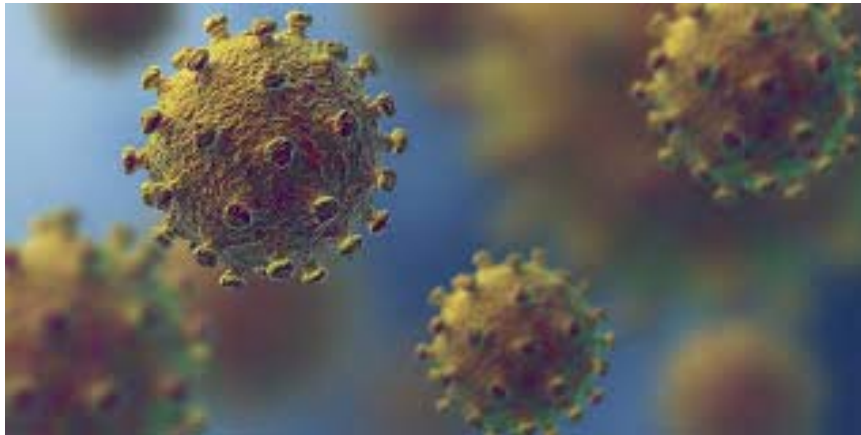


CARES Act

Overview of Selected Sections

April 2, 2020



Discussion Topics

- ▶ Sections of the CARES Act
- ▶ Paycheck Protection Program
- ▶ Economic Injury Disaster Loans
- ▶ Loans to Midsized Businesses
- ▶ Key Tax Topics
- ▶ How can we help
- ▶ FAQs
- ▶ Initiatives in Process
- ▶ Weaver Resources



Frank McElroy Disclosure



- ▶ The Act is rapidly being interpreted and there's differing opinions on certain sections
- ▶ The Treasury and SBA will be issuing further guidance in the coming days/weeks
- ▶ We'll be setting up point people to cover certain areas
- ▶ Marketing did not prepare these slides
- ▶ Big thanks to all the contributors – Bruce Zaret, Sonia Desai, Rob Myatt, Frank McElroy, Brian Thomas, Gary McIntosh, Mark Watson, Jason Avila and anyone else that answered my Skype calls!

Loan Options under the Act

- ▶ Economic Injury Disaster Loans (EIDL)
- ▶ Paycheck Protection Program (PPP)
- ▶ Loan assistance to mid-sized businesses

Economic Injury Disaster Loans



EIDLs

- Covered Period: January 31, 2020 and December 31, 2020
- Eligibility includes Tribal businesses, cooperatives and ESOPs with fewer than 500 employees, or any individual operating as a sole proprietor or independent contractor during the covered period.
- Private non-profits are also eligible for both grants and EIDLs.
- EIDLs are loans of up to \$2 million with interest rates of 3.75% for companies and 2.75% for nonprofits, and have interest and principal deferment for up to one (1) year.

EIDLs

- EIDLs are used to pay fixed debts, payroll, accounts payable and other operating expenses that can't be paid because of the disaster's impact. The loan must be made for specific and designated purposes.
- EIDLs may not be used to expand business operations.
- Funds cannot be used to pay cash dividends or bonuses, or for disbursements to owners, partners, officers or stockholders not directly related to the performance of services for the business.
- The SBA will not refinance long-term debts or provide working capital that was needed by the business prior to the disaster.
- The penalty for misusing disaster funds is immediate repayment of one and a half times the original amount of the loan.
- The SBA requires that you keep receipts and good records of all loan expenditures for three years following receipt of your SBA loan.

EIDLs

- This is a real loan.
- Other than \$10,000 advance if loan is not made, this is required to be paid back.
- The \$10,000 advance is forgiven if a loan is not made.
- Consult with our forensics group to calculate damages.

Payroll Protection Program



Overview

- ▶ Allows businesses and certain nonprofits to borrow for:
 - Payroll costs,
 - Interest on mortgage obligations,
 - Rent,
 - Utilities
- ▶ Program starts April 3rd; Sole proprietors are April 10th
- ▶ Government guarantee of 100% under the SBA's section 7(a) program through December 31, 2020.
- ▶ Loans from appropriate Federal banking agency, not the SBA.
- ▶ No personal guarantees
- ▶ SBA website offers tool and guidance

Loan Amount

Lesser of:

\$10 million

or

250% Average Monthly
Payroll

General Requirements

- Interest rate cannot exceed 1.0%
- Payments Deferred (principle, interest and fees) for 6 months
- Term – Two years
- No Borrower fees – Lenders paid from Government.
- Not required to pledge collateral or provide personal guarantees to secure a PPP

Key Terms

- Coverage Period – February 15, 2020 to June 30, 2020
- Covered Loan – Loan made during Coverage Period
- Eligible Recipient – An individual or entity that is eligible to receive a covered loan.
- Other terms – Discussed Further

Payroll

- ▶ Sum of payments to employees including:
 - » Salary, wage, commission or similar compensation;
 - » Payment of cash tip or equivalent;
 - » Payment for vacation, parental, family, medical or sick leave;
 - » Payment for group health costs;
 - » Allowance for dismissal or separation;
 - » Payment of any retirement benefit; or
 - » Payment of State or local tax on the employee compensation;

AND

- ▶ 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 not more than \$100,000 in 1 year, as prorated for the covered period;

Payroll, cont.



▶ Shall not include:

- » Compensation of an individual employee in excess of \$100,000;
- » **Federal payroll taxes – include the employer AND employee's share;**
- » Foreign employees;
- » Qualified sick leave and family leave wages for which a credit is allowed under Families First Coronavirus Response Act

▶ Questions/Comments

- » Independent contractors – Regulations were released last night, April 2nd. The regulations exclude independent contractors from the calculation. It appears that partners are included in that exclusion as well, so many of our clients will not be able to pay themselves UNLESS they file their own PPP loan in addition to the Company/Employer filing for the loan.
- » \$100,000 calculation for employees – include benefits? Based on the wording of the statute, it would appear to include all items paid to employee.

Other Costs

- ▶ Interest on Mortgage Obligations
 - » No prepayment
 - » No principal payments
 - » Loans must preexist the loan period
- ▶ Rent –
 - » Valid lease agreement
 - » Rent to related parties? With agreement, it is due.
Will it be forgiven?
- ▶ Utilities
 - » General – water, electricity, etc.
 - » Internet
 - » What about cloud computing?
 - » Lenders are asking for 12 months of bills
- ▶ 75/25 split

Qualifications

- Covers businesses, nonprofits and veterans' organizations, and Tribal businesses with up to 500 employees unless SBA establishes a higher number.
- Covers sole proprietorships, independent contractors and self-employed individuals (if certain documentation requirements are met)
- Normal SBA procedures apply an employee count or revenue threshold. This program highlights the employee count. The regulations reference that qualifying entities must meet the SBA regulations that reference revenue.

Qualifications, cont.

- General Waivers to 500 employees
 - Accommodation and Food Services Industry (NAICS Code 72) may be eligible if no more than 500 employees per physical location
 - Crude Petroleum/Nat Gas Extraction – 1,250
 - Oil & Gas Drilling – 1,000
 - Manufacturing – Ranges up to 1,500
 - https://www.naics.com/wp-content/uploads/2017/10/SBA_Size_Standards_Table.pdf

Employee Count

- ▶ Individuals employed:
 - » Full time;
 - » Part time;
 - » Or other basis - ??
- ▶ Includes Employees from:
 - » Temporary employee agency;
 - » Professional employee organization; or
 - » Leasing concern
- ▶ Average number of employees:
 - » Average domestic and **foreign** employees;
 - » For each pay period for preceding 12 calendar months;
 - » Part time and temporary employees count as full time.

Employee Count, cont.

- ▶ Affiliation rules – discussed later

- ▶ Trap for Unwary – Cannot include payroll to foreign residents, but they are included in employee count.

Calculation Period



- By statute, the 12 month period ending with the day before the loan is granted.
- Seasonal employers can use a different calculation.
- Short year taxpayers – use January 31, 2020 to February 29, 2020.
- What do we provide?
 - January 1, 2019 to December 31, 2019?
 - March 1, 2019 to February 29, 2020 – to match some of the other defined periods?
 - April 1, 2019 to March 31, 2020?
 - **RECOMMENDATION – 2019 calendar year and April 1 to March 31, 2020.**

Payroll Calculation

- ▶ Sum of:
 - » Average monthly payroll as defined
 - » Subtract any payments to employee in excess of \$100,000
 - » For each month of the calculation period
 - » Divided by months of calculation period.
- ▶ Example,
 - » Total monthly payroll from April 1 – December 31, 2019 is \$500,000;
 - » Total monthly payroll from January 1 to March 31, 2020 is \$700,000.
 - » Total payroll is \$1,200,000
 - » Average monthly payroll is \$100,000

Payroll Calculation, cont.



- ▶ Clients need to adjust payroll for:
 - » Employees over \$100,000 – probably including benefits in the calculation;
 - » Contractors over \$100,000;
 - » Federal payroll taxes;

- ▶ This is complicated!

If it looks like a Duck, its
is probably a Duck

Rules under 13 C.F.R. Section 121.103

- ▶ Non Rebuttable Presumptions
 - » 50% or more of voting stock;
 - » Less than 50% voting stock, BUT large by comparison
 - » Common management or board members

- ▶ Rebuttable Presumptions
 - » Control of less than 50% voting stock by multiple owners
 - » Common business or relationships

- ▶ Stock options, convertible securities and agreements to merge are considered exercised

- ▶ The private equity industry is pushing for relief in this area. The regulations did not clarify the affiliate rules

Affiliation Rules, Examples

- ▶ PE firm owns > 50% of all portfolio companies – AFFILIATED
- ▶ PE firm controls board of all portfolio companies – AFFILIATED - All funds could be included
- ▶ Individual/family controls multiple companies – AFFILIATED

Affiliation - Applications

- ▶ Who applies?
- ▶ If company does not apply where the payroll is, how can they prove the expenditures?
- ▶ Appears you apply at each affiliated company with payroll.
- ▶ Each application will need to document the affiliations

Loan Forgiveness

- Forgiveness Period - Borrower is eligible for forgiveness for the amount during the **8-week period** beginning the date a PPP is funded.
- Eligible forgiveness amount is equal to the total costs incurred and payments made during the Forgiveness Period for:
 - (1) Payroll,
 - (2) Mortgage interest,
 - (3) Rent;
 - (4) Utilities; and
 - (5) Repayment of EIDL if used for payroll.

Loan Forgiveness, cont.

- Forgiveness amount is further reduced by the ratio of:
 - FTE employee equivalent during the Forgiveness Period
 - Divided by:
 - FTE employees during the Measurement Period.
 - Measurement period is either:
 - February 15, 2019 to June 30, 2019; or
 - January 1, 2020 to February 29, 2020. if borrower terminates employees or reduces employee salary and wages during the Forgiveness Period.

Loan Forgiveness, cont.

- Forgiveness amount is also reduced to the extent the Decrease in FTE salary during Forgiveness Period is greater than 25 percent of the total salary or wages of the employee during the most recent quarter before the Forgiveness Period i.e. January 1, 2020 to March 31, 2020 in most cases.
 - For purposes of this calculation, only employees employed during 2019 and making under \$100,000 are considered.
 - Protects the “rank and file”
- Relief from the forgiveness reduction if the borrower rehires employees or makes up for wage reductions by June 30, 2020.

Loan Forgiveness, cont.



- There is relief from the forgiveness reduction if the borrower rehires employees or makes up for wage reductions by June 30, 2020.
- This relief appears to be a bright line test with no further testing. Not sure if you can fire all employees by August 1st.
- Seventy five (75) percent of the loan must be used for payroll.
- General comment – They will have to clarify this.

Loan Forgiveness, cont.



- Few points to consider:
 - Calculations will take a lot of work for clients to verify/confirm.
 - Federal payroll taxes are not forgiven. Clients will need to cover those costs themselves.
 - Assume that payments to employees with annualized salaries greater than \$100,000 will be limited to the \$100,000.
 - Forgiveness period is eight weeks, but loan amount covers ten weeks of payroll. Are the other expenses greater than 20%? Probably so.
 - EIDL advance reduces possible PPP forgiveness

Loan Application

- ▶ Application – Short and Sweet
- ▶ Other information needed (possibly):
 - 2019 Form W-3/W-2 summary;
 - 2019 Form 940/941/944
 - 2019 Form 1099-MISC
 - 2020 1st Quarter Form 941
 - Prior year financials – possibly three (3) years
 - Any current year financials
 - Tax Returns – most recent three (3) years
 - Debt amortization schedule

Loan Application, cont.

- ▶ Other information needed (possibly):
 - Support for other items other than payroll i.e. Utility statements, lease agreements
 - Retirement Plan Funding
 - Group health benefits
 - A COVID 19 affect statement
 - Payroll calculation
 - Number of employees

Lender Considerations



- ▶ Lenders are directed to underwrite loans not based on borrower repayment ability, but whether the borrower was in operation on February 15, 2020, with one or more employees or independent contractors
- ▶ Lenders are generally only helping existing customers
- ▶ Lenders are not enthusiastic
- ▶ Lender Compensation:
 - » For a loan with original principal balance of \$350,000 or less, 5%;
 - » For a loan with original principal balance greater than \$350,000 but less than \$2 million, 3%; and
 - » For a loan with original principal balance of \$2 million and above, 1%.

Other Considerations

- ▶ EIDL and PPP – You cannot apply for separate loans from the SBA for the same purpose.
- ▶ PPP – You cannot apply for multiple PPP loans.

Other Loans



Other Loans – Midsized Businesses



- The loan product is being developed to help businesses of 500 – 10,000 employees
- Interest rates are not to exceed 2% and for the first six months (or longer, as the Secretary may determine), no principal or interest is due and payable.
- Loans are not forgivable.
- Certification of certain information is required.
- More guidance is expected soon.

Other Provisions



CARES Act Tax Areas Related to Loans



- ▶ Employee Retention Credit for Employers Subject to Closure Due to COVID-19
- ▶ Delay of Payment of Employer Payroll Taxes – Not available if any loan forgiveness is taken on PPP.

How Can We Help?



- ▶ Provide thought leadership and key information to our clients and the public.
- ▶ Work with Banks – Agency relationship
- ▶ Client assistance:
 - » Payroll calculations if we prepare books;
 - » Gather financials and tax returns;
 - » Cash flow planning on various provisions – is the payroll tax deferral more advantageous if they are reducing workforce and/or compensation?
 - » Advise on pitfalls – do they make bad decisions just for “free money”?
 - » Forgiveness modeling?
 - » DO NOT PREPARE FINANCIALS without proper engagement letters
- ▶ Engagement letter
- ▶ Bill our clients for consulting assistance on CARES act
- ▶ Potential Agency Issue – discussed below

Agency Issue

- ▶ An agent is an authorized representative.
- ▶ Agents cannot bill borrowers (our clients). Agents are paid out of lenders fees.
- ▶ Agents can be:
 - » Accountant;
 - » Someone who prepares and applicant's application for financial assistance and is employed and compensated by the applicant;
 - » Someone who assists a lender with originating, disbursing, servicing, liquidating, or litigating SBA loans.
- ▶ Weaver is not signing and loan application and we want to avoid being an agent.

Tax Planning

- ▶ Payments to employees, vendors – Deductible
- ▶ Forgiveness of PPP – Not taxable
- ▶ Section 139
 - » Employers considering issuing payments to employees to alleviate the COVID-19-related financial impact can deduct these expenses as disaster relief under Tax Code Section 139.
 - » As a result of President Trump's declaration under the Stafford Act on March 13, 2020, the impact of coronavirus is a "qualified disaster" for Section 139 purposes
 - » Provides that "qualified disaster relief payments" made by employers to employees are not treated as taxable income to employees and remain fully deductible to the employer as a business expense.
 - » In addition to being exempt from income and payroll taxes, such payments are not subject to information reporting on either Forms W-2 or Forms 1099-MISC.
 - » Section 139 could also provide relief to the energy sector.

Questions

Upcoming Webinar



Please join us for a webinar covering:

Resources to Support Businesses through COVID-19

Wednesday, April 8, 2020 | 11:00 – 12:00 PM CDT

Learning Objectives:

- To educate business owners and C-Level management on the resources available to help minimize interruption to business operations and to encourage employee retention
- To provide an overview of how qualifying businesses can benefit from the CARES Act and the Families First Coronavirus Response Act
- To explain the SBA Economic Injury Disaster Loan (EIDL) and the Paycheck Protection Program (PPP) so businesses can access financial support
- To highlight what businesses should consider before evaluating and making decisions regarding workforce and employee related matters
- To introduce certain tax implications for businesses that will be included in greater detail in an upcoming webinar

Payroll Protection Program FAQs



1. How does SBA determine affiliation?

- ▶ Affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. SBA's regulations on affiliation are contained in 13 C.F.R. § 121.103.
- **Stock ownership:**
 - » Control of 50% or more of voting stock. A person is an affiliate of a concern if the person owns or controls, or has the power to control, 50% or more of the concern's voting stock.
 - » Control of less than 50% voting stock, but large compared to others. Affiliation may also occur when a person owns and controls, or has the power to control, a block of voting stock that is large compared to all other outstanding blocks of stock.
- **Stock options, convertible securities and agreements to merge:** If these rights have been granted and they confer the power to control, affiliation exists.
- **Common management:** if one or more officers, directors, managing members, or general partners of a business controls the Board of Directors and/or the management of another business the businesses are affiliates.
- **Identity of interest between individuals or businesses, including family members:** individuals or firms that have identical (or substantially identical) business or economic interests may be treated as though they are affiliated unless they can demonstrate otherwise. Family members, persons with common investments, or firms that are economically dependent through contractual (or other) relationships, are among those treated this way.
- **Contractual relationships or economic dependency:** a concern that is unlikely to be able to survive on its own or is economically dependent upon another person will probably be found to be affiliated with the concern(s) on which it is dependent.

2. My company is private equity backed. Do the affiliation rules preclude my company from being eligible for a PPP loan?

- ▶ Under the applicable SBA “affiliation” rules, the employees of affiliated companies are generally aggregated in applying the 500-employee (or other applicable) ceiling. Thus, a firm with fewer than 500 employees may nevertheless be disqualified if the firm and its affiliates collectively have more than 500 employees (or cross the applicable industry-specific threshold). This may preclude many Private equity firms and their portfolio companies from being eligible for the PPP loan.
- ▶ Businesses should pay close attention to the applicable industry-specific threshold, which in many cases exceeds the standard 500 employee threshold. For example:
 - » NAICS 211120 Crude Petroleum Extraction – 1,250
 - » NAICS 211130 Natural Gas Extraction – 1,250
 - » NAICS 213111 Drilling Oil and Gas Wells – 1,000
 - » NAICS 324110 Petroleum Refineries – 1,500
 - » NAICS 486110 Pipeline Transportation of Crude Oil – 1,500

3. Are there exceptions to the general affiliation rule?

- ▶ Yes. The PPP waives the foregoing affiliation rules with respect to:
 - certain businesses in the hospitality and restaurant industries (NAICS 72),
 - certain franchises, and
 - small businesses that receive financing through the Small Business Investment Company (SBIC) program (which provides access to venture capital from privately-organized and privately-managed investment firms).

- ▶ Portfolio companies falling within one of these three exceptions, as well as portfolio companies that are not controlled by the sponsor (e.g., certain minority investments), may be able to take advantage of the PPP. Portfolio companies that are eligible for SBIC loans may want to consider obtaining an SBIC loan in order to qualify for loans under the PPP.

4. What can be included in payroll costs?

► Employers:

- Salary, wage, commission or similar compensation
- Payment of cash tip or equivalent
- Payment of 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 retirement benefits
- Payment of state or local tax assessed on the compensation of the employee

► Sole Proprietors, Independent Contractors & 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, pro-rated for the covered period.

5. What is *not* included in payroll costs?

- ▶ Compensation of individual employee in excess of annual salary of \$100,000 as prorated for the covered period
- ▶ Taxes imposed or withheld under chapters 21, 22 or 24 of the IRS Revenue Code of 1986 during the covered period
- ▶ 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
- ▶ Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act

6. There is an exclusion for employees earning more than \$100,000. Does this mean that their salary is excluded entirely, or simply capped at \$100,000?

- ▶ It means that for the purpose of calculating your loan, their salary is capped at \$100,000. If you have an employee earning a salary of \$150,000, for example, the size of your maximum loan will be calculated using a salary of \$100,000 for that employee.

7. As the owner of the business, is my W2 paycheck from my own company covered by the PPP as well?

- ▶ Yes, the business owners' W2 paychecks are included, up to the \$100,000 annual maximum.

8. If we have already executed layoffs/furloughs, could we still be eligible for loan forgiveness if we bring back our employees?

- ▶ Yes. You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.

9. I have reduced my FTEE, how will that affect my loan forgiveness amount?

- ▶ A reduction in FTEE will reduce the forgiveness amount according to the following formula: The total amount eligible for forgiveness multiplied by (a) FTEE during the covered period divided by (b) the lesser of (i) the average FTEE between January 1, 2020 and February 29, 2020 or (ii) the average FTEE between February 15, 2019 and June 30, 2019.

10. I have not reduced my FTEE but have reduced some salaries and wages. How will that affect my loan forgiveness amount?

- ▶ A reduction in total payroll paid by a borrower to its employees in excess of 25% will result in a corresponding decrease in the amount eligible for forgiveness in the amount of such reduction in total wages/salary.

11. For the loan forgiveness amount calculation, do we include allowable costs *paid* in the 8 week period following loan origination, or *accrued*?

- ▶ Amounts have to be paid.

12. Do the PPP loan proceeds have to be spent within the 8-week period following the loan origination date?

- ▶ No, but any amounts spent after the 8-week period would simply remain a loan and would not be forgiven. Any remaining loan proceeds would still need to be spent on allowable purposes.

13. What is the impact of not meeting the 75% threshold of payroll costs for the forgiven amount?

- ▶ The non-payroll portion of the forgivable amount would be capped at 25%. Any non-payroll costs paid in excess of the 25% would not be forgiven.

14. Is forgiven portion of PPP loan considered taxable income?

- ▶ No, forgiven indebtedness resulting from the PPP will not be viewed by the IRS as taxable income.

15. How can I request loan forgiveness?

- ▶ You can submit a request to the lender that is servicing the loan. The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations.

16. Can the EIDL be used in conjunction with PPP?

- ▶ Yes. An applicant may also receive assistance via the EIDL Program for substantial economic injury caused by COVID-19, but the use of proceeds categories must differ. Example: If PPP funds are used to cover rent and utility expenses, funds from EIDL may not be used for same.
- ▶ Any EIDL proceeds can also be refinanced under the PPP.

17. If I receive a PPP loan am I also permitted to claim the employee retention credit?

▶ No.

18. If I receive a PPP loan and has a part of it forgiven, am I eligible for the payroll tax deferral?

▶ No.

19. What do I need to do to apply?

▶ You will need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender that is available to process your application by June 30, 2020.

20. What other documents will I need to include in my application?

▶ Business Entity Documents/Applications

- Articles of Incorporation / Organization
- By Laws / Operating Agreement
- Form 1919
- Form 413 SBA Personal Financial Statement
- SBA PPP application

▶ Payroll Expense Verification

- If you use a payroll processor, you will want to contact them to obtain a report detailing these payroll costs.
- IRS Form 941 - Employer's Quarterly Federal Income Tax Return (available with payroll processor)
- Payroll Summary Report or Employee Pay Stubs (including payroll benefits, vacation, healthcare, retirement, etc.) as of 2/15/2020 with corresponding bank statement
- 1099s (if Independent Contractor)
- Detailed monthly/annual payroll data and reports for all 12 months of 2019.
- Copies of payroll tax reports filed with the IRS for the entire year of 2019 and first quarter of 2020 (if available).
- Documentation reflecting the health insurance premiums paid by the business under a group health plan.
- Documentation of all retirement plan funding paid for by the business for the past 12 months.

▶ Other Verification Documents

- 2019 business tax returns, if available.
- If not available, 2019 YE interim P&L and balance sheet
- 2020 interim P&L and balance sheet (as of the date of the application, if available)
- Most Recent Mortgage Statement and/or Rent Statement/Lease
- Most Recent Business Utility Bills (electric, gas, telephone, internet, water)

FAQs

21. Is it first come first served?

▶ Yes.

22. Can you be turned down for the loan?

▶ Yes.

- ▶ COVID-19 Resilience and Resource Center – Weaver Website – under Insights and Resource Tab
 - CARES Act Tax Overview
 - Paycheck Protection Program Overview
 - EIDL Overview
 - CARES Act Summary
 - Marketing Blogs on various aspects of the Act
 - Marketing is continuing to update
 - Marketing Contracts: Elena Westbrook, Tina Lewandowski, and Megan Martin