

CAMPBELL FLANNERY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

Telephone: (703) 771-8344
Facsimile: (703) 777-1485

1602 Village Market Boulevard
Suite 225
Leesburg, Virginia 20175

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COVID-19 Alert to Small Business Owners

On March 27, 2020, in response to the COVID-19 pandemic, Congress enacted the CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (the "Act"). Title I of the Act is entitled the KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT (the "Paycheck Protection Act"). The Paycheck Protection Act amends various provisions of the Small Business Act. *See* 15 U.S.C. § 636 *et seq.*

Below are details about the Paycheck Protection Act:

1. OVERVIEW. The Small Business Act establishes a federal loan program in which third-party private lenders extend loans to small businesses and entrepreneurs. The Small Business Administration ("SBA") oversees this program and encourages lenders to make these loans by guaranteeing them. The SBA also makes certain "disaster loans" directly.

Through government-backed incentives to third-party lenders, the Paycheck Protection Act makes \$349 billion available to small businesses through making modifications to ordinarily applicable provisions of the Small Business Act. These modifications (a) eliminate or reduce certain underwriting requirements, (b) eliminate principal guarantor requirements, and, perhaps most significantly (c) provide mechanisms for forgiving these loans.

2. COVERED PERIOD. The Paycheck Protection Act loan program will be administered by third party lenders and is available for a covered period beginning on February 15, 2020, and ending on June 30, 2020.

3. ELIGIBLE RECIPIENTS. The following persons are eligible recipients of loan proceeds:

a. Small business concerns, business concern, nonprofit organization, veterans organization, or Tribal business (described in Section 31(b)(2)(C) of the Small Business Act) that (I) employs 500 or less employees, or (II) has a business size that meets applicable size standards established by the SBA; and

b. Individuals who operate under a sole proprietorship, as an independent contractor, and certain eligible self-employed individuals (as that term is defined in Section 7002(b) of the Families First Coronavirus Response Act (Pub. L. 116-127)).

4. MAXIMUM LOAN AMOUNTS. Eligible Recipients shall be entitled to receive the *lesser* of

a. \$10 million; or

b. The Average Monthly Payroll costs for the twelve-month period preceding the loan *multiplied by 2.5, plus* the sum of any Economic Injury Disaster Loan obtained between January 31, 2020, and the date that loans become available under the Paycheck Protection Act.

By way of illustration, if an Eligible Recipient's average monthly payroll for the twelve-month period preceding the loan was \$100,000.00 and the Eligible Recipient had not obtained any applicable Economic Injury Disaster Loan proceeds, the Eligible Recipient would be entitled to receive up to \$250,000.00 (i.e.. \$100,000.00 x 2.5) under this program.

5. USE OF LOAN PROCEEDS. During the Covered Period, Eligible Recipients may use the loan proceeds for

a. Payroll costs;

b. Costs related to the continuation of health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

c. Employee salaries, commissions, or similar compensations;

d. Payments of interest on mortgage obligations (excluding prepayment or payment of principal on a mortgage obligation);

e. Rent;

f. Utilities; and

g. Interest on other debt obligations incurred before the covered period

6. UNDERWRITING REQUIREMENTS. Lenders are directed to consider whether a borrower (a) was in operation on February 15, 2020, and (b) had employees or paid independent contractors. In addition, the Paycheck Protection Act reduces ordinary underwriting requirements by:

a. Eliminating personal guarantee requirements;

b. Eliminating collateral requirements; and

c. Eliminating recourse of the SBA against individual shareholders, members, or partners of an eligible recipient entity;

d. Waiving SBA Fees; and

e. Eliminating the requirement that a small business concern demonstrate it cannot obtain a loan elsewhere.

7. BORROWER CERTIFICATIONS. To obtain these loans, borrowers must make good faith certifications that:

- a.** The uncertainty of current economic conditions make necessary the loan request to support ongoing operations;
- b.** Funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- c.** The Eligible Recipient does not have a duplicative application pending for a loan under the Paycheck Protection Act program for the same purpose;
- d.** The Eligible Recipient has not received any duplicative loan proceeds under the Paycheck Protection Act program between February 15, 2020, and December 31, 2020.

8. LOAN DEFERRMENT. Lenders making these loans shall be required to provide complete payment deferment for impacted borrowers for a period of not less than 6 months and not more than 1 year. For purposes of this provision, an impacted borrower is presumed to have been adversely impacted by COVID-19.

9. LOAN FORGIVENESS. Eligible recipients shall be eligible for forgiveness of these loans in an amount equal to:

- a.** Payroll costs;
- b.** Payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation);
- c.** Payment on any covered rent obligation; or
- d.** Covered utility payment.

Amounts forgiven shall be considered "indebtedness by a lender authorized under section 7(a) of the Small Business Act (15 U.S.C. § 636(a)). Importantly, however, forgiveness of such debt shall be excluded from gross income under the Internal Revenue Code of 1986.

The forgiveness of the loan shall be reduced by reductions in workforce during the covered period. In this way, the Paycheck Protection Act encourages employers to retain employees and to use the loan proceeds to pay retained employees.

Forgiveness requests shall be made to lenders by submitting applications that are supported by documentation. Loans or portions of loans that are not forgiven will be subject to generally favorable repayment terms.

CONTACTING CAMPBELL FLANNERY, P.C.

This publication is provided by Campbell Flannery, P.C. as a service to clients, friends and colleagues. This publication and the information above is a summary only and is not comprehensive. It should not be construed as legal advice. Questions regarding these matters may be directed to any of the persons listed below:

James P. Campbell, Esquire

Tel. (703) 771-8344, Extension 101

Email: jcampbell@campbellflannery.com

John P. Flannery, Esquire

Tel. (703) 771-8344, Extension 102

Email: jonflan@aol.com

Matthew L. Clark, Esquire

Tel. (703) 771-8344, Extension 106

Email: mclark@campbellflannery.com

Suzanne L. Powell, Senior Paralegal

Tel. (703) 771-8344, Extension 103

Email: spowell@campbellflannery.com