



April 28, 2020

*Via: Electronic Mail Only*

Re: Assistance for New Mexico Aviation and National Security Businesses During COVID-19

Dear Sir or Madam:

These are unprecedented times in New Mexico and around the world. Small businesses are struggling around the nation, and unfortunately our local aviation business community is not immune to these same difficulties being experienced throughout the United States. However, there is help in the form of several federal, state and local grant and loan funding programs available to keep the New Mexico aviation community aloft while the COVID-19 crisis runs its course. As a member of our robust and close-knit aviation community, I am contacting you today to make sure you are aware of several small business grant resources and loan programs available to ensure your business is minimally affected by the coronavirus and its subsequent economic effects.

**Federal Relief for Aviation or National Security-Related Businesses:**

On March 27, 2020 Congress passed, and President Trump signed the “Coronavirus Aid, Relief and Economic Security (or CARES) Act into law.<sup>1</sup> As part of the CARES Act, Congress recognized the immediate need to bolster and support the aviation and national security sectors experiencing losses due to the coronavirus by

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<sup>1</sup> Coronavirus Aid, Relief, and Economic Security Act or the CARES Act, Pub. L. No: 116-136 (March 27, 2020).



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eliminating the aviation excise tax<sup>2</sup> and appropriating \$25 billion to U.S. based passenger carriers, \$4 billion to air cargo carriers and \$17 billion in the form of loans, loan guarantees or other investments made directly by the U.S. Treasury Department to businesses supportive of the aviation industry or “critical to maintaining national security.”<sup>3</sup> In order to qualify for such loans, any potential borrower must meet the statutory criteria set forth by the CARES Act.<sup>4</sup>

According to the Code of Federal Regulations, a businesses is deemed critical to maintaining national security if it is: (1) performing under a “DX”-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700); or (2) operating under a valid top secret facility security clearance under the National Industrial Security Program regulations.<sup>5</sup> An applicant that does not satisfy either of these two criteria may be considered for loans if, based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence, that the applicant business is critical to maintaining national security, and the Secretary of the Treasury determines that the applicant business is critical to maintaining national security.<sup>6</sup> A link to the loan application form for air carriers and eligible businesses can be found at: <https://forms.treasury.gov/caresact/LoanRequestForAirCarriers>.

### **Federal Small Business Relief Programs:**

Entities that do not meet all of the criteria for direct relief to aviation and national security-related businesses, however, may still be eligible for assistance under other CARES Act programs. In addition to aviation and national security-specific relief, \$349 billion was allocated to the U.S. Small Business Administration for expansion of its Economic Injury Disaster Loan Program (also referred to as the S.B.A. “7(a) program” or “7(a) loans”) to include forgivable loans for the retention of employees through the Paycheck Protection Program,<sup>7</sup> as well as the establishment of three other loan relief programs detailed below: The Economic Injury Disaster Loan Emergency Advance, SBA Express Bridge Loans and SBA Debt Relief.

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<sup>2</sup> Pub. L. 116-136 § 4007.

<sup>3</sup> Pub. L. 116-136 § 4003(b).

<sup>4</sup> For a complete list of the statutory criteria *see* Pub. L. 116-136 § 4003(c)(2).

<sup>5</sup> 32 CFR part 2004.

<sup>6</sup> Although the Treasury loans for air carriers and other eligible businesses was established as part of the CARES Act, it is important to note that as of the date of this flyer, The Treasury Department has yet to publish final procedures and evaluation criteria. It is expected that such information will be disseminated as soon as possible once promulgation of the final rules is complete.

<sup>7</sup> Pub. L. 116-136 § 1102.



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a. Paycheck Protection Program (PPP)

By far the highest utilized loan program by small businesses has been the Paycheck Protection Program (or “PPP”), which was designed to provide a direct incentive for small businesses to keep their workers on the payroll by forgiving any PPP loan made if all employees are kept on the payroll for eight weeks and if the money is used for payroll, rent, mortgage interest, or utilities.<sup>8</sup> You can apply through any existing SBA 7(a) lender/participant or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating.<sup>9</sup> Other regulated lenders will be available to make these loans once they are approved and enrolled in the program. The loan will be fully forgiven if the funds are used for payroll costs, interest on mortgages, rent, and utilities (due to likely high subscription, at least 75% of the forgiven amount must have been used for payroll). Loan payments will also be deferred for six months. No collateral or personal guarantees are required. Neither the government nor lenders will charge small businesses any fees.<sup>10</sup> Forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease.<sup>11</sup> The PPP loan has a maturity of 2 years and an interest rate of 1%.<sup>12</sup>

Applications for PPP loans through participating lenders opened on **April 3, 2020** and will be accepted through **September 30, 2020**.<sup>13</sup> However, media reports surfaced fourteen days following the opening date of the program claiming resources for the PPP program had already run out.<sup>14</sup> A second round of funding for the PPP that added \$320 billion passed both houses of Congress on April 23, 2020 and was signed into law by President Trump on April 24, 2020. Applications for additional PPP loans were reopened on **April 27, 2020**.<sup>15</sup> A list of PPP participating lenders can be found here: <https://www.sba.gov/paycheckprotection/find>. After you have identified a participating

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<sup>8</sup> See “Paycheck Protection Program,” U.S. Small Business Administration, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program> (Accessed April 27, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> “PPP Funding Ran Out in 14 Days. Round 2 Could Go Even Faster,” Inc. Magazine, <https://www.inc.com/diana-ransom/ppp-eidl-new-stimulus-paycheck-protection-program.html>. (April 24, 2020).

<sup>15</sup> “Trump Signs Into Law \$484 Billion Bill That Replenishes Coronavirus Aid Program for Small Businesses,” MarketWatch, <https://www.marketwatch.com/story/house-set-to-pass-bill-that-replenishes-coronavirus-aid-program-for-small-businesses-2020-04-23> (April 24, 2020).



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lender, it is best to contact that lender directly who will then provide you with an application for a PPP loan.

b. Economic Injury Disaster Advance Loan (EIDL)

The Economic Injury Disaster Advance Loan is a second type of loan available to small businesses experiencing a temporary loss of revenue due to the coronavirus. An EIDL allows for the advance of up to \$10,000 which will be made available within three days of a successful application.<sup>16</sup> The maximum total loan amount available under the EIDL is \$2 million dollars,<sup>17</sup> which must be based on a business' "actual economic injury," as determined by the SBA, less any recoveries such as insurance proceeds.<sup>18</sup> The interest rates for EIDLs vary from 3.75% for small businesses and 2.75% for nonprofits.<sup>19</sup> The \$10,000 loan advance does not have to be repaid.<sup>20</sup> Any requests for loan increases beyond the \$2 million maximum may be made within the two years following the initial loan approval date.<sup>21</sup> Notable restrictions on EIDL loans include a prohibition against using EIDL funds to cover qualified sick and family leave wages if the business is also taking a tax credit for such costs under the Families First Coronavirus Response Act, and EIDL funds cannot be used to refinance pre-existing debt or to pay dividends.<sup>22</sup> The EIDL program will be available until **December 16, 2020** in most states, pending availability of funds.<sup>23</sup>

In order to qualify for the EIDL the applicant must be a small business with less than 500 employees, which includes sole proprietorships, independent contractors and self-employed persons, or a private, non-profit organization or 501(c)(19) veterans organization affected by coronavirus/COVID-19.<sup>24</sup> The business must: (1) have suffered a substantial economic injury and; (2) be located in a presidentially-declared disaster area.<sup>25</sup> Although the EIDL loan applications are currently closed pending additional

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<sup>16</sup> See "Economic Injury Disaster Loan Advance," U.S. Small Business Administration, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance> (Accessed April 27, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See "What You Need to Know About Applying for COVID-19 Economic Injury Disaster Loan (EIDL)," Forbes Magazine, <https://www.forbes.com/sites/kellyphillipserb/2020/04/09/what-you-need-to-know-to-about-applying-for-a-covid-19-economic-injury-disaster-loan-eidl/#6edc4fcb4a50> (April 9, 2020).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> As of March 13, 2020, President Trump issued an emergency declaration for the entire country under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, essentially fulfilling the second requirement for any small business in the United States negatively affected by the coronavirus. *Id.*



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funding, once approved, the loan application can be accessed here:

<https://www.sba.gov/disaster-assistance/coronavirus-covid-19>.

c. Express Bridge Loan Pilot Program:

A third loan program available from the SBA is the Express Bridge Pilot Program, which allows small businesses with a prior relationship with an SBA Express Lender to access up to \$25,000 quickly.<sup>26</sup> These loans can provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing and can be either a term loan or used to bridge the gap while a business is applying for a direct SBA Economic Injury Disaster loan.<sup>27</sup> Any funds later received as part of the Express Bridge Pilot Program must then be repaid in full or in part by proceeds of any EIDL loan received.<sup>28</sup> Information on the Express Bridge Loan Program can be accessed here: <https://www.sba.gov/document/support--express-bridge-loan-pilot-program-guide>.

d. Other SBA Debt Relief Programs:

Finally, for businesses already participating in SBA 7(a), 504 or microlending programs, as part of the its debt relief efforts, the SBA will automatically pay the principal, interest and fees for all current 7(a), 504 or SBA microloans already in existence, or for new loans issued prior to September 27, 2020.<sup>29</sup> Information on other SBA debt relief programs can be accessed here: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-debt-relief>.

**New Mexico Economic Development Department/Finance Authority Programs:**

Separate and apart from federal coronavirus and small business relief programs, the State of New Mexico Economic Development Department (EDD) and Finance Authority have several additional loan programs currently available to the New Mexico small business community. Although a majority of these programs were in existence prior to the COVID-19 crisis, EDD created a COVID-19 Business Loan Guarantee Program to assist small businesses seeking emergency loans or lines of credit to deal with the negative economic impacts from COVID-19. As part of this loan program, EDD guarantees a portion of the loan or line of credit up to 80% of principal up to \$50,000.<sup>30</sup> Such loan proceeds are flexible and can be used for (and not limited to): working capital,

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<sup>26</sup> See “SBA Express Bridge Loan,” U.S. Small Business Administration, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-express-bridge-loans> (Accessed April 27, 2020).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See “SBA Debt Relief,” U.S. Small Business Administration, <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/sba-debt-relief> (Accessed April 27, 2020).

<sup>30</sup> See “COVID-19 Business Resources,” New Mexico Economic Development Department, <https://gonm.biz/about-us/covid-19-response/> (Accessed April 27, 2020).



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inventory and payroll.<sup>31</sup> In order to apply for the EDD COVID-19 loan, a borrower must approach a participating lending institution who must then vet the applicant/borrower.<sup>32</sup> Should the vetting be successful, the lender and EDD sign a loan agreement after which the lender distributes the funds to the applicant.<sup>33</sup>

Additional loan programs pre-existing the COVID-19 crisis but still open to qualifying businesses are the New Mexico Finance Authority SmartMoney and LiftFund loan programs. Similar to the EDD COVID-19 Business Loan Guarantee Program, the SmartMoney Loan Participation Program allows New Mexico lenders to join forces with the New Mexico Finance Authority to stimulate economic development in New Mexico by offering low-cost loan financing to businesses creating new jobs around the state.

Benefits of the SmartMoney Loan Participation Program for applicants include: (1) access to lower fixed or variable loan interest rates, (2) a longer amortization period, and (3) the opportunity to work individually with participating lenders to craft tailor-made terms and conditions for each loan. The maximum loan amount for the SmartMoney Loan Participation Program is \$5 million, with amortization periods spanning from 3 years for working capital, 15 years for machinery and equipment, and 30 years for land and building loans. For more information on how to identify a participating lender and to begin an application for the SmartMoney Loan Participation Program contact the NMFA directly through their webpage at:

<https://www.nmfa.net/financing/loan-participation-programs/smart-money/> or contact John Brooks, Director, NMFA Commercial Lending, (505) 992-9638, [jbrooks@nmfa.net](mailto:jbrooks@nmfa.net).

Similarly, the LiftFund, which is independently administered by a non-profit organization, provides small business loans up to \$50,000 for startups and \$ 1 million for established businesses throughout the State of New Mexico.<sup>34</sup> Although traditionally targeted towards minority and women business owners, the LiftFund is now temporarily available to all potential applicants in the wake of the COVID-19 crisis. A link to the LiftFund online application can be found here:

<https://apply4businessloan.com/#/LIFTFUND>.

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<sup>31</sup> *Id.*

<sup>32</sup> For a list of participating lenders, see <https://docs.google.com/document/d/1RQIUC1rxUiYk5x0bBEjaHjsKMJezVn3zgl8A19vSGUE/edit>.

<sup>33</sup> See “COVID-19 Business Resources,” New Mexico Economic Development Department, <https://gonm.biz/about-us/covid-19-response/>. (Accessed April 27, 2020).

<sup>34</sup> See <https://newmexico.liftfund.com> for more information.



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## **What New Mexico Aviation and National Security Businesses Can Expect:**

While there is no doubt that the social and economic effects of the coronavirus will be felt throughout New Mexico for months to come, many state leaders have been focusing on how to best prepare and execute a plan to protect New Mexicans while simultaneously easing restrictions on our economy. Right now, it is widely recognized that most regions of the state, including Bernalillo, Santa Fe, and Doña Ana counties are already on the downward trend of new cases of COVID-19.<sup>35</sup> Now that New Mexicans have been successful at “flattening the curve,” state leadership has shifted its attention on how to best move forward to repair the damage the coronavirus has inflicted on New Mexico’s economy.

In order to transition from lockdown to a gradual reopening of non-essential businesses, experts widely agree that three specific milestones must first be met: (1) steadily declining cases over at least a fourteen day period; (2) adequate hospital capacity to handle any surge of cases; and (3) sufficient levels of testing and contact tracing within the state, which would include robust antibody testing for at-risk individuals and healthcare workers.<sup>36</sup> According to guidance released by the White House on April 16, 2020, if all such milestones are met, states and counties should move to reopen in three phases:

**Phase 1:** Schools and senior living facilities remain closed and vulnerable populations continue to shelter in place. Employees can return to work in phases while limiting person-to-person contact, however, telework will still be encouraged. Elective surgeries can resume and most businesses except bars can open under strict physical distancing protocols.

**Phase 2:** Schools can reopen. Vulnerable populations continue to shelter in place, but travel may resume for others. Employers should still encourage telework when possible and make special accommodations for vulnerable employees. Physical distancing protocols in public and at work will remain in place however bars will be allowed to reopen.

**Phase 3:** Vulnerable populations can resume public interaction with distancing protocols. Businesses may resume unrestricted staffing of workplaces but with limited physical distancing requirements. Visits to senior care facilities and hospitals may resume.

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<sup>35</sup> “Health & Economic Issues from COVID-19 in New Mexico,” New Mexico Legislative Finance Committee Staff White Paper, pg. 1 (April 20, 2020).

<sup>36</sup> *Id.* at page 2.



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As of the date of this letter, New Mexico has seen a downward trend in reported infections for the last six days.<sup>37</sup> Although state capacity for hospital beds, including ICU units and available respirators has not yet been reached, under new internal state modeling the potentiality to exceed current hospital bed capacity remains, thus requiring additional resources in the form of additional short-term hospital facilities and deployment of the U.S. National Guard.<sup>38</sup> As we continue the hopeful downward trend in new infection rates however, future hospital capacity models will continue to be adjusted as needs forecasts change. Lastly, due to the continued efforts of the Governor’s Office and state leaders, New Mexico continues to be a national leader in per capita testing rates and contact tracing efforts. While national guidelines identified a rough estimate of 4,500 tests per week as adequate for New Mexico’s population to meet guidelines for easing restrictions, the state has currently recorded a rate of 7,408 tests completed per week—well over the suggested benchmark standard to be met.<sup>39</sup> Therefore, should New Mexico stay the course and continue to see a downward trend in new cases and if hospital capacity remains unmet, it is reasonable to expect that economic restrictions will be relaxed upon expiration of Governor Lujan Grisham’s stay at home order on May 15, 2020.

I hope this information is useful and please feel free to contact me should you have any additional questions or require further information. As a professional courtesy, DHV Law is offering consultations and grant/loan application assistance to any member of the New Mexico aviation and national security-related business community free of charge. We are all in this together and together we will weather this storm.

Sincerely,

**/s/Dayan M. Hochman-Vigil**

*Managing Partner, DHV Law, LLC*

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<sup>37</sup> See New Mexico Department of Health 2019 Novel Coronavirus Disease Homepage: <https://cv.nmhealth.org> (accessed April 27, 2020).

<sup>38</sup> “Health & Economic Issues from COVID-19 in New Mexico,” New Mexico Legislative Finance Committee Staff White Paper, pg. 4 (April 20, 2020).

<sup>39</sup> *Id.* at pg. 6.



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