

Welcome

In this session, Cooper Levenson attorneys will discuss:

- CARES Act and Related Issues, including:
 - Paycheck Protection Program
 - Economic Injury Disaster Loan Program
 - Financial Support for the Fishing Industry
- Chapter 12 Bankruptcy for Family Farmers and Family Fishermen
- Restructuring for Small Business



PAYCHECK PROTECTION PROGRAM

"PPP"

- Congress appropriated \$349 billion to the PPP under the CARES Act.
- The purpose of the PPP is to help small businesses to cover payroll and other expenses for a 2-month period.
- APPLY AT PARTICIPATING BANKS – ASAP as funds are available on a first-come, first-served bases

BUSINESSES THAT CAN APPLY FOR THE PPP

- Business that employs less than 500 people (Full time and Part time)
- Business that meets the SBA size standard (see SBA website)
- Independent contractors, sole proprietors, self-employed
 - Will need to provide documentation (i.e. 1099-MISC, payroll tax filing, bank records, etc.)
- Tribal business
- 501(c)(3) and 501(c)(19)
- Multiple locations: food service and accommodations (NAICS 72) – 500 employees per physical location
- Franchises: affiliations rules apply with exceptions

WHAT ABOUT LOAN FORGIVENESS?

- 2.5 x borrower's average 2019 monthly **PAYROLL COSTS**:
 - Salary (if employee makes more than \$100,000, calculate only \$100,000 for salary)
 - Certain employee benefits
 - Health care benefits (including insurance premiums)
 - State and local taxes (not payroll or income tax)
 - Excludes payments to independent contractors
- Sole proprietors/independent contractors/self-employed:
 - Sum of wage, commission, income, net earnings from self-employment, or similar compensation pro-rated
 - Up to \$100,000
- **No collateral or personal guarantee!**
- Interest rate 1%
- Repayment term 2 years – deferred payment for at least 6 months
- Loan amount cannot exceed \$10 million
- If an employer already received an Economic Injury Disaster Loan (“EIDL”) loan by April 3, 2020, any outstanding amount of the EIDL is added to the PPP loan (less \$10,000 loan advance).
- No more than 25% of loan proceeds may be used for non-payroll costs.

PAYROLL FOR SEASONAL EMPLOYEES

- Businesses with seasonal employees: calculate payroll as
 - 12-week period from Feb.15, 2019 (or March 1, 2019) to June 30, 2019
- Run numbers both ways (seasonal and annual) to determine which amount to borrow

CERTIFICATIONS BY BORROWER

Borrow must certify, among other things:

- Business was in operation on February 15, 2020 including paid employees
- Loan is necessary to support ongoing operations
- Funds will be used to retain workers and maintain payroll costs, rent or interest on mortgage, and utility payments
- If funds are knowingly used for unauthorized purposes, borrower may be subject to liability such as charges for fraud.
- No more than 25% of the loan may be used for non-payroll costs.

LOAN FORGIVENESS

This is called a loan but in effect it is a GRANT if used for payroll and other approved expenditures if spent within 8 weeks after the loan is disbursed.

After the 8-weeks period ends, the borrower can apply for loan forgiveness in which the loan is forgiven and YOU WILL NOT HAVE TO PAY THE LOAN BACK with some exceptions.

The PPP “loan” is forgiven for the following expenditures:

- PAYROLL COSTS (as defined earlier)
- Rent or Interest on mortgage or other debt obligation
- Utilities

Application for loan forgiveness must document dollar amounts spent on payroll costs, rent or interest on mortgage, and utilities, as well as the number of full time equivalent employees on payroll.

DEDUCTIONS FROM LOAN FORGIVENESS

There are certain amounts that will be deducted from loan forgiveness under the PPP:

- Failure to maintain employees
 - If you terminate employees during the 8-week period after loan origination, the forgiven amount will be reduced
 - **BUT** employer can remedy terminations between Feb 15, 2020 and April 26, 2020 by hiring the number of terminated employees back by June 30, 2020
- Failure to maintain salary
 - If you reduce salaries more than 25% (compared to most recent quarter) then the forgiven amount will be reduced
 - **BUT** employer can remedy salary reductions between Feb 15, 2020 and April 26, 2020 by restoring salaries by June 30, 2020)
- Economic Injury Disaster Relief \$10,000 Emergency Grant provided for in the CARES Act will be deducted from the forgiven PPP amount

US SMALL BUSINESS ADMINISTRATION

Because New Jersey is approved for federal disaster assistance, New Jersey businesses are available to apply for Economic Injury Disaster Loans through the Small Business Administration (SBA) as well as Paycheck Protection Program.

ECONOMIC INJURY DISASTER LOANS (EIDLs)

- CARES Act expanded EIDLs
- For small businesses, sole proprietors/independent contractors, and private non-profits of all sizes
- Covers working capital
- Must have sustained economic injury
- Streamlined application – the CARES Act included provisions that make the application process much easier (i.e. no personal guarantee for smaller loans, no need to show credit is available elsewhere, approval can be based on credit score)
- Must have been in business since January 31, 2020
- Loans over \$25,000 require collateral (or a pledge of what is available)
- Amount of loan: \$2 million max
- Interest rate capped at 3.75%
- Loan term 30 years max
- No fees
- Repayment begin when loan is disbursed

ECONOMIC INJURY DISASTER LOANS (EIDLs)

- Apply by December 18, 2020
- **EMERGENCY GRANT:** this loan also includes a \$10,000 grant made available within 3 days, which does not have to be repaid even if the applicant does not qualify for the loan; emergency grant money must be used for providing paid sick leave, payroll, increased costs of materials, rent/mortgage, and repaying obligations that cannot be met because of revenue loss

FINANCIAL SUPPORT FOR THE FISHING INDUSTRY

- Importance of commercial fishing industry in New Jersey
- Landed over 190,000,000 pounds of fin fish and shell fish in 2018
- Per latest studies from Federal Regulators, New Jersey is sixth largest fishing industry in the US and responsible for 38,000 jobs and \$6.2 billion in sales and \$1.4 billion in income
- New Jersey's three most productive ports:
 - Cape May / Wildwood
 - Point Pleasant
 - Atlantic City

FINANCIAL SUPPORT FOR THE FISHING INDUSTRY

- Secretary of Commerce authorized to disburse \$300,000,000 to commercial fishing industry and related businesses thru 9/30/21
- Statute's definition of eligible entities is ambiguous
- Definitely includes tribal, subsistence, commercial fishermen, charter fishermen, and aquaculture businesses
- Also likely includes businesses with a nexus to the fishing industry, including fish supply chain, e.g. processing, ice house storage facilities, distribution including trucking companies
- Includes "Other fish fry related business" - extremely broad (fish markets, seafood restaurants?)

FINANCIAL SUPPORT FOR THE FISHING INDUSTRY

- Businesses must demonstrate direct or indirect losses due to COVID-19 pandemic:
 - Economic revenue losses greater than 35% as compared to the prior 5-year average revenue
 - Direct relief payments may be awarded on a rolling basis, and within fishing seasons

FILING CHAPTER 12 : FARMERS & FISHERMEN

- Available exclusively to "family farmers", "family fishermen", and sometimes to their business entities too
- Provides farmers and fishermen who have suffered substantial financial losses and are burdened by crushing debt, the opportunity to avoid the loss of their businesses and liquidation.
- In most cases, they are permitted to keep their businesses, farms, boats, and valuable permits and to continue their way of life, earn income, and pay their debts over a substantial period of time (usually between three and five years)
- Invoking Chapter 12 tends to level the playing field, particularly once the bank or other creditors understand that this strategic option does not require their consent to file

FILING CHAPTER 12 : FARMERS & FISHERMEN

- To be eligible to file under Chapter 12, the total debt of the family farmer must not exceed \$10,000,000.00 and the debt of the family fisherman must not exceed \$1,924,550.00
- Family farmers must earn at least 50% of their income from farming operations
- Family fishermen must earn at least 80% of their income from commercial fishing operations
- Certain farming and fishing corporations and partnerships may be eligible for relief under Chapter 12 if they meet several criteria on the date the petition is filed. These include:
 - more than one-half of the outstanding stock or equity in the corporation or partnership must be owned by one family or by one family and its relatives
 - the family or the family and its relatives must conduct a farming or commercial fishing operation
 - more than 80% of the value of the corporate or partnership assets must be related to the farming or fishing operation
- A Chapter 12 case is initiated by filing a petition with the Bankruptcy Court, which includes:
 - schedules of assets and liabilities
 - a schedule of current income and expenditures
 - a schedule of executory contracts and unexpired lease
 - a statement of financial affairs

FILING CHAPTER 12 : FARMERS & FISHERMEN

- Filing a petition under Chapter 12 automatically stays (stops) almost all collection actions against the debtor and the debtor's property
- When a Chapter 12 petition is filed, a Trustee is appointed to administer the case
- The core of a Chapter 12 Bankruptcy is the "Plan of Repayment". The Plan is submitted to the Court for its approval. When approved, the Plan establishes payments of fixed amounts from the farmer or the fisherman to the Trustee.
- The Bankruptcy Judge is responsible for deciding whether the Plan is feasible and meets the terms and conditions established in the Bankruptcy Code
- A debtor doesn't receive a discharge in bankruptcy until after all payments required under the Plan have been made

RESTRUCTURING FOR SMALL BUSINESS

- Streamlined Restructuring
- Debtor exclusive right file plan
- Quick and less expensive
- Qualifications expanded to 7.5M



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Q & A

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