

CLIENT BULLETIN

To: Raines Feldman LLP (“**RF**”) Clients
From: Raines Feldman LLP
Date: April 24, 2020
Re: Paycheck Protection and Health Care Enhancement Act (Update to CARES Act)

This Client Bulletin summarizes key changes to the Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) (the “**CARES Act**”) made by the Paycheck Protection and Health Care Enhancement Act (P.L. 116-139) (the “**CARES Act Update**”) regarding the Paycheck Protection Program (“**PPP**”) loans and Emergency Economic Injury Disaster Loans (“**EIDLs**”). The CARES Act Update has authorized additional funding to each of the PPP (\$310 billion) and EIDL (\$60 billion) programs. As of the date of this Client Bulletin, the Small Business Administration (the “**SBA**”) intends to re-open the application process for PPP loans on Monday, April 27, 2020, but has not yet re-opened the application process for EIDLs. Applicants are advised to monitor the SBA website for any updates regarding the re-opening of these application processes. Please refer to our previous Client Bulletins on the CARES Act for a more detailed summary of its key provisions.

In response to the public health emergency in the United States due to the 2019 novel coronavirus, also known as SARS-CoV-2 and the illness it causes, COVID-19 (collectively, “**COVID-19**”), which the World Health Organization has declared a “pandemic,” the United States Congress passed, and the President signed into law, the CARES Act on March 27, 2020.

The CARES Act is primarily an emergency stimulus package to address the economic fallout from the COVID-19 pandemic and its effects in the United States. The CARES Act originally provided up to \$349 billion in loans to small businesses through the PPP and up to \$10 billion in additional EIDLs. Loans under both programs are in part forgivable, their application processes have been streamlined and a wide range of businesses are eligible for them.

Since the passage of the CARES Act and the opening of the PPP loan application process on April 3, 2020 for eligible businesses and on April 10, 2020 for independent contractors, many PPP loan and EIDL applicants have encountered difficulties in applying for loans and are unsure about the status of the loans provided under the CARES Act.

Following its passage in the United States Congress, the President signed into law the CARES Act Update on April 24, 2020 to address, among other things, the immediate need for more funding for the PPP and EIDL programs.

PAYCHECK PROTECTION PROGRAM

The CARES Act Update authorizes an additional \$310 billion in funding for PPP loans, to bring the total amount authorized to date for PPP loans to \$659 billion.

In recognition of the difficulties that many small businesses had in obtaining PPP loans, and to serve more of the traditionally under-banked communities, the CARES Act Update has earmarked some of the additional PPP loan funds for smaller and more local lenders as follows:

- SBA must use \$30 billion of the appropriated funds for the PPP to guarantee loans made by insured depository institutions and credit unions with consolidated assets of not less than \$10 billion and not more than \$50 billion; and
- SBA must use \$30 billion of the appropriated funds for the PPP to guarantee loans made by (i) community financial institutions, (ii) insured depository institutions with consolidated assets of less than \$10 billion and (iii) credit unions with consolidated assets of less than \$10 billion.

The CARES Act Update has otherwise not updated any of the certifications that a potential borrower must make as part of the application process. However, the SBA has issued, and may further issue, new guidance on the PPP following the passage of the CARES Act Update.

Applicants should particularly note the limited use of PPP loan proceeds. Borrowers may use the proceeds of PPP loans to pay payroll costs, utilities, mortgage interest payments, rents and interest payments on certain existing debt obligations incurred prior to February 15, 2020. The SBA has since advised that at least 75% of PPP loan proceeds must be used to pay payroll costs. Please refer to our previous Client Bulletins on the CARES Act for a more detailed summary of payroll costs.

As of the date of this Client Bulletin, the SBA intends to reopen the application process for PPP loans on April 27, 2020. Applicants and potential applicants for the PPP are strongly encouraged to monitor updates and additional guidance issued by the SBA and the Department of the Treasury and to check in with SBA-approved lenders for any further developments and updates on the application process. The SBA provides updates and guidance on the PPP here: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.

Potential applicants may complete a sample PPP loan application for submission to an SBA-approved lender. The sample PPP loan application is available here: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.

EIDLs

The CARES Act Update authorizes an additional \$50 billion in funding for EIDLs, as well as an additional \$10 billion for forgivable emergency advances made under EIDLs. Additionally, businesses characterized as “agricultural enterprises” under the Small Business Act that employ 500 or less employees are now eligible to apply for EIDLs.

As of the date of this Client Bulletin, the SBA has not approved the re-opening of the EIDL application process. Applicants and potential applicants for EIDLs are strongly encouraged to monitor updates and additional guidance issued by the SBA and the Department of the Treasury. The SBA provides updates and guidance on EIDLs and emergency advances provided under EIDLs here: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>.

FURTHER UPDATES

Please be sure to check our COVID-19 Client Alert and Resource Center, <https://www.raineslaw.com/covid-19>, for further updates as they become available on the CARES Act Update and PPP loans and EIDLs.

FURTHER RESOURCES

- Full text of CARES Act Update: <https://www.congress.gov/116/bills/hr266/BILLS-116hr266eas.pdf>
- U.S. Department of the Treasury Resource Page for the CARES Act (including SBA Final Interim Rules): <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>
- U.S. Department of the Treasury PPP Loans FAQs: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

FURTHER INFORMATION

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