LAW ALERT

April 7, 2020

By: Leora F. Ardizzone, Esq.

RuskinMoscouFaltischek P.C.
Smart Counsel. Straight Talk.

Health Care Practitioners Surviving Economic Effects of COVID-19

As the novel coronavirus grips many in the nation in panic, and devastates our economy, independent healthcare practitioners, whose income depends on "elective" care, have been hard hit by government-mandated closures and restrictions on what is deemed essential. For health care professionals who had to close their offices or have kept their practices open, continued to employ personnel, and provided care to the community, even in the face of lower patient volume, help is available. The CARES Act, which was signed into law by President Trump, authorizes the Small Business Administration ("SBA") to provide small businesses, including health care practices a number of disaster relief programs in addition to its other traditional lending programs.

<u>Payroll Protection Program:</u> Congress has earmarked $349,000,000,000 for the SBA's Payroll Protection Program ("PPP") which will be made available to small businesses (with a few exceptions), including tax exempt organizations, that employ up to 500 people. The purpose of the PPP is to enable borrowers to retain employees and the amount that can be borrowed is based on payroll costs which are made up of the following: (i) payroll expenses (including wages, commissions, and tips) not to exceed the rate of $100,000 per person per annum; (ii) costs and premiums for group health insurance coverage; (iii) vacation, medical leave, family leave, sick leave; and (iv) state and local taxes assessed against compensation.

In addition to payroll related expenses, the PPP loan proceeds may be used to pay rent, utilities, and interests on mortgage obligations as well as interest on pre-existing loan obligations. Borrowers are generally eligible to receive one loan in an amount that is the lesser of a maximum of $10,000,000, or 2.5 times the borrower's average monthly payroll costs, up to $100,000 of compensation per person, for the prior year. Compensation for independent contractors may not be included in the calculation since independent contractors are eligible to apply for and receive PPP loans in their own right. Borrowers should bear in mind that a borrower can only take one PPP loan, and applications and loans must be made before June 30, 2020, so borrowers should consider borrowing the maximum amount the borrower needs.

Payments of principal and interest will be deferred for six months, or for a maximum period of one year. During the six month deferment period, interest will accrue. The interim final rule for the PPP also provides that as long as at least 75% of the loan proceeds are used to pay payroll expenses (even if the payroll expenses exceed $100,000 per person per annum) during the eight week period following disbursement of loan proceeds, the borrower may seek to have all or part of the loan forgiven. Loan forgiveness will be subject to reduction if the full time employee head count or wages decline. To the extent that any part of the PPP loan is not forgiven, the outstanding amount will be payable within two years of the borrower's application for forgiveness but lenders may extend the term of repayment for up to ten years. While the PPP loans are eligible for sale by the lenders to the secondary market, any lender acquiring the PPP loans must agree to all the terms of a PPP loan but any such secondary market lender may request that the SBA repurchase a loan that is likely to be forgiven.

The interest rate on the PPP loans is equal to one percent. PPP loans may be made without the need for borrowers to show that they were unable to obtain credit from other sources. Moreover, borrowers will not be required to give personal guaranties or collateral to secure the PPP loans. However, if a borrower does not use the PPP loan for the stated purposes, after having certified to the permitted use of proceeds, the borrower may be subject to fraud charges, will have to repay the loan with accrued interest and the SBA could have recourse against the borrower's shareholders, members, partners for unauthorized use of the PPP loan proceeds.

The PPP loan may be made by lenders already authorized by the SBA to make SBA loans. PPP loan lenders may charge the SBA fees of 5%, 3% or 1% of the loan amount, depending on the amounts borrowed, and agents who assist borrowers in connection with the application process or who refer borrowers to authorized lenders may charge the lender fees of 1%, .5% and .25% depending on the amounts borrowed.

A small business is ineligible for a loan under the PPP if it is engaged in illegal activity, if a holder of 20% or more of the equity of a small business is incarcerated, on probation, on parole, subject to indictment or has been convicted of a felony in the last five years. Additionally, a small business is not eligible for a PPP loan if the business or any owner of the business has an outstanding SBA loan that is delinquent, or if it defaulted on an SBA loan in the last seven years and caused a loss to the government.

Economic Injury Disaster Loan: The PPP is not the only program that was created to respond to the COVID 19 crisis. In addition to PPP, the SBA has been authorized to make Economic Injury Disaster Loan of up to $2,000,000 to a small business that has suffered working capital losses due to the COVID-19 national emergency. An eligible borrower, including without limitations, small businesses and many non-profit corporations, can borrow up to $25,000 unsecured under the EIDL, and up to $200,000 without having to give personal guarantees. As with the PPP, Borrowers do not have to establish that they cannot obtain credit from other sources to be eligible for an EIDL.

The EIDL is not issued by a commercial lender, but is funded directly by the Department of the Treasury. The interest rate on the EIDL is 3.75% for small business, and 2.75% for non-profit organizations and the repayment terms are up to thirty years, with the first year of payments deferred. Additionally, since the applications are directly to the Department of the Treasury, there are no application fees.

While the EIDL has favorable terms and the loan proceeds can be used for a wider range of things than the PPP loan and can be obtained up to December 31, 2020, the eligibility for borrowing is contingent on the borrower possessing a credit rating that is acceptable to the SBA. Further, the SBA will have to determine that the borrower will be able to repay the loan before approving a borrower's application. Further, depending on the amounts borrowed, the SBA may require collateral and/or personal guarantees to secure the EIDL. Borrowers should be aware that they can apply for and receive loans under EIDL and PPL at the same time but cannot consolidate the loans.

<u>EIDL Advances and Grants:</u> In addition to PPL and EIDL, Congress also authorized up to $10,000,000,000 for EIDL grants and advances. Under that program, a borrower who can certify that it is eligible for an EIDL loan may also apply for an EIDL advance or grant of up to $10,000 which may be disbursed within 3 days of the application for the EIDL advance or grant. The EIDL advance or grant may be used by the borrower to maintain payroll, pay for increased cost of materials, providing paid sick leave to employees who are unable to work due to COVID-19, and to repay other obligations.

<u>Emergency Bridge Loan:</u> The fourth COVID-19 financial relief program administered by the SBA under the CARES Act, is the Emergency Bridge Loan (“EBL”) which is available to current SBA borrowers. An EBL loan can be made by a lender authorized by the SBA. To be eligible for an EBL loan a borrower must have been in operation as of March 13, 2020 and show that it has been adversely impacted by COVID 19. The borrower must also show that it cannot obtain credit elsewhere and that holders of 20% or more of the equity in the borrower do not have available funds to finance the company. A borrower can apply and receive only one EBL per declaration of disaster and the amounts borrowed will not be counted towards the maximum lending allowable to the borrower, but will count towards the maximum outstanding limit under the SBA’s primary program for extending financial assistance to small businesses, commonly referred to as the 7(a) loan program.

The maximum allowed EBL is $25,000, the maximum interest rate on the EBL indebtedness is 6.5% and the term of repayment is up to 7 years but the lender can require that the EBL be repaid in full or in part when the borrower’s long term financing comes through. The lender may charge an application fee equal to the greater of 2% or $250, and may impose late payment fees of not more than 5% of the delinquent payment then due, and reasonable costs of liquidation. No collateral is required for the EBL and it may be sold in the secondary lending market. The EBL must be disbursed to the borrower between 45 and 90 days after the application has been approved and the loan proceeds can be used for working capital for the survival of the business or to reopen the business. The EBL cannot be used to repair or replace equipment or inventory, or to repair the borrower’s premises.

This remains a fluid process and the SBA and Treasury will likely issue additional guidance that may change the information contained in this article, but for now, the loans are being made on a first come first served basis. If your healthcare business needs financing to help get you through this crisis, Ruskin Moscou Faltischek, PC is here to help. If you have any questions about the PPP or any other SBA program designed to provide disaster relief during the COVID-19 national emergency, please contact

Leora F. Ardizzone, Esq.
(516) 663-6538
lardizzone@rmfpc.com
or
Ellen F. Kessler, Esq.
(516) 663-6522
ekessler@rmfpc.com