

2020 COVID-19 Pandemic Task Force

Financial Impact on the Legal Profession Subcommittee



The 2020 COVID-19 Pandemic Task Force Financial Impact on the Legal Profession Subcommittee submits these guidelines regarding public and private financing options available to law firms and lenders during the current pandemic.

PUBLIC FINANCING OPTIONS: STATE AND FEDERAL PROGRAMS

- I. **FEDERAL:** CARES Act (Coronavirus Aid, Relief, and Economic Security Act) passed in response to Covid-19

Small Business Administration (SBA): <https://disasterloan.sba.gov/ela/>

A. Summary of Economic Injury Disaster Loans (EIDL)

1. They are working on a component that will provide up to \$10k emergency advance (this is different from the full EIDL), which will not need to be repaid.
2. Online application
3. Two different applications¹:
 - a. Business loan (Form 5) [https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20\(SBA%20Form%205\).pdf](https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20(SBA%20Form%205).pdf) or
 - b. [https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20\(SBA%20Form%205\).pdf](https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Business%20Loan%20Application%20(SBA%20Form%205).pdf)
 - c. Or sole proprietor (Form 5C) [https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Home%20or%20Sole%20Proprietor%20Loan%20Application%20\(SBA%20Form%205C\).pdf](https://www.sba.gov/disaster/apply-for-disaster-loan/pdfs/Home%20or%20Sole%20Proprietor%20Loan%20Application%20(SBA%20Form%205C).pdf)
4. General provisions:
 - a. Application requires a statement of the “Amount of Estimated Loss” in the following areas: Real Estate, Inventory, Machinery & Equipment, and Leasehold Improvements
 - b. Funds may be used for “payroll costs” (defined by the Act), mortgages, rent, utilities, and other debt obligations incurred before the covered period
 - c. May convert to a Payroll Protection Program (PPP) loan and apply for forgiveness for portion of the loan that relates to payroll, mortgage, rent and utilities. Forgiveness is reduced if worker’s salary is reduced. Apply through payroll tax filing with IRS (Form 941).
 - d. Payroll costs = “salary, wage, commission, or similar compensation,” certain fringe benefits, health insurance benefits, retirement benefits, state and local tax on compensation, self-employment tax
 - e. Payroll amount is capped at \$100k per employee prorated for the covered period (Feb. 15, 2020 to June 30, 2020)
 - f. Non-recourse if used for authorized purpose
 - g. No personal guarantee
 - h. Term no longer than 10 years

¹ Anyone can request to see or get copies of any personal information that the SBA has in your file.

- i. Interest rate not to exceed 4%
 - j. Deferral of payments for at least 6 months (SBA to give more guidance)
 - k. No prepayment penalties
 - l. For Sole Proprietor, you can check: Physical Damage or Economic Injury
 - m. For Sole Proprietor, applicant needs to state "Total Annual Income (before deductions)" from all sources, including part-time work, social security, retirement income, disability income, interest income, child support, alimony, etc.
 - n. For Sole Proprietor, you must list all debts, including mortgages, auto loans, real estate taxes, homeowner's insurance, condo fees
 - o. For Sole Proprietor, you must list all insurance policies for property damage
 - p. For Sole Proprietor, you must list all assets, including: Cash, Bank Accounts, Securities, Retirement Accounts, Personal Property, Primary Residents, and other Real Estate
 - q. For Sole Proprietor, you may have to provide a copy of the deed to your resident
5. Application Process
- a. Upload application and supporting documents through the website. SBA requires the following supporting documents:
 - i. Tax Information Authorization (IRS Form 4506T) signed by each applicant, each principal owning 20% or more of the applicant business
 - ii. Complete copies of the most recent business tax return with schedules
 - iii. Personal Financial Statement (SBA Form 413D) for each owner owning greater than 20% of applicant business
 - iv. Schedule of Liabilities (SBA Form 2202)

B. Summary of Payroll Protection Program (PPP) Loans for Small Business

Information sheet:

<https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf>

Treasury Department webpage: <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>

Application for PPP: https://www.sba.gov/sites/default/files/2020-03/Borrower%20Paycheck%20Protection%20Program%20Application_0.pdf

1. Loans guaranteed by government but funded through private lenders.
2. Requirements:
 - a. 500 or fewer employees
 - b. Loan Amount: 2.5x average total monthly payroll; capped at \$10 million
 - c. Independent contractors and sole proprietors may apply
 - d. Loan proceeds can be used for "payroll costs," mortgage interest, rent, utilities, and other debt obligations incurred before the covered period

- e. Nonrecourse (unless used for unauthorized purpose)
 - f. No personal guarantee of borrower's owners
 - g. No collateral requirement
 - h. Borrower must certify:
 - i. Economic climate necessitates the loan;
 - ii. Funds will be used for "covered expenses";
 - iii. No other similar loan applications;
 - iv. Between 2/15/20 and 12/31/20, recipient has not received and will not receive other similar loans
 - i. Maximum maturity of 10 years
 - j. Interest rate not to exceed 4%
 - k. No prepayment penalties
 - l. At least 6 months deferral of principle and interest (up to 1 year)
 - m. Underwriting criteria: Business was in operation on 3/1/20 and had employees
 - n. Business that received SBA disaster assistance loans for COVID-19 to support payroll cannot also get a CARE loan for the same purpose (SBA will provide more guidance on this)
 - o. Businesses that apply for loans are presumed to qualify
 - p. Federal government claims that these funds will be available by April 3, 2020.
3. Upon application, **loan forgiveness** for:
- a. Payroll expense, mortgage payments, rent, and utilities;
 - b. "Payroll cost" means: "salary, wage, commission, or similar compensation," certain fringe benefits, termination pay, health/insurance benefits, retirement benefits, state and local tax on compensation, self-employment income for sole-proprietor and independent contractors; all capped at \$100k per employee
4. Forgiveness will be reduced if employees are terminated during "covered period," i.e. Feb. 15, 2020 to June 30, 2020. It also is reduced if worker salaries are reduced.
5. Application for Loan Forgiveness: Payroll tax filing with IRS (Form 941)
- a. Will need to supply cancelled checks, payment receipts, etc. verifying actual payment of covered expenses;
 - b. Certification under oath that (a) the information provided is true and accurate and (b) the loan was used to retain employees and pay covered expenses

C. Section 202- Delay of Payment of Employer Payroll Taxes

1. Employers are eligible for a 50 percent refundable payroll tax credit on wages paid up to \$10,000 during the crisis. It would be available to employers whose businesses were disrupted due to virus-related shutdowns and firms experiencing a decrease in gross receipts of 50 percent or more when compared to the same quarter last year. The credit is available for employees retained but not currently working due to the crisis for firms with more than 100 employees, and for all employee wages for firms with 100 or fewer employees.

2. Employer-side Social Security payroll tax payments may be delayed until January 1, 2021, with 50 percent owed on December 31, 2021 and the other half owed on December 31, 2022.

D. IRS Payroll Tax Credit for Coronavirus Related Leave

<https://www.irs.gov/newsroom/treasury-irs-and-labor-announce-plan-to-implement-coronavirus-related-paid-leave-for-workers-and-tax-credits-for-small-and-midsize-businesses-to-swiftly-recover-the-cost-of-providing-coronavirus>

1. Credit for paid coronavirus-related leave: Provides employers with a credit of up to 80 hours of paid sick leave and expand paid child care leave when employees' children's school are closed or child care providers are unavailable.
 - a. Paid sick leave: for employee who is unable to work because of coronavirus quarantine or self-quarantine or has coronavirus symptoms and is seeking a medical diagnosis. Up to \$511 per day, for up to 10 days.
 - b. Paid leave for child care: for employee who is caring for someone with coronavirus, or caring for a child because of child's school or child care facility is closed or unavailable due to the coronavirus. Up to 2/3 of regular pay up to \$200 per day, for up to 10 days.

II. STATE PROGRAMS

A. Department of Economic and Community Development (DECD)

1. **Bridge Loan Program:** <https://portal.ct.gov/DECD/Content/Coronavirus-Business-Recovery/CT-Recovery-Bridge-Loan-Program>

- a. "Paused" for 30 days! (as of 3/27/20)
- b. No more than 100 employees
- c. Good standing with DRS
- d. Profitable prior to 3/10/20, with no adverse personal credit report for 60 days
- e. Not be involved in real estate, multi-level marketing, adult entertainment, cannabis, or firearms; nor be a state elected public official or state employee
- f. Lesser of \$75k or 3 months operating expenses
- g. 0% interest
- h. 12-month term with 6-month extension available
- i. No pre-payment penalty
- j. Personal guarantee and credit score required

B. **Connecticut Department of Labor Shared Work Program:**

https://www.ctdol.state.ct.us/progsupt/bussrvce/shared_work/?fbclid=IwAR36WmC954d6O3EStKTLK_KDEwX1bexQguTOBLnnu3MzqdO0BsHxJ28sxs

- a. Alternative to total layoffs
- b. Employers can reduce eligible employees' hours and they receive a portion of their weekly unemployment compensation

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- c. Can reduce normal work week between 10-60%
- d. Plan is in force for 6 months.
- e. Employer must maintain employee health and retirement benefits
- f. Apply online, fax, or mail
- g. Response within 30 days

PRIVATE FINANCING OPTIONS

I. PRIVATE LENDERS

- A. Community Banks and Credit Unions
E.g. Charter Oak Federal Credit Union: Jane Moriarty, Vice President, Commercial Lending, (860)446-3381; jmoriarty@cofcu.com
- B. Contact Bank Where You Have Operating Account
- C. Online Services That Provide Funding: Amounts and Terms Vary
 1. PayPal Working Capital: <https://www.paypal.com/workingcapital/>
 2. LoanBuilder: <https://www.loanbuilder.com/lb/home>
 3. OnDeck: <https://www.ondeck.com/>
 4. Fora Financial: <https://www.forafinancial.com/>
 5. Kabbage: <https://www.kabbage.com/>
 6. National Business Capital: <https://www.national.biz/>
 7. Funding Circle: <https://www.fundingcircle.com/us/>
 8. Excel Capital Management: <https://www.excelcapmanagement.com/>
- D. Other Covid-19 Relief Initiatives
 1. Clio pledged \$1M to law firms: <https://www.clio.com/covid-relief/>

II. RESTRUCTURING EXISTING DEBT: Negotiate with Your Creditors

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INSURANCE CONSIDERATIONS

I. INSURANCE CLAIMS FOR BUSINESS INTERRUPTION

- A. Most policies do not cover viruses
- B. Business interruption insurance usually requires property damage. However, if the landlord has locked/closed the building, there could be a claim. In view of this, John Kronholm of Brown & Brown recommends filing a claim. There is a lot of political pressure on insurance companies to be flexible.
- C. Some insurance companies are waiving charges on late fees and delaying cancellation of policies for 60 days

RETIREMENT ACCOUNTS

I. ABA RETIREMENT FUNDS:

- A. <https://abaretirement.com/covid-19-market-impact/>
- B. Offers financial tips for the crisis

ETHICS AND HEALTH

- I. **ETHICAL CONSIDERATIONS:** Clients' funds should never be used!
- II. **LAWYERS CONCERNED FOR LAWYERS PROGRAM:** <http://www.lclct.org> if you feel overwhelmed, this is an excellent resource

Submitted by the 2020 COVID-19 Pandemic Task Force Financial Impact on the Legal Profession Subcommittee comprised of K. Bradoc "Brad" Gallant, John Kronholm, Joaquin L. Madry, Ralph J. Monaco, and Jeffrey M. Sklarz.