

## Federal and State Grant and Loan Programs Available to New Jersey Small Businesses

April 2, 2020

Small businesses struggling to make ends meet as a result of COVID-19 should act now to determine what, if any, grant or loan opportunities might be available to them, both at the state and federal level. Below is a high-level summary of the programs available in New Jersey by the federal and state government. Applications for most of these programs are expected to be rolled out this week, so if you think that your business may be eligible, time is of the essence to analyze these opportunities and pursue them as appropriate.

### Federal SBA Programs Expanded by the CARES Act

#### **Paycheck Protection Program**

The Coronavirus Aid, Relief and Economic Security Act (“CARES Act”) that was signed into law on March 27, 2020 established the Paycheck Protection Program (“PPP”). The PPP expands U.S. Small Business Administration (SBA) loan eligibility and is designed to allow eligible businesses to borrow money in order to be able to keep employees on payroll and pay certain other eligible costs, such as rent, utilities, and mortgage interest, among other items.

The PPP makes loans available to businesses with 500 employees or fewer (and in certain limited cases businesses with a greater number of employees). A qualifying business can borrow up to two and a half times its average monthly “payroll costs” up to a maximum of \$10,000,000.

“Payroll costs” are defined as: (i) salary, wage, commission or similar compensation; (ii) payment of cash tips or an equivalent compensation; (iii) payment for vacation, parental, family medical or sick leave; (iv) payments related to dismissal or separation; (v) costs for group health care benefits, including insurance premiums; (vi) retirement benefits; and (vii) state or local tax assessed on payroll compensation.

Payroll costs expressly **exclude**: (i) compensation **in excess** of \$100,000 per year per individual employees, but any such employee’s compensation is counted up to \$100,000 for the purposes of determining the amount of payroll costs; (ii) the following taxes: (a) taxes imposed or withheld under chapter 21 of the Internal Revenue Code (“IRC”) (i.e., Social Security & Medicare), (b) Chapter 22 of the IRC (i.e., the Railroad Retirement Act), and (c) Chapter 24 of the IRC (i.e., Federal Income Tax Required to be withheld at the source for employees); (ii) compensation of an individual whose principal place of residence is outside the USA; (iii) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (FFCRA); and (iv) qualified family leave wages for which a credit is allowed under section 7003 of the FFCRA.

PPP loans can be used to pay: (i) payroll costs, (ii) benefits costs, including insurance premiums, (iii) employee compensation, (iv) mortgage interest, (v) rent and (vi) utilities.

The most notable feature of the PPP is that it allows employers to have a portion of the loan and interest forgiven. The CARES act provides that the principal amount of a PPP loan that is used on payroll costs, rent, mortgage interest and utilities during the 8-week period following the date of the loan will be forgiven. Recent SBA Guidance states that due to a likely high demand for PPP loans, it is anticipated that not more than 25% of the forgiven amount may be used for non-payroll costs. Independent contractors are not treated as employees for purposes of the program and amounts paid to independent contractors do not qualify as payroll costs.

The PPP penalizes Employers that engage in staff or salary reductions by reducing their eligibility for loan forgiveness. Specifically, an employer's loan forgiveness will be reduced proportionately if it decreases its employee headcount or if it decreases salaries and wages payable to any employee (whose annual salary is \$100,000 or less) by more than 25%.

The PPP provides that loans must be repaid within 2 years (other than amounts that are forgiven) and will carry a 1% interest rate. The SBA Guidance further provides that payment of PPP loan principal and interest may be deferred for six (6) months.

No personal guarantees or collateral are required to be provided in connection with any PPP loans.

It should be noted that obtaining a loan pursuant to the Payment Protection Program would preclude a business from taking advantage of the CARES Act's employee retention tax credit, and having a Payment Protection Loan forgiven would preclude a business from utilizing the CARE Act's Payroll Tax Deferral. As such, it is important to discuss the details and impacts of a Payment Protection Program with a legal and/or tax adviser.

Small businesses and sole proprietorships can begin applying for PPP loans beginning on April 3, 2020. Independent contractors and self-employed individuals can begin applying for PPP loans on April 10, 2020. The Paycheck Protection Program application is available [here](#).

The Act requires that regulations governing the implementation of the loan and the loan forgiveness programs be issued shortly after the Act became law. These regulations are anticipated as early as the second week of April 2020. The regulations may offer further clarity or change the loan and forgiveness programs in important ways. We will provide further updates as these regulations become available.

### **Emergency Economic Injury Disaster Loans**

The CARES Act also expands Emergency Economic Injury Disaster Loan ("EIDL") eligibility for the period between January 31, 2020 and December 31, 2020 to include businesses with not more than 500 employees. EIDLs may be approved solely on the basis of an applicant's credit score or by use of alternative methods to gauge the applicant's ability to repay. Applicants may request an advance of up to \$10,000 within three days after the Administrator receives the

application, subject to verification that the entity is eligible under §7(b)(2) of the Small Business Act and is not subject to repayment, even if the loan request is ultimately denied.

The CARES Act waives (i) the requirement of personal guarantees for EIDLs up to \$200,000, (ii) the requirement that the applicant must be in business for a year (but it must have been in business on 1/31/20), and (iii) the credit elsewhere test.

EIDLs can be up to \$2 million and are to be used to finance working capital. EIDLs cannot be used to refinance long term debt. The loan amount is limited to the economic injury determined by the SBA less business interruption insurance and other recoveries up to the lending limit. The SBA also considers potential contributions that are available from the business and/or its owners and affiliates.

The EIDL application is available at: <https://covid19relief.sba.gov/#/>

### **New Jersey Economic Development Authority Programs**

In an effort to assist in determining which NJEDA program may be applicable, the state has created an “Eligibility Wizard” program, which is available at <https://assistance.business.nj.gov/>. **Applications are expected to be opened this week, and will be considered on a first come, first serve rolling basis.**

#### **Small Business Emergency Assistance Grant Program**

This program is for employers with 10 or fewer employees. In order to be eligible for this program, which provides a grant of up to \$5,000, a business must:

- a. have between 1 and 10 full time equivalent employees (not 1099 contractors),
- b. have a physical commercial location in New Jersey (not a home-based business),
- c. be classified in one of the following industries:
  1. Retail;
  2. Accommodation & food services;
  3. Arts, entertainment & recreation; or
  4. Other specific services, including automotive and electronic repair and maintenance.

The applicant must also certify, among other things, that the company will make a best effort not to furlough or lay off any individuals from the time of application through six months after the end of the declared state of emergency (companies that have already furloughed or laid off worker must make a best-effort pledge to re-hire those workers as soon as possible).

The application is available at <https://forms.business.nj.gov/grant/>.

#### **Small Business Emergency Assistance Loan Program**

This program provides a direct loan of up to \$100,000, with low-cost and flexible terms, such as a 10-year term and amortization, a 0% interest rate for years 1 through 5 and NJEDA's prevailing interest rate floor (capped at 3%) for years 6 through 10, and deferred repayment for 12 months.

In order to be eligible for this program, a business must:

1. Have a physical commercial location in New Jersey (not a home-based business);
2. Have been in existence for at least one year;
3. Have less than \$5 million annual revenue;
4. Show a global debt service coverage ratio of 1.00, as of December 31, 2019;
5. Demonstrate negative impact related to COVID-19 on or after March 9, 2020;

Like the grant program, the applicant must certify, among other things, that the company will make its best effort not to lay off or furlough employees or will re-hire employees as soon as possible.

Applications will be made available on Monday, April 13, 2020, at 9:00 a.m. and can be found here: <https://business.nj.gov/>.

### **NJ Entrepreneur Support Program**

This program is meant to encourage private sector investors to provide working capital loans to New Jersey-based entrepreneurial businesses in which the investor is already an equity holder. The program provides a guarantee of an investor loan advanced for working capital to an entrepreneurial company that has been impacted by COVID-19. The NJEDA will guarantee up to 80% of the total investment amount, not to exceed \$200,000.

In order to be eligible the entrepreneurial business must have a minimum of 50% of its employees in New Jersey, have fewer than 25 total employees at the time of application, have under \$5 million in revenue, have a corporate headquarters in New Jersey, and fall under one of the eight sectors outlined in the Governor's economic plan (advanced manufacturing, information technology, life sciences, finance and insurance, clean energy, food and beverage, advanced transportation, and film and digital media).

### **Small Business Emergency Assistance Guarantee Program**

This program encourages lending from Premier Lender banks by providing a 50% guarantee from NJEDA. In order to be eligible for this program a business must

1. Have a physical commercial location in New Jersey (not home-based businesses);
2. Have been in existence for one year;
3. Have \$5 million or less in annual revenue;
4. Demonstrate a negative impact on business due to COVID-19;
5. Provide CEO Certification that the company will make its best effort not to lay off or furlough employees or will re-hire employees as soon as possible.

Application for this program should be made directly to a Premier Lender.

**Community Development Finance Institution ("CDFI") Emergency Loan Loss Reserve Fund and CDFI Emergency Assistance Grant Program**

These programs are specifically designed to provide capital to CDFIs to allow them to scale up their ability to provide lending to small business and micro enterprises that may not be able to secure traditional bank financing. Applications for lending should be made directly to local CDFIs.

**Emergency Technical Assistance Program**

The NJEDA is working to procure several technical assistance providers to help New Jersey companies apply for SBA programs, including those described above.

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Regulations and further guidance relating to all of these programs are expected in the coming weeks. We will continue to monitor changes and clarifications as they become available. Of course, every employer's eligibility for these programs and the impact that the programs may have upon its legal and tax obligations will be fact specific.