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Eligibility for SBA's Emergency Loan Program for Businesses Impacted by COVID-19

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Q: We have heard about the U.S. Small Business Administration (SBA) emergency loan program for businesses that have been impacted by COVID-19. Are we eligible and how do we apply?

A: SBA operates a Disaster Loan Program that provides loans of up to $2 million to eligible small businesses. In general, to be eligible, the company must:

- be located in a designated disaster area;
- show that it has suffered substantial economic injury as a result of the coronavirus (COVID-19); and
- be a “small business.”

Location in a Disaster Area

The company must be located in a designated disaster area. Areas are designated by primary and contiguous counties. Information on designated disaster areas can be found here at https://disasterloan.sba.gov/ela/Declarations.

Substantial Economic Injury

The company must show that it has suffered substantial economic injury as a result of COVID-19. Substantial economic injury means the business is unable to meet its obligations and to pay its ordinary and necessary operating expenses. Economic Injury Disaster Loans provide the necessary working capital to help small businesses survive until normal operations resume after a disaster. Eligibility is also determined if SBA finds that the business is unable to obtain credit elsewhere. If SBA determines that private credit may be available to a business, the business may be deemed ineligible to receive a loan (or the loan amount may be reduced).

Company Must Be a ‘Small Business’

- The company must be a “small business.” To be considered a “small business:”
- the size of the company alone (**without affiliates**) must not exceed the size standard designated for the industry in which the applicant is primarily engaged, ***and***
- the size of the company **combined with its affiliates** must not exceed the size standard designated for either the primary industry of the applicant alone or the primary industry of the applicant and its affiliates, whichever is greater.

The size standards for the Disaster Loan Program make reference to the North American Industrial Classification System (NAICS) and are based on either the number of employees (generally 500 to 1,000 for manufacturers) or receipts, depending upon the industry. The size standards are found at the following SBA regulations: https://www.law.cornell.edu/cfr/text/13/121.201.

The concept of "affiliation" is important because the company may lose it "small" status if it is considered to be affiliated with other entities. Concerns and entities are affiliates of each other *when one controls or has the power to control the other, or a third party or parties controls or has the power to control both*. It does not matter whether control is exercised, so long as the power to control exists. The principles SBA considers to determine affiliation are broad and encompass concepts beyond ownership of the company and are fact-specific. For Disaster Loans, the following link addresses how "affiliation" is defined: https://www.law.cornell.edu/cfr/text/13/121.301 [law.cornell.edu].

Companies owned in whole or substantial part by funds licensed by SBA as "small business investment companies" (SBICs) are not considered affiliates of the SBIC. Thus, portfolio companies that may be controlled by an SBIC are not aggregated for purposes of determining whether a company is a small business for purposes of the Disaster Loan Program.

We are available to help you assess whether your portfolio businesses could be considered "small."

Loan Application Process

The application for a Disaster Loan is an online process. The online application process will require the creation of an online account with which a business can track the process of its application. The online process can be accessed here: https://disasterloan.sba.gov/ela/.

Pending Legislation to Expand SBA's 7(a) Loan Program

We note that Congress is considering legislation that would expand the availability of SBA's 7(a) Loan Program for small businesses and enable borrowers to borrow up to $10 million and use the proceeds for (1) payroll support, including paid sick, medical or family leave, and costs related to the continuation of group health care benefits during those periods of leave; (2) employee salaries; (3) mortgage payments; and (4) any other debt obligations. The draft legislation includes features such as (1) increases in the size standard for eligible business concerns, (2) payment deferrals and (3) a forgiveness feature that would enable portions of the loan to be forgiven without resulting in cancellation of indebtedness income. In its current state, the legislation would not permit a company that has received a Disaster Loan to receive a loan under the expanded 7(a) Program. This legislation is in the very early stages, and its provisions remain fluid. We are tracking its progress and will provide an update when there is something definitive to report.