

CELL GENE

VIRTUAL WEBINAR SERIES

Understanding the Coronavirus Emergency Loan Program for Small Businesses

Q: Can you apply for any of the loan programs to hire employees and advance studies/development?

A: Yes. The SBA Paycheck Protection Program is designed to allow a borrower to receive loan proceeds for payroll costs if you maintain average employment levels and salaries/wages. The SBA Economic Injury Disaster Loans can be used for fixed debts, payroll, accounts payable and other bills, where the ability to pay is impacted by the disaster.

Q: Are people who had been searching for a job and now cannot get a job due to COVID-19 eligible for unemployment?

A: Unemployment eligibility requirements are determined state-by-state. If the individual is not eligible for traditional state-based UI, but lost their job as a result of COVID-19, the CARES Act extends new UI benefits to those not traditionally eligible because the individual is impacted by COVID-19.

Q: How does it work if you are the proprietor of a small business and your income is what remains out of revenue after expenses?

A: Under the SBA Paycheck Protection Program, a sole proprietor or independent contractor has payroll costs that are the sum of payments of any compensation to or income 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 1 year, as prorated for the covered period.

Q: Was the either/or choice between the Paycheck Protection provision and the deferred tax payment intentional? If not, is there discussion about "fixing" this in the next round of legislation? Generally speaking, will the Paycheck Protection provision be more valuable?

A: The alternative between the SBA Paycheck Protection Program and employer tax deferral does not make a lot of sense from a public policy basis. We understand that Congress is taking another look at this. The Employee Retention Credit has same rule, but that makes sense - SBA can't pay your wages and you take a tax credit.

Q: Can you apply the forgivable portion of PPP to adding new part time employees?

A: Under the SBA Paycheck Protection Program payroll costs are a permissible use, but in order to have those expenditures fully forgiven, you must maintain average number of full-time equivalent employees as defined periods before COVID-19.

Q: What are options for pre-revenue small biotech companies that are publicly traded?

A: Each of the programs addressed in the CARES Act have different eligibility requirements and different permissible uses. A deeper fact-based analysis would be necessary.

Q: Can an EIDL be applied for after receiving a PPP grant, so long as the EIDL funds aren't for expenses covered by PPP?

A: This is unclear. The CARES Act states that nothing prohibits an entity that received an EIDL between January 31, 2020 and April 3, 2020 from applying so long as the PPP loan is not for the same purpose, but it is unclear if you could apply for EIDL and PPP after April 3.

Q: Is loan forgiveness for PPP absolutely dependent on retention, or proportionally dependent on retention? In other words, is it an all or nothing scenario?

A: The CARES Act states that forgiveness will be reduced proportionally based on retention of average full-time equivalents and maintenance of salaries and wages.

Q: Small biotech companies don't have lost sales revenues, they are in R&D and depend on investor raises and can't raise money with coronavirus pandemic. What is available for loans, not PPP for public biotech companies without revenues?

A: Each of the programs addressed in the CARES Act have different eligibility requirements and different permissible uses. A deeper fact-based analysis would be necessary.

Q: In addition for other Treasury loans, there are limits for executive pay when applying and for loan and how much you can pay executives afterwards. What is the limit? Is that for EIDL loans?

A: The SBA Paycheck Protection Program allows you to include an U.S. employee's salary, wages or commissions towards your payroll costs up to \$100,000 in cash compensation. The SBA EIDL loan program applies existing SBA rules, so it was not impacted by the CARES Act. I have not studied the issue of payroll limits under EIDL. The Treasury Department's Coronavirus Economic Stabilization Act \$500 billion fund includes executive compensation limits. This is a new Treasury lending facility outside of the SBA loan programs. Please find those provisions below.

SEC. 4004. LIMITATION ON CERTAIN EMPLOYEE COMPENSATION

(a) In General.—The Secretary may only enter into an agreement with an eligible business to make a loan or loan guarantee under paragraph (1), (2) or (3) of section 4003(b) if such agreement provides that, during the period beginning on the date on which the agreement is executed and ending on the date that is 1 year after the date on which the loan or loan guarantee is no longer outstanding—

(1) no officer or employee of the eligible business whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020)—

(A) will receive from the eligible business total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received by the officer or employee from the eligible business in calendar year 2019; or

(B) will receive from the eligible business severance pay or other benefits upon termination of employment with the eligible business which exceeds twice the maximum total compensation received by the officer or employee from the eligible business in calendar year 2019; and

(2) no officer or employee of the eligible business whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of—

(A) \$3,000,000; and

(B) 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

(b) Total Compensation Defined.—In this section, the term “total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business.

Q: What are best non-PPP loans for these types of pre-revenue public or private companies?

A: Each of the programs addressed in the CARES Act have different eligibility requirements and different permissible uses. A deeper fact-based analysis of an individual company would be necessary to advise on specific opportunities since eligibility, affiliation and existing debt structure can create unique legal issues.