

Paycheck Protection Program Loans: Lender Considerations

The CARES Act



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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was signed into law, allocating roughly \$349 billion in funds to certain qualifying businesses via the U.S. Small Business Administration issuing Paycheck Protection Program loans (each a “PPP Loan”). As small businesses rush to obtain PPP Loans, lenders should pay careful attention to the following concepts that potentially will need to be addressed:

- **Permitted Debt:** Lenders should review the negative covenants generally prohibiting the incurrence of new indebtedness, including any permitted indebtedness baskets.
- **Financial Covenants:** Lenders should review financial covenants and the related defined terms and consider excluding the forgivable portions of a PPP Loan therefrom.
- **Use of PPP Loan Proceeds:** Lenders should require their borrowers to use the proceeds of the PPP Loan in accordance with the CARES Act and, if applicable, for uses that allow the PPP Loan to be forgivable under the CARES Act.
- **Affirmative Covenants:** Lenders should consider requiring their borrowers to promptly (a) deliver (i) the PPP Loan application and loan documentation and (ii) any notices of default under the PPP Loan received by the borrower from the government or third-party lender, and (b) take all applicable actions, not later than 45 days after the eight-week period immediately following receipt of the PPP Loan, to apply for forgiveness of the PPP Loan and provide documentation and the status of such forgiveness.

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- **Mandatory Prepayments:** Lenders should consider excluding PPP Loan proceeds from mandatory prepayment requirements.
- **Deposit Accounts:** Lenders should consider requiring borrowers to establish segregated deposit accounts to maintain and track the proceeds of the PPP Loan.
- **Subordinated Debt:** Lenders should review relevant subordination and intercreditor agreements to determine what action, if any, may be required, including, without limitation, review of any limits of the amount of senior debt.

Please feel free to contact a McDonald Hopkins commercial finance attorney with any questions or if you are in need of assistance.



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