

COVID-19 Help for Small Businesses

CARES Act Updates, Insurance Considerations

April 20, 2020

Main Street Lending Program

Separate from the Paycheck Protection Program but authorized under the CARES Act, the Federal Reserve is working on the rollout of the Main Street Lending Program. The public comment period ended last week and the program is expected to launch in the near future.

Main Street loans are different from PPP loans and will not be forgivable but they will still have favorable loan terms.

Eligibility. To be eligible, a business may have up to 10,000 employees or up to \$2.5 billion in 2019 annual revenue. The business must be organized in the U.S. with significant operations and a majority of its employees based in the U.S.

Loan Terms.

- Minimum loan size of \$1 million.
- Maximum loan size will be the lesser of \$150 million, 30% of the borrower's committed but undrawn debt, or an amount when added to committed but undrawn debt does not exceed six times 2019 EBITDA.
- Interest rate will be an adjustable rate equal to the secured overnight financing rate (SOFR) plus 250 to 400 basis points. The current SOFR is slightly higher than zero.
- Deferral of principal and interest for one year.
- Maturity in 4 years.
- Prepayment without penalty.

Restrictions.

- Loan proceeds may not be used to repay or refinance existing debt.
- Borrower must use reasonable efforts to maintain its payroll and retain its employees.
- For 12 months following the loan date the borrower may not repurchase any of its or its parent's securities listed on a national securities exchange.
- For 12 months following the loan date the borrower may not pay dividends or distribution with respect to its common stock.
- During the 12 months following the loan date, no officer or employee whose total compensation exceeded \$425,000 in 2019 may receive compensation in excess

of what he or she received in 2019 (excluding employees whose compensation was determined under a collective bargaining agreement).

- During the 12 months following the loan date, no officer or employee whose total compensation exceeded \$3 million in 2019 may receive compensation in excess of the sum of \$3 million plus 50% of the amount of compensation received in 2019 in excess of \$3 million.

Filing Business Interruption Insurance Claims in a COVID-19 World:

Companies with business interruption insurance coverage that wish to file a claim because of COVID-19 related concerns should be mindful of the following best practices:

- 1. Make a claim.** Even if an insurance agent says the claim is not likely to be covered, make the claim anyway to avoid a denial due to the claim being late or the failure to obtain a special endorsement for coverage in light of the pandemic. If Congress, the State of Michigan, either by legislation or Executive Order, take steps to install the infrastructure necessary to evaluate and pay these claims, businesses that make claims now will be better positioned to preserve their interests.
- 2. Use care when describing the basis for the claim.** Rather than stating that the reason for the claim is the pandemic, we recommend stating that the reason is due to the Governor's Stay Home, Stay Safe Order.
- 3. Retain all records.** Even though many businesses may be denied business interruption coverage, all records, particularly the denial, should be retained in the event that business interruption coverage is available due to a change in the law.

We are aware that one bill has been introduced in the House of Representatives (HR 6494) to address these issues and expect there will be several more.

Oakland County Health Division – New Emergency Order 2020-07

Following the Governors' issuance of Executive Order 2020-42, the Oakland County Health Division issued a new Emergency Order 2020-07 (<https://www.oakgov.com/covid/healthorders/Health%20Order%20for%20screening%20at%20businesses%202020-07.pdf>). This Order must be published by all businesses and operations remaining open at the entrance of the facility and to the members of the public at large by all reasonable means available.

Among other things, this Order:

- Requires the daily screening of employees, and clarifies that the symptoms for requiring the exclusion of a worker from the workplace include, but are not limited to, fever, cough (excluding cough due to known chronic cough), shortness of

breath, sore throat, and/or diarrhea (excluding diarrhea due to known medical reason). We note that although the Oakland County Staff Screening Checklist for Businesses

(<https://www.oakgov.com/covid/supplements/Screening%20for%20Businesses%203.24.20c.pdf>) lists additional symptoms, such as chills (which is also listed by CDC as one of the possible symptoms of COVID-19), vomiting and abdominal pain (neither of which are listed by CDC as symptoms of COVID-19 or as "principal symptoms" of COVID-19 under Michigan Executive Order 2020-36), it is not clear if someone exhibiting these other symptoms should be excluded from the workplace under the provisions of this Emergency Order.

- Provides certain exemptions for excluding workers at health care institutions, public health functions, pharmacies and other entities that are involved in the mitigation of risk during this pandemic, and for essential workers engaged in travel related to supply chain and critical infrastructure travel/movement.
- Removes social distancing guidance because this is encompassed within Michigan Executive Order 2020-42.
- Added a requirement to wear facial coverings (with reference to CDC guidance) for essential services, including but not limited to grocery stores, restaurants, pharmacies, and locations where social distancing measures are not possible, that provide goods and services and have face-to-face interaction with the public or close contact with goods that the public purchases.
- Recommended that the general public follow CDC guidance for facial covers in public settings.

This Order remains in effect until the expiration of the Michigan Executive Order 2020-42 and replaces the now rescinded Oakland County Emergency Order 2020-05.

U.S. Chamber of Commerce launches the Save Small Business Fund

The U.S. Chamber of Commerce Foundation has launched the Save Small Business Fund (<https://savesmallbusiness.com/>). Funded by corporate and philanthropic partners, the Fund is a collective effort to provide \$5,000 grants to small employers. To qualify, your business must:

- Employ between 3 and 20 people;
- Be located within an economically vulnerable community (the Fund website offers a web-based tool to determine if your business is in one of these communities, by zip code); and
- Have been harmed financially by the COVID-19 pandemic.

According to the Fund website, the application is short and will take about 10 minutes to complete; all that the qualified applicants will need is the business' W-9 form; and grants

will be awarded on a weekly basis, but applicants only need to apply one time to be eligible for funding. The application window has opened earlier today, and the link to the application portal is available at the Fund website.

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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