

COVID-19 Help for Small Businesses

CARES Act Updates

April 16, 2020

1. Payroll Protection Program and Economic Injury Disaster Loan money dries up.

By noon today, small business owners visiting the Small Business Association's website to inquire about obtaining loan money – either through the Payroll Protection Program (PPP) or an Economic Injury Disaster Loan (EIDL) – were met with this message:

Lapse in Appropriations Notice: *SBA is unable to accept new applications at this time for the Paycheck Protection Program or the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding.*

EIDL applicants who have already submitted their applications will continue to be processed on a first-come, first-served basis.

The Small Business Association of Michigan this afternoon indicated that businesses with loan approval, even if waiting to close, should still receive their funding. Those that have applied for a loan but have not received approval should immediately contact their lenders. We understand that there are advocacy and Congressional activities that have been underway for the last week aimed at supplying additional federal funds to both programs to further assist small businesses. We are watching this issue closely and will provide more information when available.

In the meantime, assuming additional PPP funding is approved, self-employed individuals and independent contractors can begin planning for their PPP loans by consulting the SBA's interim rule released this week clarifying that these businesses are eligible for PPP loans if they were in business on February 15, 2020, live in the United States, and filed or will file the Form 1040 for 2019. The rule also clarifies the treatment of partners in a partnership – rather than each partner submitting their own PPP loan application, the self-employment income of general active partners may be reported as a payroll cost, up to \$100,000 annualized, on a PPP loan application filed by or on behalf of the partnership.

In addition, the rule explained that self-employed individuals and independent contractors with no employees and no “payroll cost” should calculate the maximum loan amount as 2.5 times the average monthly net profit as reported on the Form 1040, up to

\$100,000. Whether the business has employees or not, loan proceeds can be used to pay owner compensation replacement, calculated based on 2019 net profit as reported on the Form 1040, and that forgiveness of such amounts are limited to eight weeks' worth of 2019 net profit. The interim rule is available here: <https://www.sba.gov/sites/default/files/2020-04/Interim-Final-Rule-Additional-Eligibility-Criteria-and-Requirements-for-Certain-Pledges-of-Loans.pdf>

2. Health Care Law Update

Beginning on April 10, 2020, many health care providers and health care facilities enrolled with Medicare or Medicaid began receiving funds as part of a \$30 billion dollars Public Health and Social Services Emergency Fund created under the CARES Act. The amount payable to each provider depends on the amount of the provider's 2019 Medicare FFS receipts (excluding Medicare Advantage). These funds are intended for health care providers, including those who ceased operation as a result of the COVID-19 pandemic, that after January 31, 2020 have provided or continue to provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. According to HHS, it "broadly views every patient as a possible case of COVID-19."

Within 30 days after receipt of these funds, providers are required to sign attestation statements confirming their agreement to comply with the Terms and Conditions (the current version as of the date of this article is located here: <https://www.hhs.gov/sites/default/files/relief-fund-payment-terms-and-conditions-04132020.pdf>). The Attestation Portal is now open (<https://covid19.linkhealth.com/>). Among other things, the Terms and Conditions impose various requirements on providers' qualification to receive these funds and limitations on how these funds may be used. For example, providers must certify that the payment will only be used to prevent, prepare for, and respond to coronavirus, and shall reimburse the recipient only for health care related expenses or lost revenues that are attributable to coronavirus; and that these funds will not be used to reimburse expenses or losses that have been reimbursed from other sources (presumably, including PPP loans).

HHS has indicated that these are payments, not loans, to health care providers. However, HHS has the right to audit all providers and, if an HHS audit uncovers, for example, that a provider did timely submit a required attestation, did not qualify to receive these funds or that the funds were not used properly, there may be a repayment obligation. Also, unlike the tax treatment of a forgivable PPP loan amount, the CARES Act does not specifically exclude these amounts from recipient's gross income. So, unless there will be future guidance to the contrary, the grant amounts could be taxable income.

GMH's Coronavirus Task Force is here to answer your questions. While GMH is complying with Governor Whitmer's Order, we are working remotely and available to assist you. Please contact any of the below lawyers for more Coronavirus support.

THE LOCAL, STATE AND FEDERAL GOVERNMENT REQUIREMENTS RELATED TO COVID-19 MAY CHANGE, AND ADDITIONAL GUIDANCE, RULES, LAWS AND REGULATIONS MAY BE ISSUED OR AMENDED, AT ANY TIME. ACCORDINGLY, OUR GUIDANCE OR POSITION ON THESE TOPICS MAY ALSO CHANGE, WITH OR WITHOUT NOTICE, AND THE ABOVE INFORMATION IS FOR EDUCATIONAL PURPOSES ONLY AND SHOULD NOT BE INTERPRETED OR RELIED UPON AS LEGAL ADVICE. EACH SITUATION IS UNIQUE AND SHOULD BE REVIEWED WITH THE ASSISTANCE OF COMPETENT PROFESSIONALS.



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