



Are Fraternal Eligible for the Small Business Paycheck Protection Program?

On March 27, 2020, the President signed into law the much-anticipated Coronavirus Aid, Relief and Economic Security Act (CARES Act). At a price tag of \$2 trillion, the legislation is by far the largest relief package ever enacted—more than twice that of the 2009 Recovery Act. The purpose of the act is to bolster the United States' economy, health care system and individuals through the COVID-19 pandemic.

The CARES act includes a \$349 billion Paycheck Protection Program aimed at helping small and medium-sized employers and their employees. This program allows qualifying businesses to receive loans to cover payroll, health care premiums, mortgage interest, rent, utility payments and interest on pre-existing debt obligations. There are several issues fraternal should consider in weighing whether to apply for these loans.

Fraternal Eligibility

The Paycheck Protection Program expands eligibility for loans under the federal Small Business Act to businesses with 500 or fewer employees who are a (1) a business concern, (2) 501(c)(3) nonprofit organization, (3) 501(c)(19) veterans organization or (4) Tribal business concern. There are questions as to whether fraternal can qualify as an eligible business under the Paycheck Protection Program because they are fraternal life insurance organizations exempt under 501(c)(8) of the Internal Revenue Code.

There are policy arguments that supporting the employees of fraternal business organizations should be within the intent of the CARES Act and the Paycheck Protection Program and that they should be included as a covered small business. However, 501(c)(8) is not listed in the statutes and the cross reference to the definition of "business concern" in the Small Business Act makes applicability to fraternal uncertain.

We are expecting further guidance on the CARES Act and the Paycheck Protection Program that may shed further light on these eligibility issues.

Requirements

Fraternal should be aware that even if they are included in the definition of a covered small business under the Paycheck Protection Program, there are conditions and requirements relating to receipt of payments from this program. There must be a good faith certification that the loan

is necessary because of economic uncertainty caused by COVID-19 and will be applied to maintain payroll and make qualifying payments.

Loan payments are deferred for 6 months and portions can be forgiven for an 8-week period after the loan's origination date provided that they are used for qualifying purposes and meet other requirements. If these requirements are not met, the loan will not be forgivable and must be paid back with interest.

- The amount forgiven is reduced if the business does not maintain prior levels of full-time equivalent employees or significantly reduces (more than 25%) wages during the covered time period of February 15, 2020 to June 20, 2020.
- Businesses that laid off employees or reduced salaries prior to the enactment of the act (and for 30 days thereafter) can avoid this forgiveness reduction penalty by re-hiring employees and raising salaries by June 30, 2020.
- Amounts paid to employees in excess of \$100,000, as prorated for the covered period, are also not eligible for loan forgiveness.
- Amounts received under the Paycheck Protection Program cannot be used to pay employee sick pay or family leave benefits provided under the FFCRA.
- Amounts not forgiven will accrue interest at a maximum rate of 4% and are payable over a term of 10 years.

Application/ Timeline

Small businesses can begin submitting applications as of April 3. (April 10 for independent contractors and self-employed individuals.) There is a capped total amount available for loans under the Paycheck Protection Program so there is a first come, first served element that may provide advantages to early applications.

Fraternal life insurance organizations who believe they would otherwise qualify for the program could apply pending the issuance of further guidance relating to eligibility. We would strongly recommend that care be taken to complete the application accurately and completely so that there is no issue later about loans being issued on the basis of misinformation. There are very significant penalties associated with providing false information on a loan application. This would include disclosure that the organization is a fraternal life insurance organization exempt under 501(c)(8) of the Internal Revenue Code.

Here are some additional resources you may find valuable:

<https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

<https://www.sba.gov/federal-contracting/contracting-guide/size-standards>

<https://www.sbc.senate.gov/public/cache/files/9/7/97ac840c-28b7-4e49-b872-d30a995d8dae/F2CF1DD78E6D6C8C8C3BF58C6D1DDB2B.small-business-owner-s-guide-to-the-cares-act-final-.pdf>

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>

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This information is prepared as of April 2, 2020 at 5:00 pm. The law and its regulatory interpretations are changing rapidly, and readers should take care to determine whether any subsequent changes may impact the summary provided. This summary is for general informational purposes and does not constitute legal advice or a legal option. Readers should consult with their own legal advisors regarding their specific circumstances.

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