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CARES ACT

UNDERSTANDING THE PAYCHECK PROTECTION PROGRAM

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CARES ACT

- The CARES Act includes extraordinary public health spending to confront the coronavirus (COVID-19) pandemic, immediate cash relief for individual citizens, a broad lending program for small businesses and targeted relief for hard-hit industries.
- Title I of the CARES Act – the Keeping Workers Paid and Employed Act – includes paycheck protections and loan forgiveness, and small business contracting relief.

KEEPING WORKERS PAID AND EMPLOYED ACT

- \$349 billion in new and increased federally guaranteed Paycheck Protection Program (PPP) loans through the Small Business Administration (SBA)
- Targeted to small businesses to help keep their workers employed.
- By maintaining employees on their payroll through the duration of the crisis, these small businesses can qualify for PPP loan forgiveness.
- The Act is also retroactive, incentivizing small businesses to rehire employees that have recently been laid off.

PPP LOANS

- Loans up to \$10 million with a 1.00% interest rate.
- Loan amount: lesser of the \$10 million maximum and 2.5 times the borrower's average monthly payroll for the past 12 months.
- Excludes compensation over \$100,000.
- SBA guarantees 100% of the issued loans during the period of 2/15/2020 through 6/30/2020.
- Loan proceeds can cover: payroll costs; group healthcare benefits; mortgage interest payments, rent, utilities, and other debt interest.

PPP LOANS LOAN FORGIVENESS

- Up to 100% loan forgiveness for funds used in the first 8-weeks post-disbursement
- Reductions in Loan Forgiveness for:
 - Greater than 25% used toward non-payroll costs
 - Reductions in head count
 - Reduction in salaries greater than 25%
- Forgiveness Process

PPP LOANS BORROWER ELIGIBILITY

- Eligibility – “Small Business” under the SBA
- Eligibility – “Small Business” expanded under the Paycheck Protection Program
- Affiliation Issues

PPP LOANS CERTIFICATION REQUIREMENTS

The Act requires loan applicants to make a good faith certification:

- that the uncertainty of current economic conditions makes necessary the loan request to support the *ongoing operations* of the eligible recipient;
- to acknowledge that the funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and
- during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan

PPP LOANS CERTIFICATION REQUIREMENTS

What does this mean?

- You must need the funds because of today's circumstances. Do not use this program for old debts that pre-date February 15, 2020 even if they are for covered expenses (e.g. old utility bills, lease payments not made in 2019).
- Use PPP loan funds for these authorized purposes – to retain employees, make payroll, or to pay for the mortgage / lease and utilities; do not use loan funds to pay other business costs even if those costs are key to maintaining ongoing operations.
- No double dipping. Do not seek or accept multiple PPP loans under the current Act.

PPP LOANS RISKS

- The government will be watching how these funds are spent. The Act funds extensive oversight mechanisms to prevent and uncover fraud and waste.
- Even if you win, government investigations can be time-consuming, expensive, and intrusive.
- If you are investigated and lose, there are serious risks associated with any fraud in connection with these funds:
 - Criminal fines and imprisonment for making false statements to the SBA to obtain a loan (for yourself or on behalf of any applicant);
 - DOJ can bring other fraud charges as well (wire / mail fraud); and
 - Civil liabilities could be significant; in a whistleblower False Claims Act case, damages would be calculated as **three times** the amount of a loan *plus* civil penalties.
 - A finding of fraud here can leave you excluded / debarred from working with the government for a long time.

PPP LOANS – ACTION STEPS

- Determine eligibility
- Connect with a Lender
- Prepare documentation
- Plan on delays
- Mitigate enforcement risks by seeking / using funds appropriately

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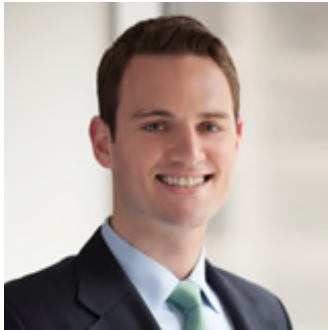
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Biography



Andrew T. Budreika

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Andrew T. Budreika is a Partner in the Finance practice. He advises clients on private equity transactions, domestic and cross-border public and private mergers and acquisitions, debt financings, strategic investments, and other corporate transactions. Andrew also regularly counsels clients on securities law, corporate governance, and other general corporate and finance matters.

Consistent with Morgan Lewis's core principles, Andrew is committed to providing exceptional client service and building long-term strategic relationships with clients focused on communication and collaboration. Andrew seeks first to listen and understand a client's goals and the business context and then to provide insightful, creative, and tailored solutions that enable the client to achieve those goals within the client's defined parameters for success. Andrew endeavors to bring together Morgan Lewis's intellectual and global talent and resources to construct elite legal teams that deliver the best overall results and experience to clients.

Andrew is also passionate about using technology, knowledge management, legal project management, and other innovations in legal practice to provide fast, reliable, and consistent service in a cost-effective and efficient manner.

Andrew has practical experience handling a full spectrum of transactions including buyouts; platform acquisitions; exit transactions; mergers; add-ons and roll-ups; carve-outs and spin-offs; leveraged recapitalizations; and management rollovers and equity incentive structures. He also regularly works on matters involving growth equity, minority, and strategic investments; co-investments; corporate restructurings and reorganizations; and founder liquidity transactions. Additionally, Andrew advises on acquisition financings; syndicated bank loans; investment grade and high-yield bond offerings; asset-based loans; mortgage loan warehousing and repurchase facilities; and capital call lending transactions.

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Stephen E. Ruscus

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Stephen E. Ruscus is a Partner in the FDA practice. Stephen represents clients in government contracts procurement, US federal drug pricing programs, and in litigation before the Boards of Contract Appeals, the US Court of Federal Claims, and the US Government Accountability Office (GAO). He also advises in protest practice before the US Small Business Administration and in matters relating to federal procurement of commercial items and services, including those under Federal Supply Schedule contracts.

With more than 25 years of experience, Stephen counsels clients in the defense, technology, life sciences, manufacturing, services and food industries on supplies and service indefinite delivery, indefinite quantity (IDIQ) task order contracts, fixed-price, and cost reimbursement contracts and related Federal Acquisition Regulation provisions, subcontract negotiations and compliance, government contracts disputes, and federal debarment and suspension.

Stephen conducts investigations and prepares reports under the US Department of Veterans Affairs (VA), the US Department of Defense (DOD), and the US Department of State voluntary disclosure programs. He appears before the US Court of Federal Claims, US Courts of Appeals, the Armed Services Board of Contract Appeals, and the Civilian Board of Contract Appeals. He also represents clients in bid protests before the GAO and the US Court of Federal Claims.

With respect to federal healthcare supplies and services, Stephen counsels clients on VA, DOD, and US Department of Health and Human Services (HHS) procurements. He also advises on government pricing laws and regulations governing manufacturer participation in the Medicaid Drug Rebate, Medicare, 340B, TRICARE, and Veterans Healthcare Act programs; VA FSS contracts; and public policy affecting these programs.

Additionally, Stephen counsels clients on the implementation and review of complex government pricing systems, providing strategic advice on the government pricing, fraud, and abuse implications of commercial pricing and patient benefit programs.

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Margaret E. Rodgers Schmidt

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Margaret Erin Rodgers Schmidt is a Partner in the Litigation practice. She represents clients in complex civil and criminal government investigations, internal investigations—including investigations involving alleged harassment and workplace misconduct, and civil litigation.

Clients rely on Erin to represent them in internal investigations, government investigations, and litigation arising under the False Claims Act, the Anti-Kickback Statute, the Foreign Corrupt Practices Act, the Medicaid Rebate Statute, the Federal Food, Drug, and Cosmetic Act, and various US federal and state civil and criminal fraud statutes. Erin also regularly counsels pharmaceutical, medical device and healthcare clients on the development and oversight of compliance programs and the negotiation, implementation, and monitoring of corporate integrity agreements involving healthcare entities, the US Department of Justice, and the Office of Inspector General (OIG) of the US Department of Health and Human Services (HHS). Erin co-leads the healthcare industry initiative.

Erin has also worked with clients in the media, nonprofit, and healthcare industries to conduct independent internal investigations and advise on remediation of potential workplace issues.

Erin maintains an active pro bono practice. As a child advocate, she represents young clients in dependency proceedings before the Family Division of the Philadelphia Court of Common Pleas. She has also conducted numerous internal investigations for nonprofit clients.

Prior to attending law school, Erin was a researcher on art and cultural property issues for the Presidential Advisory Commission on Holocaust Assets in the United States and a contributor to the report "Plunder and Restitution: The US and Holocaust Victims' Assets."

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Sheila A. Armstrong

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Sheila Armstrong is a Partner in the Litigation practice. She represents companies in all aspects of government contracting including investigations, compliance, and counseling matters. Sheila routinely counsels both prime and subcontractors in a variety of contractual and civil settings. She frequently advises clients with respect to General Services Administration (GSA) and Veterans Affairs (VA) Federal Supply Schedule contracts. Sheila's experience includes proposal preparation, contract negotiation, subcontracting, teaming arrangements, intellectual property rights in government contracts, contract compliance, audits, investigations, mandatory disclosures, and procurement fraud. She also routinely provides support to clients on novation and due diligence issues.

Clients turn to Sheila for her knowledge of developing and maintaining corporate compliance programs. In this area, she conducts compliance reviews, training, and internal investigations, and advises clients on required disclosures under the Federal Acquisition Regulation (FAR) and 2 CFR Part 200. She has represented clients before defense and civilizational agencies, including the US Department of Justice (DOJ), the General Accountability Office (GAO), the US Department of Defense (DoD), the GSA, and various Suspension and Debarment Officials.

Complementing her contracting work, Sheila provides counsel on foreign sourcing issues and regularly advises on compliance with the Buy American Act, Trade Agreements Act, and other foreign sourcing restrictions applicable to federal contracts.

Sheila is an active member of the American Bar Association's Public Contracts Law Section, serving in a leadership role as council member, vice chair of Finance, and vice chair of the Commercial Products and Services Committee. She frequently assists with comment letters submitted on behalf of the American Bar Association relating to new and updated regulatory changes.

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Benjamin W. Stango

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Benjamin W. Stango is an Associate in the Corporate Business Transactions practice. He works with a team to counsel clients in business law matters, including mergers and acquisitions, joint ventures, financings, restructurings, and compliance with securities laws. He advises clients ranging from emerging and high-growth businesses to Fortune 500 companies. Ben also has experience in government, nonprofits, and political campaigns. With an M.B.A. from The Wharton School, Ben brings a unique perspective on business, law, and government to serve his clients' needs.

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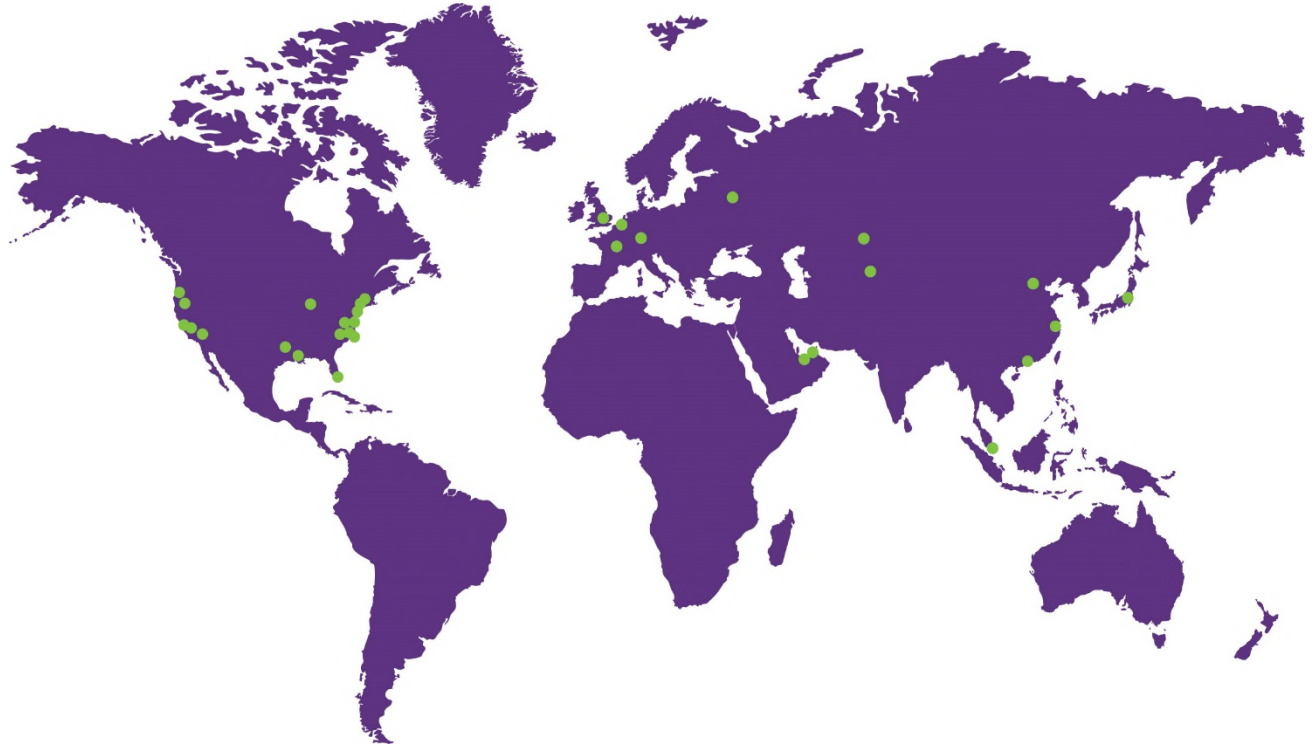
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