



PRESENTED BY  GOODWIN

CARES Act and Your Medical Practice:

What You Need to Know

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TODAY'S SPEAKERS



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Disclaimer: *This is a general presentation on the stimulus loan programs which was recently enacted and has been rapidly evolving. Goodwin is participating in this presentation as counsel to Phreesia and the presentation and accompanying materials should not be construed as legal advice because that will be dependent on the facts of your specific situation. If you have a particular situation on which you need advice, please reach out to your counsel.*

FEDERAL SMALL BUSINESS LOAN PROGRAMS: OVERVIEW

	Payroll Protection Loan Program (PPP / PPL / PPLP)	Economic Injury Disaster Loans (EIDL)
Lender	Private SBA-approved lenders (current and new)	Small Business Administration directly
Federal Allocation	\$350 billion. More in discussion	Pre-existing program, additional \$10 billion added under CARES Act
Purpose	Provide small businesses with funds to pay 8 weeks of payroll costs including benefits	To satisfy financial obligations that cannot be met as a direct result of the disaster
Amount	Up to \$10M, limited to 2.5 times average monthly payroll and benefit costs (excluding salaries in excess of \$100K per year and of employees residing outside the U.S.A.) during the prior 1-year period	Not more than \$2M, based on SBA injury determination
Access to Credit Restriction	No requirement to demonstrate inability to access other credit	Must certify as to inability to obtain credit elsewhere

FEDERAL SMALL BUSINESS LOAN PROGRAMS: PROCEEDS & FORGIVENESS

	PPL	EIDL
Use of Proceeds	<ul style="list-style-type: none">➔ 75% of the loan proceeds must be used for payroll and benefit costs➔ Balance may be used for, among others, utilities, rents and certain existing debt service payments.➔ Cannot be used for repayment of principal of any debt	<ul style="list-style-type: none">➔ Working capital, including payments of fixed debts, payroll, and accounts payable.➔ Cannot be used to refinance long-term debt
Loan Forgiveness	<ul style="list-style-type: none">➔ Funds used within 8 weeks of closing for a certain subset of permitted uses (including the minimum 75% payroll component) are eligible for forgiveness➔ Forgiveness subject to restrictions (e.g. compensation over \$100K) and potential reduction for reductions in force or wages	<ul style="list-style-type: none">➔ SBA can elect to deem up to \$10,000 to be a grant

FEDERAL SMALL BUSINESS LOAN PROGRAMS: KEY LOAN TERMS

	PPL	EIDL
Application Timing	<ul style="list-style-type: none"> ➔ Open Apr 3 to Jun 30 ➔ Turnaround time TBD 	<ul style="list-style-type: none"> ➔ Open Jan 31 to Dec 31 ➔ Turnaround ~4 weeks
Rate	1.0%	3.75%
Maturity	2 yrs	Up to 30 yrs
Deferral	No interest or principal payments for 6 months	None
Guaranty & Security Requirements	Guaranty and collateral requirements waived	No waiver. A combination of personal/owner guarantees and/or collateral will be required for EIDLs in excess of \$200,000.
Ranking	Lenders expected to want to be 'first dollar' out of the company ahead of all other debt or equity	Same
Institutional Investor Requirements	No obligation for 20%+ holders to co-certify to the application, only the borrower must	20%+ holders (as well as officers and directors) may have to supply tax returns

FEDERAL LOAN PROGRAMS FOR SMALL BUSINESSES: QUALIFICATION & AFFILIATION

- ➔ **How to Qualify?** Both programs require that you are either a “small business concern” or meet the applicable headcount for being “small” (generally <500 employees).
- ➔ **“Affiliates”** are included in a business employee count (which is used for eligibility for EIDL and PPPL).
 - “Affiliation” is typically assessed on the basis of control (equity or positive/negative control rights).
 - General rule, non-rebuttable presumption of affiliation by ownership of 50% or more of the voting securities of a business.
 - Minority ownership may still create a case of affiliation where holders possess exclusive rights of control over certain “operational matters”.
- ➔ **What about Corporate Practice of Medicine Structures?** CPOM structures present a unique challenges with respect to affiliation. More on this later.
- ➔ **Are there exceptions?** For PPLs there are waivers for businesses: (1) with not more than 500 employees that are assigned an NAICS code starting with 72 (which are generally food services and hospitality companies), (2) operating as a franchise and (3) receiving financial assistance from a Small Business Investment Company.

➔ Applications for EIDLs are done online through the SBA website.

- Details: <https://covid19relief.sba.gov/>

➔ Applications for PPLs are done through a private SBA-approved lender.

- Details: <https://home.treasury.gov/cares>
- The 'final' application posted contemplates that applications will be available to employers starting April 3, and most lenders are now online, but some may lag.

➔ What can you do to prepare?

- Confirm the business is sufficiently 'small' (< 500 employees).
- Do affiliates analysis. If potential affiliates, consider amending or waiving provisions in governance documentation to eliminate problematic blocks.
- Get comfortable company can make the certifications in the application.
- Contact your existing lender and/or cash management bank.
- Get your payroll numbers and backup in order.
- Map out expected use of proceeds.

FEDERAL LOAN PROGRAMS FOR SMALL BUSINESSES: CPOM CONCERNS

- ➔ **Why are CPOMs a particular case?** CPOM structures often run afoul of size standards due to affiliation with either the hospital system they contract with and/or a practice management entity with institutional investors

- ➔ **What Factors Affect Affiliation?** Key factors in the MSO-PC relationship to evaluate are:
 - Overlapping equity ownership between MSO & PC
 - Negative controls over PC operations by MSO
 - Consolidation of tax returns between MSO & PC
 - Length of term of the management agreement
 - Negative controls over equity transfers by PC owners
 - Symbiotic relationship that cannot be unwound

- ➔ **Any Other Concerns?** Other items to be mindful of include:
 - Is amending documents to 'break' affiliation feasible?
 - Are the PC and/or MSO's existing lenders on board?
 - What payroll would be available to underwrite the loan?
 - What reputational impact could participating in the program have?

FAQ

THANK YOU



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