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PERMITTED USES OF SBA DISASTER LOANS

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The list of acceptable uses of an Economic Injury Disaster Loan ("**EIDL**") from the SBA remains a bit murky and we expect the projected uses by an applicant are likely to be an important factor utilized by the SBA in deciding whether and how much to loan to an applicant. In the SBA's March 12th announcement that EIDL loans would be available to mitigate the effects of the Coronavirus on businesses, the SBA stated that an EIDL "can be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact."

We don't (yet) have any experience or direct information from clients as to uses of loan proceeds that have been approved or questioned by the SBA in connection with the Coronavirus. We also could not locate a single, comprehensive list published by the SBA of acceptable or unacceptable ways to use the proceeds of an EIDL. As a general rule, we suggest your response to the SBA as to projected uses of the loan proceeds would be to meet your business's short term working capital (a) shortfalls that can be tied to the Coronavirus and (b) needs that would have been otherwise available from your normal business operations absent the disaster (i.e. EIDL is not supposed to cover working capital that was needed by the business prior to the disaster).

From various SBA pronouncements and unofficial sources about the purposes of EIDLs, here are some suggested guidelines as to how to best position your EIDL loan with the SBA:

- (a) Focus on the business need to maintain a reasonable working capital position during the period affected by the disaster **and being able to keep people employed and make payroll**.
- (b) Be prepared to explain and demonstrate the impact on your working capital cash flow (i.e. with historical financial statements before the disaster and pro forma financial projections for after the disaster began). Items to consider include the cash impact of:
 - (i) larger than normal volume of accounts receivables;
 - (ii) lower sales or revenue due to cancellation or business disruption such as cancelled or delayed orders, cancelled meetings or events;
 - (iii) slower inventory turnover or supply disruption; and
 - (iv) projected delinquencies in trade payables, current accruals and debt payments.
- (c) Do not use an EIDL to buy equipment or other capital assets.
- (d) Do not use an EIDL to pay cash dividends or bonuses, or for disbursements to owners, partners, officers or stockholders that are not directly related to the performance of services for the business.
- (e) Do not use EIDL to refinance or substantially repay long-term debts (it appears the EIDL can be used to make pre-existing scheduled debt payments, but not a full or accelerated repayment of those debts).
- (f) Do not use the EIDL to fund expected lost profits.

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