources. Also known as the "Credit Elsewhere Test," this typical requirement for SBA funding does not apply to PPP loans.
17. No collateral or personal guarantee is required for a PPP loan.
18. A borrower may receive assistance from both the EIDL and PPP programs, but cannot use EIDL and PPP funds for duplicate purposes. A borrower who obtains EIDL funding for reasons unrelated to the COVID-19 crisis may also apply for a PPP loan, and may even refinance the EIDL loan into the PPP loan. Any amounts received via an Emergency Economic Injury Grant (up to \$10,000) available under the EIDL program are ultimately deducted from any amount forgiven under the PPP. In other words, you cannot receive both an Emergency Economic Injury Grant and full PPP loan forgiveness.
19. The CARES Act contains other provisions, in addition to the PPP and EIDL loans, targeted to aid small businesses. Among those are certain tax law changes that allow for a business to take an immediate write-off of costs associated with facility improvements, as an alternative to write-offs over time as improvements depreciate. Consult your accountant for tax advice.

Additional Resources:

DC Bar, Pro Bono Center, Is Your Nonprofit or Small Business Impacted By Coronavirus? Apply NOW for Economic Relief Programs.

Small Business Administration Corona Virus Funding Options.

Treasury Department Small Business Assistance Center.

Senate Finance Committee CARES Act Summary.

PPP Borrower Overview, Information Sheet, & Application Form.

This memorandum is a summary for general information and discussion only and may be considered an advertisement for certain purposes. It is not a full analysis of the matters presented, may not be relied upon as legal advice, and does not purport to represent the views of our clients or the Firm.

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