

Legal Services in connection with the Paycheck Protection Program

April 2020

As part of the recently-enacted CARES Act, Congress established the Paycheck Protection Program (PPP), an allocation of \$349 billion to enable lenders to make fully-guaranteed (and potentially completely forgivable) loans to small businesses to cover payroll and overhead costs. There are a number of legal considerations involved with respect to the PPP, including:

- determining whether a business is eligible to participate in the program;
- verifying the maximum amount of the loan that an eligible business can receive;
- conducting due diligence and working closely with the client to confirm that all application requirements are satisfied and that all certifications and representations are accurate;
- counseling on permitted uses of loan funds;
- advising on recordkeeping and documentation requirements; and
- applying for and obtaining loan forgiveness.

If all legal requirements are followed properly, the entire principal amount of the loan will be forgiven – meaning that these “loans” essentially are tax-free grants that businesses can use to pay employees, rent, mortgage interest, and utilities.

However, it is important to note that while the application itself is a short and relatively simple document, it relies almost entirely on borrower-certifications. The potential liability to an applicant (and its owners) for any false statements or inaccurate certifications in the application, or for any misuse of loan funds, is significant, including

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substantial fines and imprisonment. As such, it is critical that all PPP applicants take care to confirm, verify, and document all of the application items and to comply with all statutory and regulatory requirements.

Wiley is very familiar with the PPP, its requirements, and the steps needed for businesses to obtain a PPP loan and to comply with all legal requirements. In order to be able to provide valued support to our clients in a way that is also fair and reasonable considering the difficult business decisions and current climate, we are offering our legal services to all clients for a fixed fee amount as follows:

1. For legal services covering all aspects of preparing and submitting a PPP application [items (i) through (iii) above], a fee of \$3,000.
2. For legal services covering all aspects of the program – from application to forgiveness [items (i) through (vi) above], a fee of \$8,500.

As always, we are able to advise and assist on any business matter above and beyond the PPP, including as to other emergency loan relief programs that are available through the U.S. Small Business Administration, reviewing commercial contracts (leases, supply contracts, etc.) that may have been impacted by the COVID-19 pandemic as to *force majeure*, MAC, and other relevant provisions, negotiating amendments to loan documents and forbearance/standstill agreements, and complying with corporate governance and compliance requirements. We are offering discounts on our hourly rates for these other services and for any other issues and needs that might arise in the coming months. We appreciate that businesses are struggling and facing unprecedented challenges, and we believe that we can successfully partner with our clients to get through these tough times.

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