Putting the Pieces Together: PPP Loans, SBA EIDL Loans, and Tax Credits

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There are various loans available to small businesses including the Paycheck Protection Program ("PPP") loans and SBA Economic Injury Disaster Loan ("EIDL") loans, as well as various federal tax credits. Because different programs have different features, the best way to determine which loan is optimal for a particular business is to review the business's current circumstances, and to apply the business's historic numbers and run alternative calculations. One thing to note is that the CARES Act does not allow businesses from claiming benefits that are considered duplicative.

This guide is not meant to provide a complete and exhaustive list of key considerations. Instead, this article is intended to assist small businesses to begin their basic overall planning.

Question 1: Is the business operating currently? Does the business anticipate longer than 8 weeks to restore full operation?

If the business is not operating currently, or the business anticipates reducing employee headcount or needs to furlough any of its employees due to the stay-at-home order, the PPP loan may not be the best option for the business. Even if the business resumes operation, whether the business anticipates a longer period than 8 weeks to return to full operation is a key consideration.

Under the PPP loan, borrowers can apply for loan forgiveness equal to the costs incurred and payments made during the 8-week period immediately following the loan origination date on payroll costs, rent, utilities and interest on mortgages. The law requires at least 75% of the loan amount be used for payroll costs. If the employee headcount is reduced or if the pay is reduced, the forgivable amount is reduced. Therefore, if the business remains uncertain about the timing of its full operation, there is risk that the business might not be able to satisfy the forgivability requirement (75% on payroll), which will result in having to pay back the unforgiven amount in 2 years (which may not be sufficiently long enough for certain businesses).

However, if the business is still operating or plans to restart operations before June 30, 2020, the PPP loan may be a good option. If the business does not reduce employee headcount or pay under the parameters set forth by the PPP, the portion of the loan used to cover payroll costs, lease and mortgage interest payments, and utilities for an 8-week period may be completely forgivable.

There may be some advantage for some businesses to attempt to line up the end of the eight-week PPP period with a date at which the business may be able to fully reopen. However, any advantage to waiting may be outweighed by the possibility that funds may run out.

The business also should consider the unemployment benefits expanded by the CARES Act, including the $600 per individual in weekly Federal Pandemic Unemployment Compensation.

Question 2: Is the business payroll heavy? Or does the business have a broader range of operating expenses beyond payroll and rent?

If the business has a broader range of operating expenses beyond payroll, rent, mortgage interest and utilities, and anticipates a longer period than 8 weeks to return to full operation, a careful analysis is necessary before deciding to use the PPP as to the impact any termination or furlough would have on available relief and whether the business can repay the loan within 2 years.

There are advantages of an SBA EIDL loan to be considered:

- It provides access to the $10,000 emergency advance.
- It also has a broader range of operating expenses that can be permissibly financed.
- It will make sense for businesses who need the immediate $10,000, have significant operating expenses beyond payroll, rent, mortgage interest and utilities, and anticipate a longer period than 8 weeks to return to full operation.

If a business did not qualify for PPP loan or did not otherwise obtain it, the business may qualify for the Employee Retention Tax Credit or the Employer Social Security Tax Deferral. However, if any portion of the PPP loan is forgiven, then the business will *not* qualify for relief under the Employer Social Security Tax Deferral. Even if the business obtains the PPP loan, if the business does pay back all of the PPP loan, then the business can obtain relief under the Employer Social Security Tax Deferral.

Can a business apply for both PPP loan and EIDL loan?

Business can obtain both SBA EILD loan and a PPP loan, but cannot finance the same expenses twice. If the business has already obtained an EILD loan before you obtain a PPP loan, it can refinance EIDL principal in a PPP loan. Because of the 75% rule under the PPP loan (75% of the loan has to be spent on payroll), refinancing of EIDL loans will make sense only if the EIDL principal was used for forgivable expenses. The primary advantage of such a refinancing would be to make the EIDL principal forgivable. EIDL loans are not forgivable but can be repaid over a longer period of time at 3.75% interest.

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Comparison between PPP and SBA EIDL Loan

	PPP	SBA EIDL
Eligibility	Business with 500 or fewer employees or that meets the SBA size standard for their specific industry. Sole-proprietors, independent contractors, and self-employed are eligible.	
Interest/Loan Maturity	1%, 2 years. Need to apply by June 30, 2020, loan payments will be deferred for 6 months.	3.75%, up to 30 years, first payment deferred for up to 1 year.
Amount	Lesser of 1) 250% of average monthly payroll costs* measured over the prior 12 months or 2) $10 million. *Payroll costs includes state and local taxes, as well as payments for vacation and leave, retirement benefits, but does not include FICA and income tax withholdings, certain COVID-19 paid leave (under FFCRA), and pay in excess of $100,000 annually.	Up to $2 million. Loans for $25,000 require collateral. The maximum unsecured loan amount is $25,000.
Permitted Use	• Payroll costs; • Costs related to the continuation of group health care benefits during paid sick, medical or family leave, and insurance premiums; • mortgage interest payments (but not principal payments); • rent; • utility payments; • interest payments on any other debt obligations incurred before February 15, 2020; or • refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020	• Payroll; • Accounts payable; • Fixed debts; • Other bills that could have been paid had the disaster not occurred.
Forgiveness/Special Feature	Up to 100% forgivable if at least 75% of the loan amount is used for payroll. Forgiveness will be reduced if full-time headcount is reduced or if pay is reduced. Forgiven amount will not be treated as taxable income.	Not forgivable. However, EIDL advance of $10,000 is available.

Credit Criteria	No specific requirement other than requirement to certify in good faith that the business meets the requirements of the PPP program that 1) the loan is necessary due to the uncertainty of current economic conditions due to COVID-19, 2) they will use the funds to pay payroll, rent, etc., and 3) they are not receiving duplicative funds for the same use from another SBA program.	SBA will review • Credit history; • Repayment; • Eligibility
Guarantee/Collateral	PPP loans are unsecured, and do not require a personal guarantee.	Loans over $25,000 require collateral (such as real estate when available), but lack of collateral is not a reason for decline.
Where to Submit Application	Apply through SBA 7(a) lender. See here for active Illinois lender list.	Direct application to SBA. Apply here.

Cf. For simplicity, nonprofits are not addressed in this chart, but they are generally also eligible for PPP loans and SBA EILD loans.

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More About CARES Act Tax Provisions relating to Payroll

Employee Retention Credit for Employers Subject to Closure Due to Covid-19 (Section 2301)

This provision provides a refundable payroll tax credit for 50% of wages paid by employer to employees during the Covid-19 crisis. An eligible employer includes whose operations were fully or partially suspended during any calendar quarter during 2020 due to a COVID-19 shutdown order, or employers whose gross receipts declined by more than 50% when compared to the same quarter in the prior year. This credit is based on qualified wages paid to the employee. The amount of qualified wages that can be included in the calculation of the credit is dependent on the employer's number of full-time employees. For eligible employers with more than 100 full-time employees in 2019, qualified wages are wages paid to employees when they are not providing services due to the COVID-19 situations. For eligible employers with 100 or fewer full-time employees in 2019, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.

The credit is capped at $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is applicable for wages paid or incurred from March 13 through December 31, 2020. *An employer is not eligible for the credit if the employer receives SBA loan under the CARES Act*.

Delay Payment of Employer Payroll Taxes (Section 2302)

This provision allows employers and self-employed individuals to defer payment of the employer's 6.2% share of the social security tax they otherwise are responsible for paying to the federal government with respect to their employees. The deferral period runs through December 31, 2020. The provision requires that the deferred employment tax be paid over the following two years, with half deferred required to be paid by December 31, 2021 and the other half by December 31, 2022. *Employers who receive SBA loans that were forgiven under the CARES Act are not eligible for this deferral*.

** The information contained here has been prepared for informational purposes only and is not legal advice. This material describes issues in general terms, and good legal advice required detailed analysis of particular facts and circumstances.

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