



PTACs of Michigan in collaboration with Butzel Long

COVID-19 CARES ACT SUPPORTING FEDERAL CONTRACTORS:

A Guide for the Small Business Defense Industrial Base

Beth A. Cryderman Moss
President, PTACs of Michigan
April 15, 2020



Today's Agenda

- **Contracting – COVID-19**
Beth Cryderman Moss, PTACs of Michigan
- **CARES Act – A Legal Perspective**
Justin Klimko, Butzel Long
- **CARES Act – A Lenders Perspective**
Kyle Sasena, Chemical Bank
- **Q&A - Beth Gotthelf, Butzel Long**



PTACs of Michigan in collaboration with Butzel Long

MANY SOURCES OF INFORMATION – USE THEM ALL!



U.S. Small Business Administration

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options>



<https://www.gsa.gov/policy-regulations/policy/acquisition-policy/acquisition-policy-library>



<https://www.dla.mil/SmallBusiness/>



<https://www.acq.osd.mil/dpap/pacc/cc/COVID-19.html>



MICHIGAN ECONOMIC DEVELOPMENT CORPORATION

<https://www.michiganbusiness.org/covid19/>

<http://www.ptacsofmichigan.org/wp-content/uploads/2020/04/PTACs-of-Michigan-COVID-19-Response-Playbook.pdf>



Contracting – COVID-19



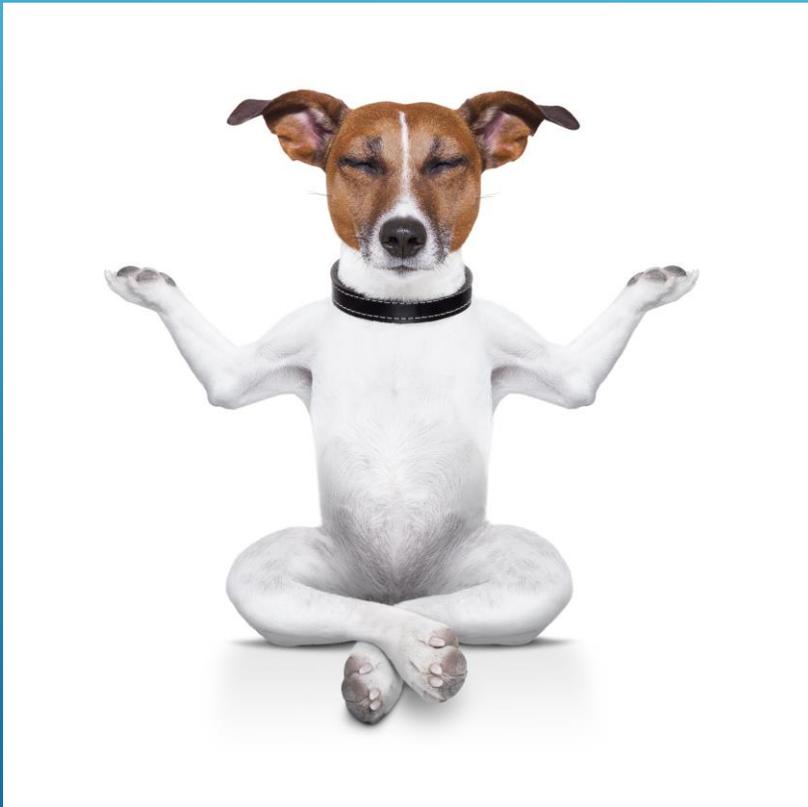
- 20 March 2020 – Ellen Lord, Under Secretary of Defense for Acquisition and Sustainment, deems DX & DO rated contracts as critical & essential infrastructure. A DX rating is assigned to those programs of the highest national priority and takes priority over a DO rating which takes priority over an unrated order.
- Contracts that do not allow for telework are modified. If a contract does not lend itself to telework, for example, because it must be performed at a government facility, agencies should consider being flexible on delivery schedule contract completion dates.
- New guidance under CARES Act allows firms impacted (but not able to telework), may consider sick leave as an allowable expense (as long as available funds exist).
- In response to the COVID-19 national emergency, the progress payment rates (DFARS) 232.501-1 are increased to 90% for large business concerns and 95% for small business concerns.
- DCMA/DFAS to accelerate payments to small businesses, under new DFARS rule, once all required documentation is received.

Contracting – COVID-19

- **DLA is now accepting Other Transaction Authority whitepapers on the following problem statements.** These problem statements support COVID-19: 1. Personal Protection Equipment (PPE) Re-Use and Decontamination. 2. Prototype PPE: N95 Equivalent Masks. The white paper submission period closes May 4, 2020 at 1:00 EDT.
<https://www.dla.mil/HQ/InformationOperations/Accelerate>
- **The Under Secretary of Defense for Acquisition and Sustainment, Ms. Ellen Lord,** established the COVID-19 Joint Acquisition Task Force (JATF) to synchronize and support the acquisition execution of DoD's COVID-19 response for medical resources. The team serves as the single entry point to the DoD acquisition enterprise. The JATF is currently interested in: Protective Wear: Surgical Masks; Medical Gowns; and Latex Gloves, Respirator (N95), Screening and Diagnostic capability, Sterilization services.
<https://www.acq.osd.mil/jatf.html>



Contracting – COVID-19



Shutterstock

Protecting Small Businesses is ESSENTIAL!!

“The highest levels of performance come to people who are centered, intuitive, creative, and reflective – people who know to see a problem as an opportunity.”

~ Deepak Chopra

Find your local PTAC, we're here to help!
www.ptacsofmichigan.org



The CARES Act: What Defense Suppliers Need to Know

Justin Klimko | Director | 313.225.7037 | klimkojg@butzel.com

The CARES Act - \$ Breakdown

- \$2 TRILLION in economic relief from the Coronavirus – largest in American history
- \$600 Billion – Individuals
- \$500 Billion – Larger Corporations
- \$377 Billion – Small Businesses (*PLUS \$250 Billion more?)
- \$340 Billion – State & Local Governments
- \$180 Billion – Public Services

Paycheck Protection Program – Issues

1. Eligibility
2. Use of Loan Proceeds
3. Forgiveness of Loan
4. Terms of Continuing Loan
5. What is the process?

Who is Eligible?

- Organizations that meet SBA small business standards
- *Other Businesses*, start-ups, veterans organizations and 501 (c)3 non-profits that have:
 - 500 employees or fewer; OR
 - IF GREATER, the number of employees permitted under their NAICS Code
 - Example: Certain auto manufacturers are considered “small” if no more than 1,500 employees
 - NAICS information available at Table of Small Business Size Standards at SBA website
- Sole proprietorships & Independent contractors may apply separately
- To be eligible, the organization must have been in operation on February 15, 2020

Beware: Affiliates Included In Calculation

- All domestic & foreign affiliates' employees combined
- Exception to affiliation rules
 - NAICS Code with “72” – hotels, inns, RV parks, food services, restaurants, caterers (location exception)
 - Franchised businesses
 - Receives financial assistance under Section 301 of Small Business Investment Act.

How is the Loan Size Determined?

- Maximum loan: \$10 million
- Average total monthly payroll costs over the last year multiplied by 2.5
- Eligible payroll costs
 - Compensation (salary, wage, commission or cash tips)
 - Payment for vacation, parental, medical, or sick leave
 - Severance
 - Health care benefits, including insurance premiums
 - State or local tax assessed on employee comp
- Not included in payroll costs:
 - Employee/owner comp over \$100,000
 - Certain taxes (discussed later)
 - Comp of employees whose principal place of residence is OUTSIDE of the U.S.
 - Qualified sick and family leave for which a credit is allowed under Families First Coronavirus Response Act

Allowable Uses of Loan?

- Payroll costs
- Payment of interest on any mortgage obligation (not principal)
- Rent (including rent under a lease agreement)
- Utilities
- Interest on any other debt obligations that were incurred before the covered period

Is Loan Forgiveness Available?

- Yes, to the extent of the following paid or incurred during the 8 weeks following the loan date:
 - Payroll costs
 - Interest on mortgages created before 2/15/20
 - Rent on leases in force before 2/15/20
 - Utility payments for service that began prior to 2/15/20
- Non-payroll costs cannot be more than 25% of forgiveness amount
- Note that temporal limits apply to loan forgiveness but not to use of proceeds

Amount Forgiven Will Be Reduced If Employer:

- Reduces its workforce during the 8-week period
 - Pro rata reduction
 - Based on avg. monthly FTEs during the 8-week period compared to average monthly FTEs for one of two earlier periods chosen by borrower:
 - Feb. 15 to June 30, 2019
 - Jan. 1 to Feb. 29, 2020

Amount Forgiven Will Be Reduced If Employer:

- Reduces the salary or wages paid to an employee by more than 25% during the 8-week period
 - Dollar for dollar reduction
 - Only applies to reductions for employees making not more than \$100,000 annually
 - Open question: starting point for determining reduction

Exception to Reductions

- Forgiveness will not be reduced:
 - In the case of staff reductions made between Feb. 15 and April 26, if the employer eliminates the reduction in the number of FTE's by June 30
 - In the case of compensation reductions made between Feb. 15 and April 26, if the employer eliminates the reduction in salary or wages by June 30

What if the Loan is NOT Forgiven?

- Portion NOT forgiven continues as a loan

| | CARES Act says | SBA decided |
|----------|-----------------------------|--------------|
| Term | Not more than 10 years | 2 years |
| Interest | Note more than 4% per annum | 1% per annum |

- Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the loan.

Issues to Note

- Mismatch in periods
 - Loan amount based on 2.5x monthly payroll costs, which is around ten weeks
 - Period to measure qualifying forgiveness expenses is only 8 weeks
 - Likely will leave a gap in forgiveness amount
 - Non-payroll expenses (rent, utilities, etc.) cannot be more than 25% of total forgiveness amount
 - May not soak up entire gap amount

Issues to Note

- Taxes
 - Definition of “payroll costs” excludes FICA and income tax withheld during the period Feb. 15 to June 30, 2020
 - What does this mean?
 - Commentators have suggested it means that you can include 2019 withholdings in calculating loan amounts but must exclude them from forgiveness amounts
 - SBA FAQ of April 7 appears to say that no exclusion is necessary (except employer portion of FICA, which wouldn't be in payroll anyway)
 - Additional clarification needed

Process for Getting a Loan

1. Contact your lawyers
2. Contact your CPA & Bookkeepers
3. Contact your bank or an approved SBA 7(a) lender
 - Fill out application (online)
 - Self Certify
 - Lender has 15 days to approve

Process for Loan Forgiveness

- Specific documentation will be required to support forgiveness
 - Verify # of employees on payroll and pay rates, including IRS payroll filings and state income, payroll and unemployment insurance filings
 - Verify rent, mortgage, lease, and utility obligations
- Lender decides within 60 days after it receives application for forgiveness
- Forgiven amounts do NOT constitute cancellation of debt income
- More to come: Act directs SBA to issue interpretation within 30 days of Act's adoption. FAQ already issued.

Assistance for Mid-Sized Businesses

- Between 500 and 10,000 employees
- Direct loans with interest rate not higher than 2 percent per annum
- No principal or interest due for first 6 months (or longer)
- Certification required (strings attached)
 - Uncertainty of economic conditions
 - Funds will be used to retain at least 90% of workforce at full compensation and benefits until September 30, 2020
 - Will restore not less than 90% of workforce that existed as of February 1, 2020
 - Domiciled in the US with significant operations and employees in the US
 - Not in bankruptcy
 - No dividends or repurchase of stock (buy-backs)
 - No outsourcing or offshoring jobs
 - No abrogation of CBA's
 - Neutrality in any union organizing effort for term of loan

Assistance for Mid-Sized Businesses

- Limits on Employee/Executive Comp
 - \$425k cap for officers and employees while loan is in effect PLUS one year
 - \$3,000,000 cap for officers and employees plus 50% of whatever he/she received over that in 2019
- Can be waived, but Treasury Secretary must testify why...

Other Assistance

- Employee Retention Credit Against Payroll Taxes for COVID-19 Closure
 - 50% of wages up to \$10,000 for each employee
 - Not applicable if you are in the PPP
- Deferral of Social Security Payroll Tax Deposits
 - For taxes through end of 2020
 - 50% due Dec. 31, 2021 and 50% due Dec. 31, 2022
 - Deferral not available once any PPP loan indebtedness is forgiven

Butzel Long

CARES Act Assistance Team

- Justin Klimko (PPP)
- Bernie Fuhs (PPP)
- Brett Miller (L&E – Rehiring)
- Suzanne Miller (Tax)
- Tom Kabel (SBA & Landlord/Tenant)
- Mark Lezotte (Non-profit)
- Deb Geroux (Healthcare)
- Nancy Keppelman (Retirement)
- Bob Stevenson (Retirement)
- Jonathan Kirkland (SBA & Application Process)
- Steven Eatherly (Large Company Eligibility)



Paycheck Protection Program (PPP)

April 15, 2020

The Paycheck Protection Program provides up to \$349 billion in forgivable loans to small businesses to pay their employees during the COVID-19 crisis



Loan Terms

- Maximum loan amount of 2.5x monthly payroll costs up to \$10 million cap
- 2-year loan term @ 1% fixed interest rate
- Payments deferred for 6 months, interest accrues from date of origination

Borrower Eligibility

- Businesses with <500 employees per location
- Self-employed and Independent contractors
- Self-certification of adverse COVID-19 business impacts

Eligible Loan Usage

- Two months payroll costs including salaries, wages, and benefits, capped at \$100k/employee
- Interest on mortgage obligations
- Rent/Utilities
- Eligible interest on prior debt

Loan Forgiveness

- Documented spending on eligible costs for 8 weeks after loan origination

Forgiveness reductions for:

- Headcount reductions
- Wage decreases > 25%
- Improper usage of funds

Eligibility

- Businesses who were operating as of February 15, 2020
- A business with 500 or fewer employees
- A business that otherwise meets the SBA's size standard
- A 501(c)(3) with 500 or fewer employees; religious organizations are included
- An individual who operates as a sole proprietor
- An individual who operates as an independent contractor
- An individual who is self-employed who regularly carries on any trade or business
- A Tribal business concern that meets the SBA size standard
- A 501(c)(19) Veterans Organization that meets the SBA size standard
- For business whose NAICS code begins with 72 (primarily food service and hospitality businesses), franchises registered with the SBA, and businesses who receive financial assistance from a SBA-licensed SBIC, the size standard is expanded to ≤ 500 employees per physical location.



Application Process



Can be submitted between April 6 and June 30

Contact Your Bank

On ways to apply (most will have an online application)



Get Your Application Ready

Gather documentation needed to complete application

Wait for the Disbursement



A bank can approve and fund the loan quickly. Times may vary by institution



Complete the Application

Generally it should take 20 minutes to complete the application and upload documentation

Application Documents



- ✓ • **2019 tax documentation** to support payroll numbers (IRS 940, 941, or 944 should be acceptable documentation)
- ✓ • **Payroll registers** that will detail gross wages for each employee (including W2 wages, paid time off, vacation pay, family medical leave pay, state & local taxes assessed on compensation)
- ✓ • **1099's** for independent contractors for 2019 if applicable
- ✓ • Documentation showing **total group health insurance premiums** paid by company for benefit of employees or company owners
- ✓ • Documentation showing **the sum of all retirement plan** (401k, Simple IRA, SEP IRAs, etc.) funding paid by the company (not including contributions paid by employees or owners)
- ✓ • The **names, titles, ownership percentages, social security numbers, and addresses** for all $\geq 20\%$ owners
- ✓ • Copy of **driver's license** for all $\geq 20\%$ owners.
- ✓ • **Total number of both part-time and full-time employees** as of 2/15/20 for both applicant entity as well as affiliate entities (broken out by entity)
- ✓ • **Bank deposit account numbers** for eventual deposit of loan proceeds

Advice for Borrowers



**Work directly
with your
primary bank
(where operating
accounts reside)**



**Begin gathering
needed
documentation**



**Move with
urgency**



**Additional
Resources:**
tcfbank.com/businessrelief

Beth Cryderman-Moss | *PTAC* | 586.498.4122 | ptac@macomb.edu

Justin Klimko | *Butzel Long* | 313.225.7037 | klimkojg@butzel.com

Kyle Anne Sasena | *Chemical Bank (TCF)* | 248.404.0889 | Kyleanne.Sasena@chemicalbank.com

Beth Gotthelf | *Butzel Long* | 248.258.1303 | gotthelf@butzel.com

QUESTIONS?



Disclaimer

These materials and presentations are intended and designed for informational purposes only – they do not provide legal advice and no attorney-client relationship is created. No liability is assumed in connection with the use of these materials. Legal counsel should be consulted regarding how applicable law impacts specific situations.