

THE INTERSECTION OF SBA LOANS -AND- UNEMPLOYMENT ASSISTANCE



Below is an overview of how the Pandemic Unemployment Assistance (“PUA”) and the Small Business Administration (SBA) programs - the Paycheck Protection Program (“PPP”) and Economic Injury Disaster Loans (“EIDLs”) - may interconnect. For specific questions about business needs and which program to pursue, seek legal counsel for advice.

ELIGIBILITY FOR PUA, PPP, AND EIDL

INDIVIDUALS CAN BE ELIGIBLE FOR PUA AND PPP/EIDL, BUT RECEIPT OF EACH MAY BE IMPACTED BY THE OTHER.



- There is no federal guidance prohibiting individuals from applying for and receiving both PUA and PPP loans or EIDLs. However, receiving a PPP loan or EIDL may impact eligibility for PUA.

PUA MAY BE AVAILABLE PRIOR TO PPP/EIDL FUNDS DISBURSEMENT.



- Because PUA claims may be backdated to February 2, 2020, an eligible individual who experienced a significant loss of business due to the COVID-19 public health emergency before receiving a PPP loan or an EIDL may be eligible for PUA benefits for the time between February 2, 2020, and the date of a PPP loan or EIDL disbursement.

PUA MAY BE AVAILABLE AFTER THE PPP COVERED PERIOD.



- If an independent contractor or self-employed individual continues to have a loss of business due to the COVID-19 public health emergency after the 8-or-24-week PPP covered period, the individual may again be eligible for PUA benefits.

PUA IS UNLIKELY TO BE AVAILABLE WHILE USING PPP/EIDL TO COVER YOUR SALARY.



- Nothing in federal law or guidance directly prohibits small business owners and independent contractors from applying for PUA benefits during the PPP covered period. To the extent, however, that small business owners, independent contractors, and self-employed individuals are utilizing the loan to cover their full or partial salary, they may be deemed ineligible for PUA benefits during the PPP covered period. This will require a case-by-case analysis.
- Additionally, while EIDL proceeds and PUA benefits may be used for different, non-overlapping purposes, because EIDL grants may be used to maintain payroll to retain employees, a small business owner or independent contractor who has received an EIDL grant may need to account for these funds when applying for PUA benefits to the extent the grant was used to pay themselves.

POTENTIAL PITFALLS TO CONSIDER

INDIVIDUALS MAY HAVE DIFFICULTY FULFILLING THE PPP “GOOD FAITH LOAN NECESSITY CERTIFICATION” AND OTHER LOAN FORGIVENESS REQUIREMENTS WHILE RECEIVING PUA BENEFITS.



- Specifically, small businesses are required to certify, at the time of the PPP loan application, that “current economic uncertainty makes [the] loan request necessary to support the ongoing operations” of the borrower.

INDIVIDUALS MAY HAVE DIFFICULTY SATISFYING THE PPP LOAN REQUIREMENTS IF THEY ARE RECEIVING PUA BENEFITS.



- PPP loan applicants are required to certify that all PPP loan proceeds will be used only for business-related purposes. And, at least 60 percent of the PPP loan amount must be used for payroll costs in order to obtain forgiveness. Small business owners, independent contractors, and other sole proprietors may have difficulty satisfying these requirements if the self-employed owner is receiving PUA benefits, but this will require a case-by-case analysis.

INDIVIDUALS MAY HAVE DIFFICULTY ATTESTING THEY ARE UNEMPLOYED OR PARTIALLY UNEMPLOYED IF THEY ARE USING A PPP LOAN TO COVER THEIR SALARY.



- In applying for PUA benefits, individuals must attest – under penalty of perjury – that they are unemployed or partially unemployed. If a small business has received a PPP loan and the self-employed owner is utilizing the loan to cover his/her own salary, the owner cannot attest that he/she is unemployed, and may not be able to attest that he/she is partially unemployed.