



MEMORANDUM

TO: Water Environment Foundation

FROM: Fred Andes, Jason Myers, Matthew Agnew, Barnes & Thornburg LLP

DATE: April 3, 2020

SUBJECT: COVID-19 Assistance, Resources, and Planning

The COVID-19 pandemic has placed economic stress on numerous governments, businesses, and non-profit organizations, including the Water Environment Foundation (WEF) and its Member Associations (MAs). This Memorandum addresses recent legislative changes that provide assistance and resources to WEF and MAs. As you review this Memorandum and have questions, please reach out to [Lisa Ruane](#), Sr. Director of Association Engagement at WEF, to address your individualized needs.

The programs discussed below are focused exclusively on providing relief to employers. The programs do not replace lost sales, profits, or conference fees, and instead, provide assistance to businesses and non-profits who require employee assistance to prevent layoffs or other reductions in the workforce. It is anticipated that current assistance programs may be expanded to provide additional benefits (e.g., Federal Emergency Management Agency (FEMA) assistance) and that Congress may consider expanding COVID-19 assistance when Congress comes back from recess.

Paycheck Protection Program Loans

The Keeping American Workers Paid and Employed Act, part of the CARES Act, provides \$349 billion in guaranteed loans to small businesses, private non-profits, and other entities that have 500 employees or fewer. Eligible borrowers can obtain up to a \$10 million loan based on 2.5 times of its average monthly payroll over a 12-month or annualized basis, depending on the nature of the business, before the COVID-19 outbreak in the United States. Such covered loans, to the extent not forgiven, would have up to a 10-year term with an interest

rate not to exceed 4 percent. Loan proceeds can be used for payroll costs and other employee compensation (subject to certain limitations for employees who make more than \$100,000 annually), group healthcare premiums and certain other related costs, mortgage interest payments, rent, utilities, and interest on any other debt obligations that were incurred prior to Feb. 15, 2020; and to refinance any loan that the borrower received under the Small Business Administration (SBA)’s disaster assistance loan program for small businesses impacted by COVID-19.

The loan program will be administered by the U.S. Small Business Administration (SBA) through its existing Section 7(a) business loan program, which requires applying through an approved SBA lender, though certain requirements associated with typical SBA loans, such as guarantees, collateral, and a “credit available elsewhere” underwriting, have been relaxed or eliminated.

One of the most anticipated provisions of the loan program was the “forgivable” nature of the loan, where a borrower under a covered loan can have a portion of the principal forgiven in an amount equal to payroll costs, mortgage interest, rent, or utility costs during the eight weeks following the origination of the loan.

The CARES Act requires that any amount forgiven be reduced proportionally by any reduction in employees retained, compared to the prior year, and reduced by the decrease in the pay of any employee beyond 25 percent of their previous year compensation. The federal government will not penalize borrowers that rehire workers previously laid off for having a reduced payroll at the beginning of the period.

You can find a lender and read more about this SBA program [here](#).

PAYCHECK PROTECTION PROGRAM LOANS SUMMARY	
LOAN AMOUNT	Small businesses with less than 500 employees (including sole proprietorships, independent contractors and self-employed persons), private non-profit organizations, or 501(c)(19) veterans organizations affected by COVID-19 are eligible for a loan equal to 2.5 times their payroll.
USE OF LOAN	Entities receiving funds may use it for payroll costs and other employee compensation, group healthcare premiums, mortgage

PROCEEDS	interest payments, rent, utilities, and interest on any other debt obligations that were incurred prior to Feb. 15, 2020.
AMOUNT FORGIVEN	The loan can be forgiven in an amount equal to payroll costs, mortgage interest, rent, or utility costs during the eight weeks following the origination of the loan.
HOW TO APPLY	Any existing SBA lender, federally insured depository institution, federally insured credit union, or Farm Credit System institution that is participating in the 7(a) Loan Program can take your application for funds. The banks will start accepting applications on April 3, 2020.

SBA Economic Injury Disaster Loan

The SBA will be offering Economic Injury Disaster Loans (EIDL) for small businesses impacted by the COVID-19 pandemic. Small businesses and nonprofits may be eligible for low-interest loans of up to \$2 million to help overcome temporary loss of revenue due to the coronavirus.

Through Dec. 31, 2020, any business with 500 or fewer employees may apply directly to the SBA for an EIDL in response to COVID-19. For EIDLs made during the covered period, personal guarantees will not be required for loans of \$200,000 or less. Applicants may also have an opportunity for an immediate emergency advance of \$10,000. The amount of the advance would not have to be repaid even if the EIDL is denied. The SBA is obligated to fund the \$10,000 within three days of its receipt of the application.

To qualify for an SBA Disaster Assistance loan, applicants must demonstrate credit history, the ability to repay the loan and working capital losses attributable to COVID-19. A business that has other available funds, such as cash flow or reserves, may not be eligible to receive such a loan.

Under this program – unlike traditional SBA loans—a business does not have to involve an SBA lender. Instead, loan proceeds will be issued directly by the Department of Treasury to the applicable business. These loans may be used to pay fixed debts, cover payroll, address accounts payable and other bills incurred during this public health emergency. The interest rates

for small businesses and nonprofits for these loans are 3.75% and 2.75% respectively, with terms up to 30 years.

Family First Coronavirus Response Act

On March 18, the Family and Medical Leave Act was expanded to guarantee paid sick leave for individual employees. Under this legislation, employers with fewer than 500 employees are required to provide up to two weeks of paid leave and 10 weeks at two-thirds pay of workers until the end of the year. Employees subject to local quarantine or an isolation order related to COVID-19, caring for a stricken family member, or with children whose schools or child care programs have closed are eligible for the initial two weeks of paid leave.

Paid leave is capped at \$511 daily and up to \$5,110 for leave related to quarantine/isolation or COVID-19 healthcare symptoms or concerns confirmed by a healthcare provider. Paid leave is capped at \$200 daily and \$2,000 total for individuals caring for an individual subject to a self-quarantine or isolation order.

Businesses that fall under the mandate would also have to provide an additional 10 weeks off at partial pay for people who have lost their child care because of school and day care closures. Paid leave due to child care-related COVID-19 school closures is capped at two-thirds of the employee's base salary up to \$200 daily and \$12,000 total.

To compensate employers for the paid leave, the law provides a credit against the employer portion of the social security tax component of its payroll taxes. To avoid a fine, employers must provide notice of the "employee rights" described above either in a conspicuous place in the business or provide each employee with a copy electronically. Beginning April 1, 2020, employers must come under compliance with these Family First Coronavirus Response Act requirements.

CARES Act: Work Share Programs

In states that have or will adopt a "short-time" compensation program, such programs will allow an employer to reduce hours for its workforce, and the state's unemployment compensation programs will cover a portion of the reduced hours. For example, an employee whose hours have been reduced by 25 percent will be entitled to an unemployment compensation claim equal to 25 percent of the employee's weekly unemployment benefit.

It is also important to note that the COVID-19 employment-related laws may intersect with the Family and Medical Leave Act and Americans with Disabilities Act, especially in the areas of employee requests for extended unpaid leave accommodations or an employer's inquiry about an employee's medical condition or request for medical examination or testing. Additionally, large-scale reductions in your company's workforce could trigger WARN-Act obligations or other considerations for covered employers.