

Must Do's and Need-To-Knows for SBA Stimulus Loans

By: Harsh Arora, Partner in Kelley Kronenberg's Fort Lauderdale office and Nicholas Fiorello, Attorney in Kelley Kronenberg's Fort Lauderdale office. [Must Do's and Need-To-Knows for SBA Stimulus Loans, South Florida Business and Wealth, April 2020](#) The coronavirus pandemic has thrown a wrench in the world's economy, specifically impacting small businesses, where day-to-day operations have been stunted, if not completely halted. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, is an economic aid stimulus package which was formulated by the federal government and signed into law to minimize the economic effect of the health crisis. In addition to the Small Business Association's existing loan programs, including the Economic Injury Disaster Loan (EIDL), the CARES Act has created a new loan under the Paycheck Protection Program (PPP), which came into effect April 3. The spirit of the CARES Act is to prevent any further loss of revenue or other economic injury as a result of the ongoing pandemic by providing a lifeline to businesses who are finding themselves in the unfortunate position of considering laying off employees, if they have not already done so. These rapid developments, though promising for small business owners, have led to confusion as to the specifics of how financial institutions are to deal with the influx of loan applications, thus making it more difficult for small business owners to traverse the landscape in order to sift through the possibilities and ultimately settle on a loan. Although the intention of the federal government was for quick turn-arounds by lenders to provide funding immediately upon receipt and review of a loan application, implementing such a grand program is a significant task. Lenders only had a mere couple of days to establish procedures for same-day approvals, and are not equipped to handle such an influx due to lacking the requisite manpower trained to process, close, disburse, and service these SBA-guaranteed loans on the same day. Many banks have notified customers that they will not yet launch their loan platforms until further process guidance is given by the federal government and/or the SBA. As the systems and processes are ironed out, more details are sure to be launched weekly, if not daily. With the number of uncertainties floating around the SBA's stimulus loan programs that have been offered to rescue small businesses from suffering further economic injury, small business owners and managers should brainstorm and decide the urgency for seeking a loan, because keeping funding options open may be more beneficial in the long-run. The following are some important items small businesses should consider before applying for the SBA stimulus loans:

1. **Contact** your lender to see if they are an SBA approved lender or will be seeking approval by the SBA to become a SBA approved lender. In addition, if your lender is an approved lender or is seeking approval, ask when they plan on launching their SBA loan platform. Obtaining this information will help small businesses plan for receiving loans by knowing a date when loans will be processed and funded.
2. **Organize** all relevant documentation relating to the interruption of your business, including but not limited to, documentation regarding:
 1. Aggregate payroll costs from the last 12 months for employees whose principal place of residence is in the United States
 2. Average monthly payroll costs
 3. Compensation paid to employees, independent contractors, or sole proprietors in excess of an annual salary of \$100,000
 4. Outstanding amounts of an EIDL made between January 31, 2020 and April 3, 2020
 5. Proof of operation of business, as well as the payment of salaries and payroll taxes on or around February 15, 2020 (the cut-off date for small business to be in operation to receive the PPP loan)
 6. Mortgage obligation incurred before February 15, 2020, if applicable
 7. Rent payments on leases dated before February 15, 2020, if applicable
 8. Utility payments under service agreements dated before February 15, 2020.
3. **Confirm** the accuracy of all relevant documentation referred above and other information required to be provided in the loan applications. Any errors, omissions, or misrepresentations made on these loan applications could lead to rejection of the application or litigation down the line after funding, once the dust settles. Additionally, under the PPP, if the PPP funds are used for unauthorized purposes, the SBA will direct repayment of those amounts. If a small business knowingly uses funds under the PPP for unauthorized purposes, the small business may be subject to additional liability, which can even extend to owners and operators. To protect against such unauthorized use of funds, on the PPP application, an authorized representative of the small business must certify, among other things, that he or she understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold that representative legally responsible. The authorized representative must also certify that information provided within the application and on all supporting documents is true and accurate, and that knowingly making a false statement to obtain such a loan is punishable by imprisonment and/or fines. Thus, it is important for small businesses to consult with legal counsel in order to review the necessary application materials for any errors, omissions, or misrepresentations.
4. **Complete** after carefully reviewing the application form(s) for the loan(s) you are seeking to receive:
 3. **PPP Sample Application Form** is available at <https://www.sba.gov/document/sba-form-paycheck-protection-program-borrower-application-form>. Lenders were allowed to begin processing applications on April 3.
 4. **EIDL Application Form** is available at <https://covid19relief.sba.gov/#/>. The EIDL application is up and running on the SBA website, and small businesses have 60 days to accept or reject this loan if approval is granted, and small businesses should consider applying if they have suffered an economic injury due to the pandemic.
5. **Understand** the spirit of the stimulus package is to provide relief for **economic injury**. Although there is no reason to prevent an uninjured business from applying for a loan and ultimately borrowing the money that is set aside by the federal government, small businesses should wait until a need arises due to loss of revenue or other economic injury in order to qualify with the spirit of the stimulus package. These funds are **not** free money that has been set aside for all small businesses to take. These funds are being provided to support small businesses reeling from the economic injuries caused by the coronavirus pandemic and the resulting economic crisis.

Although the prospect of obtaining these loans may sound great in theory, it may not make sense for each and every business. Business owners and managers should not read one article or listen to one news story and arbitrarily decide on obtaining these loans. Business owners should consult with counsel before jumping at the false sound of free money because there are many requirements and conditions that must be met to receive the benefits under the SBA's stimulus loan programs. Employment levels must be kept at par with a business' pre-pandemic levels, and if your business has significantly cut back or even closed its doors, it may not be worth it to attempt to continue, or even resume

business in the current economic environment. Additionally, there are other benefits within the CARES Act that a small business can leverage, such as tax credits on money used to pay wages and benefits, that may be foregone if a loan is obtained. As more information will continually unfold regarding the SBA's stimulus loan programs, businesses should do what they can to plan ahead and consult with their counsel to review the benefits of each of these programs, as well as the possible side-effects, in order to mitigate any further injury as a result of the current coronavirus pandemic. **Disclaimer:** *This article is intended to provide you with general information regarding the impact of a potential or actual coronavirus pandemic on obligations under many types of commercial contracts or arrangements. The contents of this article are not intended to provide specific legal advice.*