

Small Business Loan/Grant Support working its way through Congress

March 23, 2020

- **Who** - US small businesses and certain other organizations who employ no more than 500 employees. Also independent contractors and self-employed individuals.
- **What** - Forgivable loans up to 2.5 times monthly payroll expenses, capped at \$10 million
- **When** - Bill signing expected before March 27, 2020 with funds available TBD in April
- **Where** - Anywhere in the United States
- **Why** - To support small businesses, non-profits, veterans organizations, independent contractors and self-employed individuals through the COVID-19 crisis.
- **For What** - Funds to be used to retain workers, maintain payrolls and/or make mortgage, lease and utility payments.
- **Loan Forgiveness** - Up to 100% of the loaned amount may be forgiven under certain circumstances if workers are retained through June 30, 2020

Executive Summary

The coronavirus outbreak and resulting quarantine measures have led to widespread business disruptions in the United States. As part of the federal response, the Congress is expected to approve this week a bill that would provide relief of up to \$350 billion in forgivable loans to small business concerns, non-profit and veterans organizations and self-employed individuals to cover their expenses during the crisis.

This alert is based on draft legislative language as of March 22, 2020 and remains subject to revisions during the legislative process. There will most certainly be changes and revisions to the current proposal, as negotiations are ongoing with respect to, among other things, size and scope, before the Congress considers and passes the third economic relief bill.

Stay tuned for further developments. We will be hosting a briefing call Thursday, March 26, 2020 at 2 p.m. EST. Please RSVP [here](#).

As soon as the bill becomes law, we can work with you to identify SBA-approved lenders and assist in the preparation and submission of a business interruption loan application. It is critical to leverage our experienced public policy experts in D.C. to best position applications for success, including guiding them through the approval process, given the expected intense competition for limited resources, as well as working with you to sort through the interplay with business interruption insurance, existing credit arrangements and other related complexities. We will keep you posted

as the bill moves through the Senate, the House and then as it is signed into law, and provide further details so you may access the program, if you are eligible.

Details

Eligibility

Any small business concern, non-profit organization or veterans organization¹ is eligible provided that it employs no more than 500 employees and was in operation on February 15, 2020.² In addition, any applicant that meets certain size standards established by the SBA may be eligible. All prospective borrowers are presumed to have been adversely impacted by COVID-19.

Self-employed individuals, sole proprietors and independent contractors are also eligible if they have documented payroll tax filings with the IRS. In addition, business concerns with more than one (1) physical location are eligible if they employ not more than 500 employees per physical location and they operate in the hotel, restaurant and/or bar sectors.³

Maximum Amount

The maximum loan amount to be guaranteed is an amount equal to two and a half (2.5) times the borrower's total monthly payments for payroll (calculated as an average per month over the 12 months prior to the date of the applicable loan)⁴, capped at \$10,000,000.00 per borrower. The SBA will waive all fees or reduce fees to the maximum extent possible.

Payroll costs are defined as the sum of all payments for compensation, including salary, wage, cash tips, paid time off (vacation, parental, sick leave), severance, health care benefits, state or local taxes. For sole proprietors or independent contractors, payroll costs are defined as the sum of all compensation payments including wages, commissions or similar compensation capped at \$100,000 per year. Payroll costs shall not include compensation of any individual employee in excess of \$100,000, any compensation of an employee whose principal place of residence is outside the United States, or any sick leave or family leave covered under the Families First Coronavirus Response Act.

Use of Proceeds

The loan proceeds can be used to provide payroll support, including paid sick leave, group health care benefits, employee salaries, mortgage payments, rents, utilities and payments on other debt obligations. The SBA will require lenders to provide complete payment deferment relief for a period of not more than 1 year.⁵ The program covers the period from February 15, 2020 through June 30, 2020.

Other Matters

The proposed bill provides other details, including with respect to loan forgiveness, an increase in SBA guarantee to 100% until January 1, 2021 and eligibility details.

In order to qualify for full loan forgiveness, a borrower must maintain, during a period beginning on February 15, 2020 and ending on June 30, 2020 an average monthly number of employees that is not less than the average monthly number of employees for the same period in 2019.

The bill is still under negotiation and this summary does not describe all of the details that may be applicable to any specific borrower. Please reach out to your Dentons contact for information specific to your circumstances.

Illustrative Example

By way of illustration, a company applies for a loan with fewer than 500 employees, \$200,000 in monthly payroll and \$100,000 in monthly rent and utilities. Its total loan may be for 2.5 times the company's payroll, or in this instance, \$500,000. If workers are retained, lender will be required to forgive an amount determined pursuant to a formula that takes into account the number of employees retained, equal to up to eight weeks of the companies expenses, including payroll, rent, mortgage and/or utilities (approximately \$600,000). By retaining employees, the company would not have to repay the loan and the lender will be covered by the SBA's guarantee.

1 As defined in Section 501(c)(19) of the Internal Revenue Code.

2 A small business is ineligible under this program if it already receives assistance under section 7(b)(2) of the Small Business Act relating to COVID-19. A non-profit organization is ineligible if it qualifies under Medicaid for payments for certain items and services furnished under a State plan.

3 Business concerns are eligible if they are assigned a North American Industry Classification System code beginning with 72 at the time of disbursement. <https://www.bls.gov/iag/tgs/iag72.htm>

4 Seasonal employers will average payroll expenses by month over the period from February 15, 2019 or March 1, 2019 through June 30, 2019.

5 Subject to guidance from the SBA to be drafted no later than 30 days after passage of this legislation.

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