

Corporate and Business Alert
March 2020

Business and Corporate COVID-19 Update

Emergency COVID-19 Loans – Small Business Administration Loans Made Possible via the Payroll Protection Program

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As part of the recently passed Coronavirus Aid, Relief, and Economic Security Act (CARES), \$350 Billion dollars has been allocated to assist small businesses struggling to keep their workers employed through the COVID-19 global pandemic. The Paycheck Protection Program provides forgivable loans to those small businesses who maintain their payroll during the crisis. The loans are 100% federally backed.

The Act provides for broad eligibility criteria for small businesses in the United States. Paycheck Protection Program loans are available to small businesses with fewer than 500 employees, that may otherwise meet SBA size requirements, a 501(c)3 organization with fewer than 500 employees, a sole proprietor, independent contractor, self-employed individual, a 501(c)19 Veterans Organization that meets the SBA size standard, and a Tribal business concern that meets the SBA size standard. Additionally, if a business is within the hospitality or food service sector, the 500 employee standard applies on a location-by-location basis. The 500-employee threshold applies to all employees, full-time, part-time, and any other status.

Potential government-approved Lenders will be looking to examine if potential Borrowers were in business and paying employees on or before February 15, 2020. Most importantly, Lenders will be asking qualifying small businesses for a good-faith certification that:

1. The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations;
2. The borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments;
3. The borrower does not have an application pending for a loan duplicative of the purpose and amounts for which the borrower has applied; and
4. From Feb. 15, 2020 to Dec. 31, 2020, the borrower has not received a loan duplicative of the purpose and amounts for which the borrower has applied.

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Small businesses should note that there is an opportunity to roll previously applied for and granted emergency loans into this loan program as one new loan. Previously granted loans must have been made after January 31, 2020.

Lenders will also be looking for certain documentation from potential borrowers, such as payroll tax filings and income and expense information. Exact documentation requirements have not been announced by the government, but will be soon.

Lenders will not be taking into consideration whether a borrower has applied for credit from another institution and been denied, will not require collateral for any loan, and will not require personal guarantees; these policies are aimed at speeding up access to credit and increasing the pool of eligible Borrowers.

Borrowers can seek an amount two and one-half times the borrower's average monthly payroll cost, in an amount not to exceed \$10 million dollars. For businesses not in business in 2019, the eligible loan amount will be two and one-half times the average of the monthly payroll cost between January and February of 2020.

Perhaps most importantly, **borrowers are eligible to have their loans forgiven.** An eligible Borrower may have their loans forgiven equal to the amount the borrower spent on the following list of items over the eight (8) week period beginning on when the loan was originated:

1. Payroll Costs
2. Interest on the mortgage obligation incurred in the ordinary course of business
3. Rent on a leasing agreement
4. Payments on utilities (electricity, gas, water, transportation, telephone, or internet)
5. For borrowers with tipped employees, additional wages paid to those employees

The loan forgiveness cannot exceed the principal.

Loan forgiveness may be limited if there is a reduction in the number of employees or a reduction of more than twenty-five percent (25%) in wages paid to employees.

Additionally, reductions in employees through layoffs from the period beginning on February 15, 2020 through thirty (30) days following the enactment of the CARES Act will not reduce the availability of loan forgiveness if the borrower reverses the reduction in employees or reduction in wages paid by June 30, 2020.



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The above Alert serves as a summary of the Paycheck Protection Program. It is important to remember there are many more involved and complicated rules surrounding the application process with the Small Business Association. If you need any guidance or advice regarding applying for a loan available through the Paycheck Protection Program, please do not hesitate to reach out to Peter T. McNulty at pmcnulty@mhtl.com or (617) 479 -5000.

This Client Alert was prepared by Peter T. McNulty and reviewed with Nan O'Neill, Arthur Murphy, and Katherine Hesse. If you have any questions, please contact Peter T. McNulty or the attorney responsible for your account, or call (617) 479-5000.

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