



WEBINAR:

***REACTION AND RECOVERY PLAN
FOR INTERNATIONAL COMPANIES
DURING AND AFTER COVID-19***

***Cross Border COVID-19
Considerations for Companies Doing Business
in the US***

***Part 1
April 7, 2020***

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Inon Elroy, Economic Minister to North America, Government of Israel



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Ministry of Economy and Industry
Foreign Trade Administration

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AGENDA

1) Application of COVID-19 economic stimulus plan to International Companies:

- **Cares Act – Paycheck Program (focus on foreign companies)**
- **SBA Economic Injury Disaster Loans (EIDL)**
- **Alternative Assistance provided by Trade Agencies**
- **Issues we have seen for Foreign Companies – Essential Businesses**

2) COVID-19 and Immigration from US Employment Perspective:

- **COVID-19 Immigration Policy changes**
- **Work from home**
- **Benching and Layoffs**
- **Unemployment Benefits for FNs**
- **Layoffs Related Immigration Risks:**
- **Impact on Travel**
- **Families First Coronavirus Response Act**

1) Application of COVID-19 economic stimulus plan to International Companies:

- **Cares Act – Paycheck Program (focus on foreign companies)**
- **SBA Economic Injury Disaster Loans (EIDL)**
- **Alternative Assistance provided by Trade Agencies**
- **Issues we have seen for Foreign Companies – Essential Businesses**

What is going on in your home country? Is there stimulus relief coming from foreign country available for parent?

- Michael Kraus – Head of the German Practice of Smith, Gambrell & Russell, LLP
- Kiyo Kojima – Head of the Japan Practice of Smith, Gambrell & Russell, LLP
- Inon Elroy – Economic Minister to North America: Government of Israel Economic Mission to North America
- Paolo Siniscalco – Italian Certified Public Accountant of Grassi&Co.

Stimulus relief in Italy

Paolo Siniscalco, Grassi&Co.

Law Decree 18/2020 “Cura Italia”

Measures in relief of unemployment

- Unemployment Insurance (§19-22) – Payment of salaries of employees of a business concern in difficulty because of the crisis (COVID-19), and temporary unemployed for a period not longer than 9 weeks, are paid by the National Institute for Social Security (INPS). To be eligible employees should already have been employed on the date of 02.23.2020.

Measures to enhance business cash flow to Small & Medium Enterprises

- Liability waiver (§ 49) - State guarantees on bank loans up to euro 5 mil. for each business concern with a maximum of 80% of guarantee on loan;
- DTA Conversion (§ 55) – Losses on bad debts sold by December 31, 2020 may be converted in tax credits – max amount the lesser of 20% or euro 400 mil. – Affiliation Rules apply;
- Extraordinary moratorium (§ 56) – deferment until 09.30.2020 of the payment of installments on financial loans in place to the date of 02.28/03.08.2020 (even applicable to micro enterprises);
- Tax deadlines (§ 62) – tax filings in the period among 03.08/05.31.2020 extended to 06.30.2020; tax payments in the period among 03.08/05.31.2020 extended to either in full on 05.31.2020 or 5 equal monthly payments starting from May 2020 (only taxpayers with revenues not exceeding euro 2 mil. in the previous FY).

Others

- Made in Italy & internationalization (§ 72) – funds to promote the Made in Italy brand (especially in the food industry) and support the export

Stimulus relief in Italy

Paolo Siniscalco, Grassi&Co.

Law Decree April 6, 2020 “Liquidità imprese” at the glance

Measures to enhance business cash flow to Small, Medium & Large Enterprises

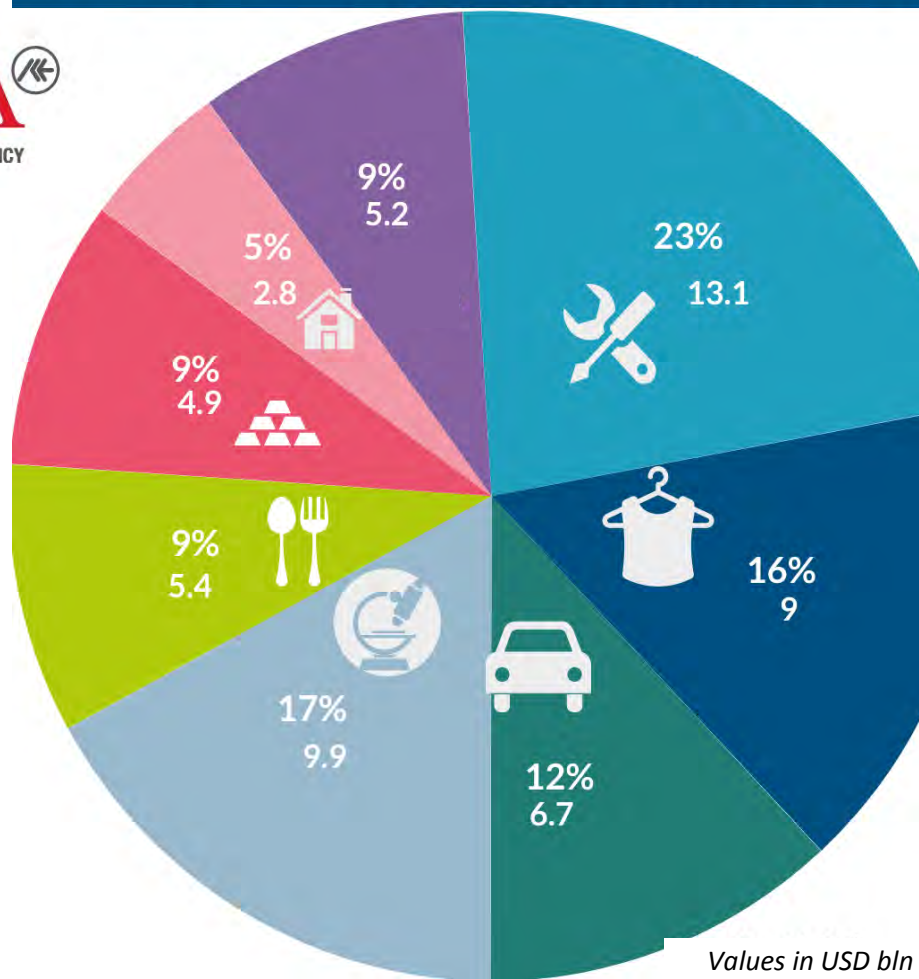
State guarantees on bank loans up to

- 90% for large enterprises
- 100% for self employed and small enterprises up to euro 25k loan size
- 100% (90% State & 10% Confidi) up to euro 800k loan size
- 90% up to euro 5 mil. loan size

Italian Trade Agency – New York Office

- Which type of issues are the Italian Companies in the US facing at this moment?
- Which kind of assistance can give ICE to the Italian companies in the US?

US IMPORTS FROM ITALY - 2019



Values in USD bln

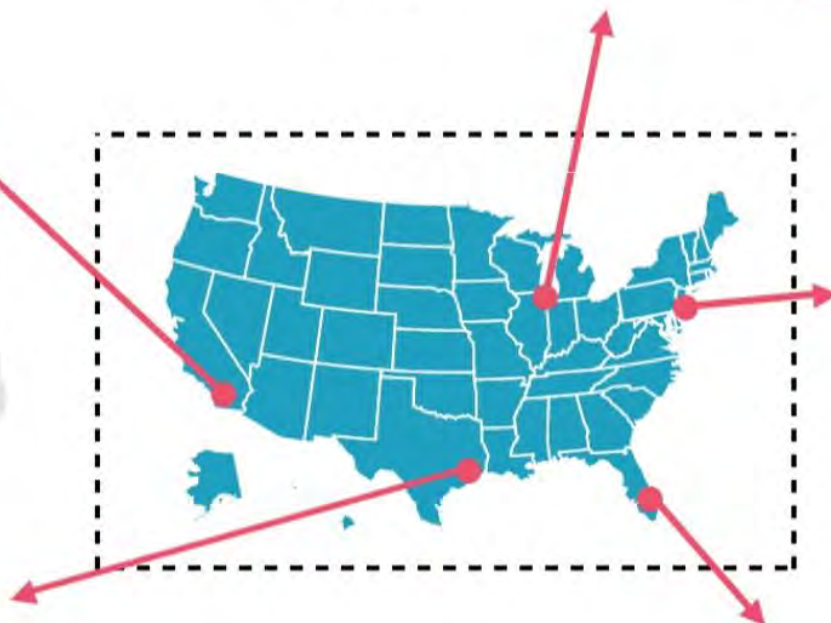
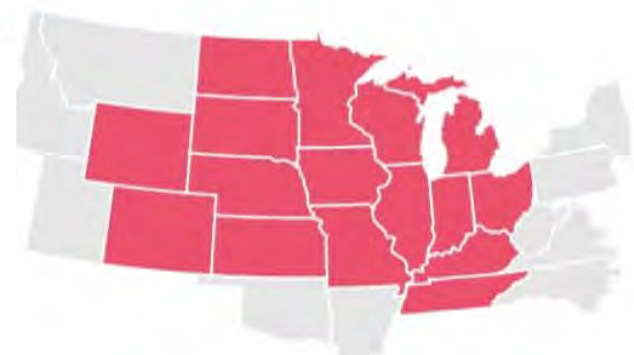
Key figures

- 57 bln \$
US import from Italy in 2019
- +4.4%
growth 2019/18
- 1.000+
Italian companies in the US
mostly technology, services, 3F (fashion, furniture, food)

Italian Trade Agency: the US network

Los Angeles

Chicago



New York



Houston



Miami



- New Catalog of services as of April 1, 2020
- 28 services in all which range from basic market entry information to orient the company, all the way up to advanced customized consultancy services to expand and consolidate presence in foreign countries

Divided into 2 broad categories:

- **SERVICES TO KNOW FOREIGN MARKETS**
- **SERVICES TO GROW IN FOREIGN MARKETS**



General and first orientation information	World news
Information on Foreign markets	Market reports
Commercial opportunities: proposed by foreign operators and Italian operators	Online consultation by reservation
Previews of international projects and International competitions	Product sheets
International financing	Foreign operators profiles
Export Tips	Foreign trade statistics
Your product on the market	Customs, tax, legal, currency information
Local professional directories	Market research
Customized foreign trade statistics	Participation in tenders
Online showcase	Dispute resolution

20 services, including the online services, are now at your disposal to help start and deepen the knowledge of foreign markets and how to operate in them

- **8 fee based**, high value-added services **customized** to the company's needs to help it expand and consolidate its presence in foreign markets

As of April 1st, 3 of these services:

- *Search for foreign customers and partners*
- *Search for foreign investors*
- *Use of ITA's structures (only 3 days per year)*

are now offered free to companies that:

- **have up to 100 employees** (*with certificate to certify the number of employees*)
- **and are the end user of the service** (*excluding consultants / intermediaries and consequent prohibition of transfer to third parties*)



Training services for large customers, groups of companies, companies and young people

Use of ITA's structures

Search for foreign customers and partners

Organization of Business Tours in Italy

Search for foreign investors

Organization of events and participation in promotional events

Advanced consultancy services

Confidential information on foreign companies

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Economic Minister to North America, Government of Israel

- The Israeli story
- Israeli companies who are doing business in the US.
- What can Israel Economic Mission to North America do for Israeli companies doing business in the US?



Israel Economic Mission

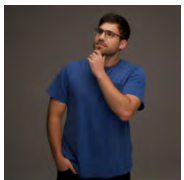
- 44 Israel Economic Missions globally
 - 1-on-1 treatment, sector-wide coverage
- Scouting the best Israeli technologies to meet your challenges
- Free & unbiased – no strings attached



Inon Elroy

Economic Minister to North America

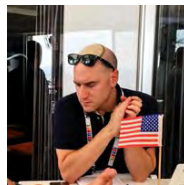
Sam Rubenstein
HLS, Sports



Tamar Shlimak
Fintech, Cyber



Josh Berliner
Digital Health, BioTech



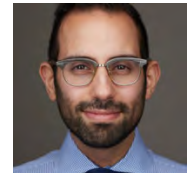
Josh Rabinovitz
Investor Relations



Elisa Greenberg
Retail, Consumer

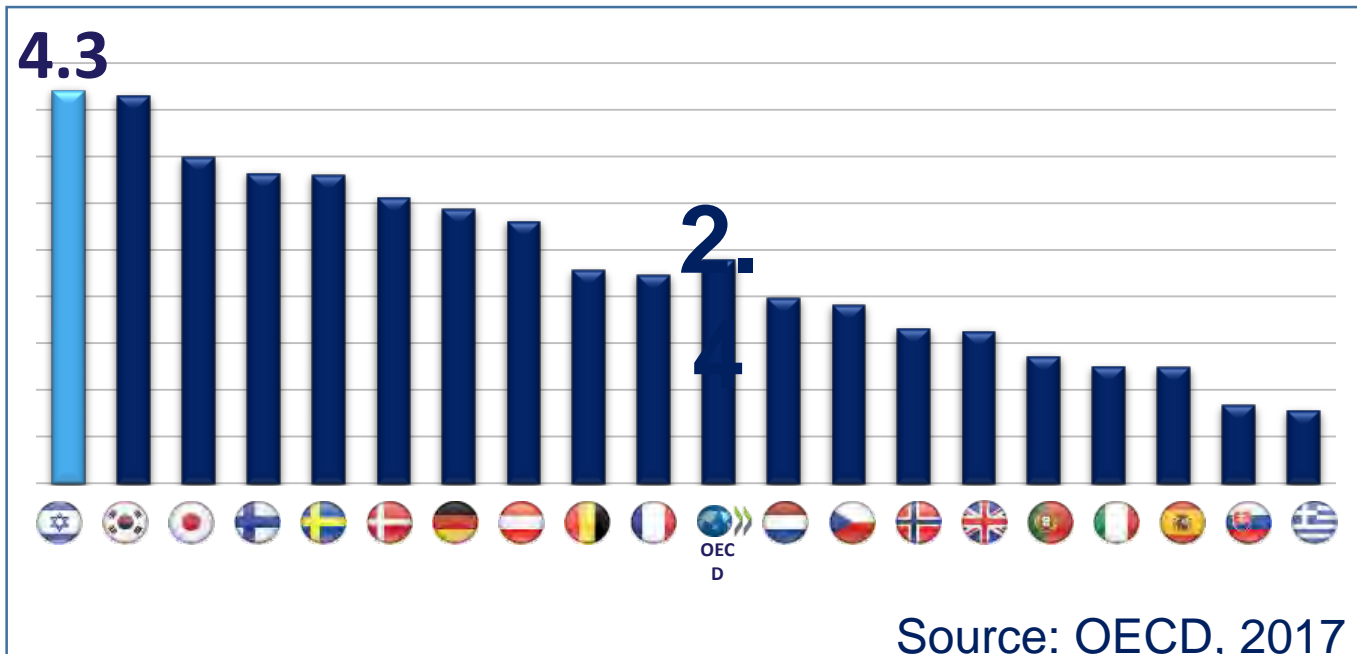


Jacob Bassiri
Water, Energy, RE, Ind 4.0



Global Leadership in R&D

National expenditure on civilian R&D as % of GDP



2017



~\$24B

Total exits – New record including Mobileye \$15B

\$5.2B

Capital raising

~700

Net new startups

רשות החדשנות
Israel Innovation
Authority



Ministry of Economy and Industry
Foreign Trade Administration

Israel: A multi-sector Innovation

Water technologies, Agriculture, Health & Life Sciences, New Media & Internet, Cyber-Security



**WATER
TECHNOLOGIES**

250 innovative
companies



AGRICULTURE

200 innovative
companies



**HEALTH & LIFE
SCIENCES**

1,000 innovative
companies



**NEW MEDIA AND
INTERNET**

800 innovative
companies



CYBER-SECURITY

250 innovative
companies

**Water
management**

**Water
desalination**

Irrigation

**Urban water
solutions**

**Fertilizer and
pesticides**

**Seeds and seedling
production**

**Poultry and dairy
farming
technologies**

**Specialized
agricultural
production
equipment**

**Veterinary
products and food
additives**

Digital Imaging

**Innovative medical
and surgical
equipment**

**Pharma and drug
delivery**

**Healthcare IT and
Telemedicine**

Medical Lasers

Bio-informatics

**Media,
publishing,
content and
gaming**

**Online advertising
And commerce**

**Broadcast
delivery and
services**

**Big data &
analytics**

**Tools, apps and
user platforms**

**Securing networks,
cloud and devices**

**Information Security
and threat
Monitoring &
protection**

**Fraud Detection &
prevention and
Security
Management**

**Access Control &
Authentication**

**Intelligence and
Attack**



Ministry of Economy and Industry
Foreign Trade Administration

What Makes Israel Successful?



Over 300 MNC Operate in Israel

~1,200 IL companies in the US



CARES Act Background

- Allocates \$350 billion to assist small businesses to keep businesses operating and to keep workers employed amid the COVID-19 pandemic and economic downturn
- Expands the SBA's 7(a) Loan Program to support new "Paycheck Protection Program" Loans (PPP)
- Includes increased loan amounts, expanded allowable use provisions and possible loan forgiveness
- Provides 100% federally guaranteed loans to small businesses
- Application deadline is 6/30/20

CARES Act –Paycheck Protection Program Eligibility

Paolo Siniscalco, Italian CPA at Grassi & Co.

500 or fewer employees whose **principal place of residence** is in the United States (for certain industries meet the small business size standards described in NAICS⁽¹⁾), and

1. You are:

- A. A small business concern as defined in section 3 of the Small Business Act (15 USC 632)⁽²⁾, and **subject to SBA's affiliation rules** under 13 CFR 121.301(f) unless specifically waived in the Act: (i) NAICS code 72; (ii) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; (iii) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681); and (iv) Faith-Based Organizations
- B. A tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business

2. You were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll tax or paid independent contractors, as reported on a Form 1099-MISC.

Individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and is in operation on February 15, 2020 is also eligible.

Documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship must be submitted.

Entities owned by a non-US citizen, or a non-Lawful Permanent Resident **qualify** for the PPP regardless of the percentage of ownership.

(1) North American Industry Classification System

(2) SBA definition (13 CFR §121.105): "... a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

CARES Act –Paycheck Protection Program The Affiliation Rules (CFR 13 §121.103) Paolo Siniscalco, Italian CPA at Grassi & Co.

How does SBA determine affiliation?

For applicants in SBA's Business Loan, Disaster Loan, and Surety Bond Guarantee Programs, the size standards and bases for affiliation are set forth in §121.301(f) (CFR 13 121.103(a)(8))

A.Concerns and entities are affiliates of each other when:

- i. one controls or has the power to control the other, or
- ii. a third party or parties controls or has the power to control both.
- iii. it does not matter whether control is exercised, so long as the power to control exists.

B.Factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists are considered;

C.In determining the concern's size, all employees of its domestic and foreign affiliates are counted, regardless of whether the affiliates are organized for profit.

D.Exceptions to affiliation coverage:

- i.business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958;
- ii.Business concerns owned and controlled by certain Indian Tribes;
- iii.For financial, management or technical assistance under the Small Business Investment Act of 1958, as amended, (an applicant is not affiliated with the investors listed in paragraphs (b)(5) (i) through (vi) of this section): which include among the others Venture capital operating companies, as defined in the U.S. Department of Labor regulations found at 29 CFR 2510.3-101(d); Investment companies registered under the Investment Company Act of 1940

Further guidance is expected in order to clarify whether Private Equity or Venture Capital Funds are excluded by the Affiliation rule.

CARES Act –Paycheck Protection Program Ineligibility & Certification Paolo Siniscalco, Grassi&Co.

Causes of Ineligibility:

- i. Applicant engaged in any activity that is illegal under federal, state, or local law;
- ii. Applicant is a household employer (individuals who employ household employees such as nannies or housekeepers);
- iii. An owner of 20 percent or more of the equity of the applicant is incarcerated, on probation, on parole; presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or
- iv. Applicant, or any business owned or controlled by Applicant or any of Applicant's owners, has ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted within the last seven years and caused a loss to the government.

Good faith certification from borrower that:

- i. is in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
- ii. current economic uncertainty makes this loan request necessary to support the ongoing operations
- iii. the funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments, as specified under the Paycheck Protection Program Rule
- iv. during the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.

CARES Act – Loan Amount Limit

Paolo Siniscalco, Grassi&Co.

- How is the loan amount calculated:
 - A. Aggregate payroll cost either from the last 12 month or for FY2019
 - B. Subtract any compensation paid to employee in excess of \$100,000
 - C. Divide the amount from B by 12 (average monthly payroll cost)
 - D. Multiply the average monthly payroll costs C by 2.5
 - E. Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020
- Maximum loan amount is \$10 million
- Example: Some employees make more than \$100,000, outstanding EIDL loan of \$10,000
 - A. Annual payroll: \$1,590,000
 - B. Subtract compensation amounts (\$390,000) in excess of an annual salary of \$100,000: \$1,200,000 (\$1,590,000 - \$390,000)
 - C. Average monthly qualifying payroll: \$100,000
 - D. Multiply by 2.5 = \$250,000
 - E. Add EIDL loan of \$10,000 = \$260,000
 - F. Maximum loan amount is \$260,000

CARES Act – How to apply?

Jacob Zakif US Retail Business Banker at CitiBank

How to apply?

Applications must include documentation verifying the number of FTEs or equivalents on payroll and pay rates including:

- Payroll costs including paid sick, medical, vacation, and costs related to continuation of group health care benefits during periods of leave
- Employee salaries, wage commission or other similar compensation
- Interest on mortgage obligations
- Allowance for dismissal or separation
- Payment of any retirement benefit
- Payment of state and local tax assessed on the compensation of employees
- Rent
- Utilities
- Evidence of other debt obligations incurred before the covered period

CARES Act – Applying for Loan Forgiveness

Jacob Zakif US Retail Business Banker at CitiBank

- All borrowers seeking forgiveness must file an application with the lender
- Decision on forgiveness must be within 60 days after the lender receives the completed application
- Documentation:
 - Verification of FTEs for the relevant periods, including IRS payroll tax filings and state, income, payroll, and unemployment insurance filings
 - Cancelled checks, receipts ,transcripts of account or other documents verifying rent, mortgage interest, and rent payments
 - Certification by borrower representative that information provided is true and correct and the loan proceeds were used for permissible uses
 - TBD documentation that the SBA determines is necessary

Applying for a PPP Loan and an SBA EIDL

Jacob Zakif US Retail Business Banker at

- An eligible business can apply under the SBA EIDL Loan Program and the PPP
- Business will not be permitted to use the SBA EIDL and the PPP loan for the same expenses covering the same period
- If business has already received a SBA EIDL, then the borrower can refinance the EIDL as part of the
- PPP loan, which may be subject to forgiveness
- Remaining portions of the EIDL loan for purposes other than those in the loan forgiveness terms for a PPP loan would remain an outstanding loan

CARES Act – Loan Forgiveness

Mazars Group Consulting

- Borrowers are eligible to have a portion of their loans forgiven
- The forgiven debt will NOT be recognized as Federal income for tax purposes
- Borrower is entitled to loan forgiveness for the amounts spent on the following items during the eight-week period beginning on the day the loan was originated:
 - Payroll costs
 - Interest on mortgage obligation (originated before 2/15/20)
 - Rent on a business lease (originated before 2/15/20)
 - Rent paid to related party
 - Utility payments (services that began before 2/15/20)
 - Additional wages paid to tipped employees
- Borrowers will not be responsible for interest accrued during the eight-week period on the amount of the loan that is forgiven
- Loan forgiveness may be reduced based on reduction of employee head count or employee wages
- Reductions in headcount or wages that occur during the period beginning 2/15/20 and ending 30 days after the start of the CARES Act will not reduce the amount of loan forgiveness IF by 6/30/20 the borrower eliminates the head count reduction or wages reduction



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CARES Act – Reduction of Loan Forgiveness Based on Reduction of Head Count

Mazars Group Consulting

- Forgiveness period of the 8 weeks begins from when the funds from loan are received.
- Forgivable amount multiplied by a fraction
- Average number of FTE equivalents per month during 2/15/20 to 6/30/20 / average FTE equivalents per month from 2/15/19 to 6/30/19
- Example:
 - Potentially Forgivable amount = \$1,000,000
 - Average monthly employment of 100 during the period 2/15/19 to 6/30/19
 - Average monthly employment reduced during eight-week period from 100 to 75
 - Forgivable Amount= $\$1,000,000 * (75/100) = \$750,000$



CARES Act – Reduction of Loan Forgiveness Based on Reduction in Pay

Mazars Group Consulting

- Employees not earning more than \$100,000 in annual salary, who have their pay reduced during the eight-week period after loan origination by more than 25%
- Forgivable amount will be reduced by the amount the reduction exceeds 25% of the employee's pay for the quarter most recently completed prior to loan origination
- Example:
 - Potentially forgivable amount = \$1,000,000
 - 25 employees earning \$100,000 are retained; salaries are reduced by 30%
 - Reduction = $(25 * \$100,000) * (30\%) = \$300,000$
 - Forgivable amount = $\$1,000,000 - \$300,000 = \$700,000$
- NOTE: This reduction in forgivable amount for reduction in wages is in addition to the reduction for employee headcount

CARES Act – Reduction of Loan Forgiveness Based on Reduction in Pay

Mazars Group Consulting

- The Act allows for a “Cure” whereby employers are encouraged to re-hire employees and restore full wages before June 30, 2020. Regardless of the Forgiveness Period, if a client can restore the headcount to levels prior to February 15 and restore wage reductions prior to June 30, 2020, there will be no reduction of forgiveness.
- The Small Business Administration has indicated on their website that 75% of the forgiven debt must have been used for payroll



Yelena Epova, Certified Public Accountant at Arpio

- Overview on the International Companies
- SBA Economic Injury Disaster Loans (EIDL) – Background
- SBA EIDL – Loan Amount Limits
Yelena Epova, Arpio
- SBA EIDL – Application Process and Requirements

Aprio at a glance



585+

Team
Members



78

Partners



6

Industry
Specialties



22

Services



25+

Languages
Spoken



Clients in
40+
Countries

25% of the firm is foreign born

Breadth of services



Advisory



Assurance



Tax



Private Client

Specialty Services

- Behavioral Economics
- Blockchain Accounting & Tax
- Business Technology Consulting
- Business Valuation
- Cloud Accounting
- Data Analytics
- Financial Consulting
- International
- Litigation Support & Forensic Accounting
- SBA Loan Assistance
- State and Local Tax
- Succession Planning
- Tax Credits & Incentives
- Transaction Advisory
- Treasury Optimization Services

SBA's role in recovery

The CARES Act signed into law on Friday, March 27, 2020 has put into place a series of different actions administered by the Small Business Administration (SBA) to get people back on the payrolls of their employers and help to insure the liquidity of small business.

- Creates the Paycheck Protection Program (PPP) that amends section 7(a) of the small business act and provides short-term liquidity to get workers back on their employer's payroll.
- Economic Disaster Relief Loans (EIDL) program provides low interest disaster loans to help businesses recover from declared disasters.
- SBA pays the principle and interest on ALL existing SBA loans for the next six months. This is NOT a deferment. They are paying it!

Loan options: EIDL

Economic Injury Disaster Loan (EIDL)



- Payroll
- Fixed debts
- Accounts payable
- Other expenses that can't be paid because of the disaster's impact



up to **\$2 million**



3.75%
annual percentage rate



30 years



0% is eligible
for forgiveness

Economic Injury Disaster Loan (EIDL)

Economic Injury Disaster Loan (EIDL) program provides low interest disaster loans to help businesses recover from declared disasters.

Details

- \$2 million cap
- Based on 50% of trailing 12-month gross profit
- Interest rate of 3.75%
- Up to 30-year term
- 6-month deferral and payments of principle and interest

Permitted Uses: Fixed debt payments, salaries, operating expenses, should be viewed as a working capital loan.

***Guarantees and Collateral?** Yes to both.

*Certain exceptions might exist.

The Kicker: When you apply you get a \$10,000 grant within 72 hours.

Emergency EIDL grants of \$10,000

The CARES Act has expanded the EIDL Program to include a \$10,000 emergency grant.

- This grant does NOT have to be re-paid but reduces loan forgiveness by \$10,000 if you utilize both programs.
- Grant is to be paid within 72 hours.
- Receiving the grant is contingent on your business being eligible for EIDL, not getting approved for EIDL. There is no claw back pending non-approval.

The Kicker: Every business that has suffered economic injury should submit an EIDL application for this reason alone.

Eligibility

- Applicant is a business with not more than 500 employees.
- Applicant is an individual who operates under a sole proprietorship, with or without employees, or as an independent contractor.
- Applicant is a business with more than 500 employees that is small under SBA Size Standards found at <https://www.sba.gov/size-standards>.
- Applicant is a private non-profit organization that is a non-governmental agency or entity that currently has an effective ruling letter from the IRS granting tax exemption under sections 501(c),(d), or (e) of the Internal Revenue Code of 1954, or satisfactory evidence from the State that the non-revenue producing organization or entity is a non-profit one organized or doing business under State law, or a faith-based organization.

*Employee count includes affiliated entities

Other considerations

- Access to alternative capital is important, therefore a line of credit with available balance will be considered. Consideration of drawing full balance in advance of application.
- The PFS is a factor for qualifying credit worthiness, NOT for need. The need component is determined at the entity or applicant level.
- Collateral may not be required for EIDL of \$200,000 or less. Collateral is not defined. Typically, they take real estate but will take what is available. They have said they will not deny a loan for lack of collateral under the EIDL Loans for COVID-19. Nothing in writing though.

Application process & usage

How do you apply for the EIDL \$10,000 grant award?

- Is it contingent on receiving disaster recovery loan?
- How long does it take to receive this?

Apply as part of initial application.

- Apply as part of initial application on SBA website. \$10,000 grant award received as long as you are eligible. In the event you are deemed not credit worthy and do not receive loan, you would retain the \$10,000 grant award.
- Received in 72 hours.

Usage of proceeds

Loan proceeds not to be used for the refinance of existing debt.

Application process & usage

Can a company owned by foreign parent qualify for the loan:

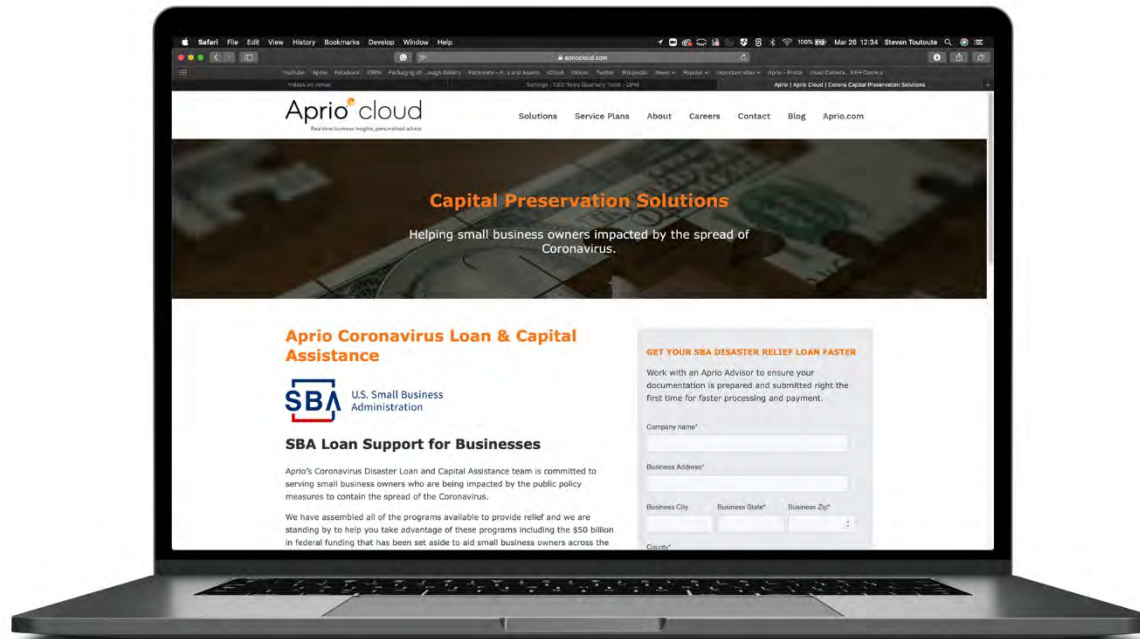
There is no explicit requirement for the ownership to be U.S. ownership but SS# is required for the responsible party for the application process. Guarantee will be required for the loan over \$200,000 from the U.S. person. It may be also required for the smaller loan as well.

Aprio SBA Loan Relief Assistance

For more information, please visit



<https://www.apriocloud.com/sba>



Issues we have seen for Foreign Companies

– Essential Businesses – Michael Kraus

- The Covid-19 pandemic has prompted at least 17 states to issue stay-at-home orders. As a result, some businesses are shuttering while the "essential" ones remain open, though often with restrictions.
- The lists of essential businesses are mostly the same: Health care services, grocery stores and gas stations make the cut. Malls, gyms and movie theaters do not.
- But a closer look at state orders shows some inconsistencies: In Delaware, florists can still deliver bouquets. In Pennsylvania, medical marijuana dispensaries are OK but liquor stores aren't. And in Arizona, golf courses can stay open, too -- they're essential businesses.
- The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) gave states an outline of suggested "essential businesses" to follow. But because it's up to the states, there are bound to be differences among them -- and many lists are shifting as the pandemic does.

Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 2.0



CISA
CYBER+INFRASTRUCTURE

2) COVID19 and Immigration from US Employment Perspective:

- **COVID-19 Immigration Policy changes**
- **Work from home**
- **Benching and Layoffs**
- **Unemployment Benefits for FNs**
- **Layoffs Related Immigration Risks:**
- **Impact on Travel**
- **Families First Coronavirus Response Act**

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COVID-19 Immigration Policy Changes:

- **Impact of COVID-19**

- Field Office closures through May 4, 2020
- Automatic rescheduling of in-person appointments
- Suspension of premium processing.

- **Policy Changes:**

- 60 day grace period for post-filing responses
- Relaxed Signature Policy
- Relaxed physical presence requirement for I-9s;
- Reusing biometrics for certain extension applications (e.g. EAD renewals)

- **Ongoing Challenges:**

- No grace period on filing deadlines for extensions.
- DOL posting requirements still in place

Work From Home:

- **Worksite Specific Visas**

- Includes H-1B and E-3 employees
- General Rule: *If* change in worksite to new MSA, *then* new LCA / Petition Amendment required.

- **Other Employment-Based Visas**

- Includes L-1, E-2/E-2, TN, O, etc.
- General Rule: Change in worksite alone does not generally require an amendment.

Benching & Layoffs:

- **Temporary Leaves of Absence vs. Termination**
 - Termination (Layoffs, Firing and Resignations)
 - Must notify USCIS.
 - 60 Day Grace Period for Employee. Must then depart if they cannot extend or change visa status.
 - H-1B / O-1 / E-3: Employer obligation to pay transportation cost of employee's return abroad.
 - Temporary Leaves of Absence (Benching, Furlough, Sick Leaves)
 - H-1B / E-3:
 - Prohibition against “benching” employees.
 - Employee-requested leaves are ok.
 - All other visas:
 - No prohibition against employer-mandated leaves, but should document temporary nature of leave.

Layoffs Related Immigration Risks:

- **Generally no risk to employers, *but* . . .**
 - Can increase scrutiny in future NIV petitions
 - Mass layoffs within a company can trigger questions about availability of work for the employees, ability to pay offered wages.
 - These questions may increase risks of RFEs, but does not necessarily lead to denials for future work visa petitions.
 - Triggers 6 month moratorium on PERM filings in same or similar positions within area of intended employment for green card sponsorship.

Unemployment Benefits for FNs:

- **General Eligibility**
 - Varies across states.
- **“Able and Available” to Work**
 - ***Open Market Work Authorization:*** Legal Permanent Resident Cards (i.e. Green Cards) and EADs
 - EAD based on F-1 OPT must work in a related field of study
 - ***Employer Specific Work Authorization:*** E, H, J (Interns/Trainees), L, O, TN, etc.
 - Work authorization linked to specific petitioning employer
 - Must generally file new petition with USCIS to work with a different employer
- **Unemployment Benefits and Public Charge Rule**
 - Unemployment Benefits is **not** a public benefit for immigration purposes.

Impact on U.S. Travel:

- **Travel Bans**

- **U.S. Rule**: Suspends entry to nearly all foreign nationals who have been in UK, Ireland, Schengen Countries, China and Iran at any point during the 14 days *prior* to their scheduled travel to the U.S.
 - Exceptions: Does *not* apply to US Citizens and LPRs and family members.
- **Foreign Travel Bans**: See <https://travel.state.gov>

- **Border Closures**

- Rule: US Northern and Southern land borders are closed to “non-essential” travel.

- **Consular Closures**

- Length of closures are consulate specific, but most visa services are closed indefinitely.
- Anticipate very long visa appointment delays.

Stay Options for Terminated Employees

- **Overstay Consequences:**
 - 3 and 10 Year Re-Entry Bar
 - Denial of future immigration benefits
- **Options for Lawful Stay in the US**
 - Visa Specific Grace Periods
 - Extension/Change of Status (e.g. H-1B, B-2, F-1, etc.)
 - Some visas do not come with work authorization
 - Note: ESTA/Visa Waiver travelers are not eligible to change status, but can seek Satisfactory Departure to get a 30 day extension.

Kiyo Kojima, Head of the Japan Practice of Smith, Gambrell & Russell, LLP

- Overview on the Japanese Companies in the US
 - Runs the gamut from services, distribution, and retail to manufacturing
 - Regional clusters with industry variations
 - Reasonably mature business services sector
- Families First Coronavirus Response Act
 - Emergency Family and Medical Leave Expansion Act
 - Emergency Paid Sick Leave Act
 - Emergency Unemployment Insurance Stabilization and Access Act
 - “Essential Business” & FFCRA Compliance

Families First Coronavirus Response Act – Emergency Paid Sick Leave Act

Kiyo Kojima

- **Emergency Paid Sick Leave Act** - The second leave provision of the FFCRA that affects businesses is emergency paid sick leave. Until the end of 2020, employers with fewer than 500 employees must offer paid sick leave to those who meet criteria associated with the public health emergency.
- **Which employees are eligible?**
- The new FFCRA paid sick leave is available to any employee if they are unable to work (in-house or remotely) because they are:
 1. Subject to federal, state, or local quarantine or isolation related to COVID-19; → “Shelter-in-Place” and “Stay-at-Home” Orders???
 2. Have been advised by their doctor to self-quarantine due to COVID-19; → Doctor’s Note Required???
 3. Experiencing symptoms of COVID-19 and seeking a medical diagnosis; → Multiple Absences Possible???
 4. Caring for a family member subject to a quarantine order or self-quarantine;
 5. Caring for children if schools are closed or their caregiver is unavailable because of the COVID-19 health emergency; or
 6. Experiencing substantially similar conditions as specified by the Secretary of Health and Human Services.
- **How are employees paid during this time?** - Full-time employees can receive up to 80 hours of paid sick leave, while part-time employees can receive pay based on the number of hours they would work during an average two-week period. If an employee qualifies based on reasons 1 ~ 3 above, they receive sick leave at their regular rate with pay capped at \$511 per day and \$5,110 total. If an employee qualifies based on reasons 4 ~ 6 above, they receive sick leave at two-thirds their regular rate of pay with amounts not exceeding \$200 per day and \$2,000 total.
- Dept. of Labor Guidance: <https://www.dol.gov/newsroom/releases/whd/whd20200401>
- IRS Form 7200: <https://www.irs.gov/forms-pubs/about-form-7200>
- **How does this impact sick leave that’s already offered?** - Emergency paid sick leave is offered **in addition to** any existing sick leave and/or paid time off that is already offered by an employer.
- **Are there exemptions?** Businesses with fewer than 50 employees may be exempt from all of these provisions if providing the leave could “jeopardize the viability” of your business.

Families First Coronavirus Response Act – Emergency Family and Medical Leave Expansion Act

Kiyo Kojima

Emergency Family and Medical Leave Expansion Act - The first section of the FFCRA that applies to businesses pertains to an expansion of the U.S. [Family and Medical Leave Act \(FMLA\)](#). Until the end of 2020, employers with fewer than 500 employees will now be required to provide employees with up to 10 weeks of paid FMLA. The first two weeks of the normal 12-week FMLA leave may be provided unpaid, but an employee may be able to be paid through the paid sick leave provision or other paid leave the employee has available.

Which employees are eligible? - Paid FMLA will be available to any employee who has been employed for at least 30 days and must care for children whose schools have closed due to the coronavirus health emergency. The eligible employee must not be able work (or work remotely) while caring for children.

How are employees paid during this time? - First, employers are required to offer employees unpaid leave (or accrued paid leave or paid vacation) for 10 days. After this, paid leave kicks in and employees are compensated at two-thirds of their regular rate. Paid leave cannot exceed \$200 per day and \$10,000 total for the full 10 weeks.

Are there exemptions?

- Businesses with fewer than 25 employees are not required to reinstate an employee to their position after they return from leave but all businesses with more than 25 employees must do this.
- Businesses with fewer than 50 employees are exempt from civil actions brought by employees for violations regarding emergency paid FMLA.
- Healthcare and emergency response organizations may exclude employees from paid FMLA expansion due to the coronavirus crisis.



**THANK YOU FOR
ATTENDING TODAY'S
WEBINAR.**

Families First Coronavirus Response Act –Emergency Unemployment Insurance Stabilization and Access Act

Kiyo Kojima

- **Emergency Unemployment Insurance Stabilization and Access Act of 2020**
- Finally, the FFCRA also allocates \$1 billion in funds for state unemployment programs and gives state governments new flexibility when it comes to workers needing unemployment insurance. The FFCRA eliminates the need for employees to wait a week before they are eligible for UI and eases work search requirements, meaning employees will be able to apply for unemployment insurance more quickly. The law also provides more money to states to fund their UI programs.
- These new rules may inform how businesses make decisions about their employees, especially those companies considering layoffs or staff changes in light of the coronavirus crisis.
- A GA Example: <https://dol.georgia.gov/gdol-covid-19-information>