

Sweeney Mason

LLP

Coronavirus (COVID-19) Update:

Five Things Businesses Can Do to Help Support Necessity and Safeguard PPP Funds

Headlines describing funds loaned under the Small Business Administration's ("SBA") Paycheck Protection Program ("PPP") being doled out to high profile companies that may not have a legitimate "need" for the capital have created a backlash. In response, the Department of Treasury ("Treasury") released guidance reminding borrowers of the certifications included in their loan applications and requiring companies to assess their economic need for funding. The Treasury also confirmed its intent to review the loans, including all loans in excess of \$2 million. The Treasury is allowing businesses that are concerned about such scrutiny a safe harbor—return all of the money by May 14th. To many, this is a bitter pill after going through days or weeks of effort to apply for the loan.

An additional safe harbor was announced on May 13, 2020. Now, the SBA, in consultation with the Treasury, has said that borrowers that received PPP loans of less than \$2 million will be deemed to have made their certifications concerning necessity in good faith. The SBA also said that when it determines a borrower lacked an adequate basis for the required certification, the borrower will be required to return the funds and forgo any loan forgiveness in lieu of having the matter referred by the SBA to other agencies for enforcement. [PPP Frequently Asked Questions, Question 46, published May 13, 2020.](#)

The coronavirus is novel, but catastrophic shocks to the economy are not. Regulations are being adopted quickly and guidance (sometimes contradictory guidance) is being released almost daily, all amidst threats of criminal prosecution. In these times, businesses must remember to practice their fundamentals, including good corporate governance. Here are five

things businesses should do right now to help ward off allegations of misconduct associated with the PPP loan program.

1. Work with financial advisors and bankers to verify the loan amount is calculated correctly and in compliance with the CARES Act. It may be appropriate to return all or a portion of funds borrowed.
2. Evaluate the availability of other sources of capital (capital lines, investors) and whether any available capital would be sufficient to support ongoing operations in a manner that is not significantly detrimental to the business or whether such capital will be needed for purposes other than payroll, rent, mortgage interest, and utilities.
3. Monitor collections weekly or even daily to measure any reductions over average, seasonally adjusted collections. Review and adjust projected workloads, revenues and expenses.
4. Take note of the severity of the spread of the coronavirus in the community in which the business operates and how these factors are expected to impact, or have impacted, operations.
5. Work with financial advisors to track usage of the funds appropriately.

We say “five things” but they all boil down to one. As grade school math teachers say, *show your work!* While going through this process, companies should document their findings and conclusions. Companies should prepare written resolutions for the board of directors (or managers of a limited liability company) that can be added to the file and used when responding to any audit or review.

Many businesses are scrambling right now, doing what they can to keep the lights on while staying safe and healthy. In this environment, it may seem counter-intuitive to spend precious time taking these actions when businesses are being pushed to the limit. In fact, the process can offer some shelter from the storm, allowing businesses to memorialize the analysis that they have gone through and move on to the next challenge.

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no “one-size-fits-all” approach to COVID-19-related legal matters. For example, several Bay Area Cities impose their own emergency orders

that mirror but in many cases are more stringent than the Statewide or County orders. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason LLP.

Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason LLP is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.

For more information, please contact our corporate team at 408-356-3000 or via email: Romin P. Thomson at rthomson@smwb.com or Liudmyla Balke at mbalke@smwb.com.

The following links may assist you in evaluating some of the issues you may have. Stay safe!

DOL Publications:

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

IRS Guidelines:

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

SBA Guidelines:

[PPP FAQs](#)

CDC Guidelines:

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)

OSHA:

[Preparing Your Workplace for COVID-19](#)

California:

[Stay at Home Order](#)

[EDD COVID-19 Overview](#)

EDD COVID-19 FAQs

Santa Clara County:

Updated Shelter-in-Place

Social Distancing Protocol

Public Health Department FAQs on the Shelter in Place Order

San Jose:

Paid Sick Leave Ordinance



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

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