CLIENT UPDATE

FINANCIAL RELIEF FOR BUSINESSES | A QUICK-REFERENCE GUIDE TO NEW COVID-19 RELIEF LEGISLATION

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The Federal government has passed a flurry of new legislation that provides financial relief for businesses, including the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act ("CARES"). This new legislation provides billions in aid to businesses and individuals to alleviate the economic impact of COVID-19.

The CARES Act provisions provide the following aid relevant to businesses in the construction industry, as detailed in this update:

1. Lending Provisions
   a. SBA Paycheck Protection Program Loan
   b. Exchange Stabilization Fund
   c. Economic Injury Disaster Loans
   d. Emergency Economic Injury Grants
2. Tax Provisions
3. Infrastructure Provisions: Federal Agencies and Specific Industry Aid

1. LENDING PROVISIONS

The federal government passed two programs pertaining to lending: the U.S. Small Business Administration Paycheck Protection Program ("SBA PPP") loan program, and the Exchange Stabilization Fund ("ESF") loan program.

a. SBA PPP

To qualify, the business must:

- have fewer than 500 employees or otherwise meet the current SBA size standards for employees. Under SBA size standards, contractors and specialty contractors are defined by their gross receipts;
- have been operational as of February 15, 2020; and
- have employees for whom it paid salaries and payroll taxes, or paid an independent contractor.

i. SBA PPP Loan Terms

- The maximum loan amount is limited to 2.5 times an employer's average monthly payroll or $10 million, whichever is less;
- Covered payroll costs include salary, wages, and payment of cash tips (up to an annual rate of pay of $100,000); employee group health care benefits, including insurance premiums; retirement contributions; and covered leave;
- Allowable uses of the loan include operating costs for mortgage, rent, utility payments, or interest on debt incurred prior to February 15, 2020;
- Businesses will have to self-certify that funds borrowed under the program are used for an allowable purpose;
- This loan has a maturity of two (2) years and an interest rate of 1%;
- No loan fees for borrower and lender; and
- No collateral for the loan required.
- The SBA continues to modify and clarify the loan terms and conditions. Some additional guidance may have been issued since the publication of this article. Please check with your lender or the SBA website for any new guidance.

ii. SBA Loan Forgiveness Program

The above loan is "forgiven" if a business establishes the following criteria:

- The money borrowed through the program is used for allowable expenses: payroll, mortgage interest, rent, and utilities, operating costs;
- Documentation is provided to support those expenses;
- The employer's layoffs, furloughs, and pay reductions do NOT reduce the payroll or employee count by more than 25%. If the employer had already laid off employees or cut pay rates, the employer has until June 30, 2020 to reinstate or hire new employees to raise the workforce and payroll back up to prior levels;
- No more than eight (8) weeks of expenses can be forgiven. The eight (8) weeks begins on the loan origination date. Any remaining amounts are treated as a loan with the above terms; and
- Due to likely high subscription, SBA indicated that only up to 25% of the forgiven amount will be for "non-payroll" expenses.

iii. SBA Loan Application Process Steps

1. **Gather relevant documents and information, including the following:**
   (i) Tax return for 2019;
   (ii) P&L;
   (iii) Balance Sheet;
   (iv) 2-3 months of payroll;
   (v) Information regarding any layoffs and plans to re-hire;
   (vi) 1099;
   (vii) W2s; and
   (viii) Any other contract labor, payments to any contractors, subcontractors, or vendors.

2. **Submit loan application through SBA PPP here or through your approved banking institution. The institution should be an SBA-approved lender.**

3. **Submit required forms:**
   a. IRS Form 4506T
   b. Form 412 / Personal Financial Statement
   c. SBA Form 2202 / Schedule of Liabilities listing all fixed Debts

b. Exchange Stabilization Fund ("ESF")

In addition to SBA loan program, the $500 billion Exchange Stabilization Fund was created to give:

- $46 billion for commercial airlines, cargo air carriers, and "businesses important to maintaining national security."
- The remaining $454 billion is available for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities.

ESF loan details are still being worked out by the federal government. At this time, it appears that ESF loans will be available to businesses that certify that alternative financing is not otherwise available. ESF loans will NOT be forgiven. A few stringent loan requirements released to date include:

- Borrowers will generally be prohibited from engaging in stock buybacks, issuing dividends, increasing executive compensation, or issuing "golden parachutes"; and
- Borrowers with 500 to 10,000 employees will likewise be: (a) required to retain 90 percent of their workforce; (b) prohibited from offshoring or outsourcing jobs for two (2) years; (c) prohibited from abrogating existing collective bargaining agreements for the term of the loan plus two (2) years; and (d) required to remain neutral in any union organizing effort for the term of the loan.

c. Economic Injury Disaster Loans

Economic Injury Disaster Loans ("EIDL") are also available for small businesses and non-profits. EIDL terms are:

- Must pledge collateral for loans over $25,000;
- Credit history and ability to repay are considerations in loan approval;
- Maximum is $2,000,000, interest rate is 3.75% for small businesses and 2.75% for non-profits, terms up to 30 years, no application fees;
- Funds can be used for the same allowable uses: payroll and operating expenses;
- Funds come directly from the U.S. Treasury; applicants do not go through a bank to apply; and
- EIDL loans do not have an associated forgiveness program. However, an Emergency Economic Injury Grant for up to $10,000 can be requested after applying for an EIDL loan.

d. Emergency Economic Injury Grants

The CARES Act included $10 billion in funding to provide advance emergency grants of up to $10,000 to small businesses and nonprofits that also apply for an EIDL loan. To receive this grant, a business must first apply for the EIDL loan and then request the grant. These emergency grants will be provided to applicants within three (3) days of applying for the loan.

Applicants can receive an SBA Disaster loan and still qualify for an EIDL loan and Emergency Economic Injury Grant. Application for EIDL/Grant is available here.

2. TAX PROVISIONS

The following key tax incentives are offered by the CARES Act:

- **Deferral of Employer Payroll Tax Payments**: Employer's share of Social Security taxes on employee wages (6.2%) can be deferred.
- **Interest Expense Deduction Limits are Raised:** The threshold limit under IRC Section 163 (j) for interest expense deduction is raised from 30% to 50%.
- **Revive and Enhance Net Operating Loss Carryback Refund Claims**: Companies that experience losses can "carry back" those losses against taxes paid in previous years, potentially allowing the company to obtain a refund of taxes it paid in prior years. This is similar to the 2008 recession, which had a two-year "carry-back" allowance. The new allowance is five (5) years.

- **"Retail Glitch" Correction**: This provides an incentive for the owners of qualified improvement property ("QIP") (generally restaurants, retail establishments, and leasehold improvements for commercial real estate) to write off the costs of improvements to that property in one (1) year; CARES clarified that QIP qualifies as a 15-year property under the modified accelerated cost recovery system and a 20-year property under the alternative depreciation system, and is eligible for 100% bonus depreciation. This is retroactive and applies to QIP placed in service after September 27, 2017.
- **Employee Retention Credit**: For employers that are forced to suspend or close operations but continue to pay their employees, a one-year credit is allowed. The credit is capped at $10,000 in aggregate per employee for all quarters. The credit applies to wages paid after March 12, 2020 and before January 1, 2021. More details and forms can be found here.
- **Elimination of Loss Limitations**: The $250,000 limitation on aggregate loss deductions for pass-through businesses and sole proprietors is suspended through the end of the year.

3. INFRASTRUCTURE PROVISIONS

The CARES Act provided additional funding to select federal agencies: the U.S. Department of Transportation, U.S. Army Corps of Engineers, and EPA.

The Act also provides aid to certain industries, including but not limited to:

- Aviation: grants for airlines and related businesses; loans and loan guarantees to the aviation industry; grants for airports; and suspension of certain aviation-related taxes;
- Public Transit Agencies; and
- Amtrak

Applications open on Friday, April 3, 2020. Industry experts and analysts have predicted that this will be a high-demand program, and therefore encourage businesses seeking relief to apply quickly to secure funds while they remain available. We wish everyone safety and security as we navigate this unprecedented situation together.

ABOUT

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Allensworth & Porter focuses exclusively on the practice of construction law. For 25 years, the firm has handled complex construction matters from preconstruction to closeout, from the first claim to the last appeal, and all manners of disputes in between for clients in virtually every sector of the commercial construction industry. For more information, visit aaplaw.com.

Note: This article was written on Thursday, April 2, 2020, based on the most up-to-date information available at the time. During this unprecedented situation, policies and circumstances evolve rapidly. For our most recent analysis of COVID-19 and the construction industry, please visit aaplaw.com/news. ***This is not legal or financial advice****; all legal decisions should be based on an analysis that is specific to the contracts and facts of any given project, and financial decisions should be made under CPA guidance.*