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TO ALL LIUNA AFFILIATES IN THE UNITED STATES

Re: Coronavirus Aid, Relief, and Economic Security (CARES) Act – Stimulus III

Dear Brothers and Sisters:

COVID-19 is a major threat to both the health and the jobs of our members. In many parts of the country, construction has been spared the first wave of mandatory jobsite closings. But, there are already some areas of the country in which construction has been significantly affected by mandatory closures and, we must assume, many more areas will be affected in the coming weeks. The International Union has been in the forefront of legislative efforts to provide both for direct worker benefits and for stimulus monies that will indirectly benefit workers by protecting their jobs.

In adopting the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress took dramatic action to protect the incomes of American workers, at least over the near term. While there are a series of important programs contained in CARES, one piece, the Paycheck Protection Program ("PPP"), available to small employers, is of particular importance to our members. It allows employers with up to 500 employees (and some larger employers) to borrow from banks, with Small Business Administration (SBA) backing, to cover payroll costs, including both wages and fringes, as well as other normal business expenses such as rent and utilities. The critical component of this loan is that, if the employer does not reduce the workforce or payroll expenditures, the first eight weeks will be forgiven.

Bluntly described, *the federal government will pay our contractors not to close down operations or projects for eight weeks after a loan originates – and the contractors will be incentivized to restore positions and compensation levels they may have already reduced.* We need to be certain that our contractors are fully aware of the resources made available to them under the Paycheck Protection Program, especially before any layoffs occur.

The critical features of PPP are set forth in the following Q & A format, followed by a summary of other new programs that employers can access for financial relief, to the potential benefit of our members.

SBA Federally-Backed Loan Program, With Loan Forgiveness ("Paycheck Protection Program")

Which employers are eligible to apply? Any employer with 500 or fewer full- or part-time employees, and any employer with more than 500 employees that is small under SBA Size Standards at https://www.sba.gov/size-standards, that had paid employees or independent contractors on or around February 15, 2020. An employer may obtain only one Paycheck Protection loan.

What must an eligible employer demonstrate? The form requires the applicant to certify that "current economic uncertainty makes this loan necessary in order to support [its] ongoing operations," and "[t]he funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments." A false certification is criminally punishable. The applicant must document payroll, mortgage interest and rent costs sought to be covered by the loan.

How can an employer apply for a loan? Through SBA-approved banks and other lenders. SBA information and a sample application form are available here, and a Treasury Department information sheet is available here. Applications will be accepted until the $349 billion available is exhausted, but applications and loans end by June 30, 2020; loans are made on a "first-come, first-served" basis.

What may the loan be used for? At least 75% of a loan must be used for compensation and other payroll costs, meaning:

- wages and salaries of U.S.-resident employees up to annual salaries of $100,000/yr. (as calculated by proration during February 15 – June 30, 2020);
- vacation, parental, family, medical, or sick leave (minus any credit allowed for sick or family leave under the federal Families First Coronavirus Response Act enacted on March 18);
- group health care benefits, including insurance premiums;
- retirement benefits;
- state and local payroll taxes, but *not* FICA.

The loan also may be used for mortgage interest, rent and utilities, and for interest on other debt incurred before February 15, 2020.

What is the maximum loan amount? 2.5 times the average total monthly payments for payroll costs of U.S-resident employees incurred during the 1-year period before the date of the loan, up to $10 million.

What is the interest rate? 1.0%.

When are loan payments due? Loan payments will be deferred for a period of 6 months, though interest will accrue. Full repayment (less any forgiveness) is due within 2 years after the loan originates.

How can the loan be forgiven? By *not reducing the number of employees or compensation amounts, or by restoring any such reductions by June 30*, and *by using loan proceeds only for permissible purposes*, an employer is eligible for loan (including interest) forgiveness of an amount equal to the sum of all costs incurred and payments made *during* the 8-week period *after* the loan originates for:

- salary, wage, compensation and other payroll costs;
- interest on a mortgage obligation incurred before February 15, 2020;
- rent under a lease dated before February 15, 2020; and
- utilities for which service preceded February 15, 2020.

More specifically, if the employer does reduce its number of full-time employee equivalents (FTEs) or compensation amounts, then loan forgiveness also will be reduced – that is, more of the loan must be repaid. But if an employer cuts FTEs or an employee's salary or wages between February 15 and April 26, and fully restores either by June 30, 2020, then those cuts will not be factored into the formulas above.

The actual formulas to determine the amount by which forgiveness will *not* be reduced is quite involved and is best left to those signatories reducing payroll to explore with their financial consultants. Note that the PPP provides that the SBA is to compare the employer's FTEs during the 8-week post-loan period with the employer's PTEs during either the February 15 – June 30, 2019 period or the January 1 – February 15, 2020 period, at the employer's choice. But the SBA may determine that some or all construction employers are "seasonal" for these purposes, in which case the February 15 – June 30, 2019 period will be used. That period is likely to be the better choice anyway, at least for employers whose work was relatively less during the recent 2020 winter months than during spring 2019. For many construction employers outside the Sunbelt it may be difficult to secure 100% loan forgiveness for costs incurred during the 8-week post-loan period, which will occur this spring and summer, because that is typically a busy time compared with earlier in the year. But precisely because it may be a busy time, the total amounts forgiven may be quite high anyway.

Even with that uncertainty, the Paycheck Protection loan program should prove invaluable to Laborers, because it provides a strong incentive for their employers to maintain or restore payrolls knowing they can do so in the end at little or no cost to themselves – along with mortgage, rent, interest and utilities they incur at the same time.

Other CARES Act Programs

CARES includes other programs that may prove valuable to our signatory employers, particularly after the initial eight weeks of PPP coverage is exhausted.

SBA Economic Injury Disaster Loans (EIDL). Although much smaller in scale—$10 billion as compared to $349 billion—the same employers eligible for PPP are eligible here. If they also receive a PPP loan, the EIDL loan may *not* be used to cover payroll costs; instead, the EIDL may be used to redress its other economic injuries that were due to the pandemic, as the SBA determines. The interest rate is 3.75%; repayment may be deferred for up to 4 years. Applicants may qualify for a $10,000 emergency *grant* paid within three days of the application, which does *not* have to be repaid even if the loan application is rejected. Applications can be found here. The SBA makes the loan directly, not a bank or other lender. See more at the SBA website.

Employee Retention Payroll Tax Credit. *Only available to employers that do not receive a PPP loan – an employer must consider carefully which is more important.* All employers are eligible, and no approval is required. For each 2020 calendar quarter, the employer will receive a credit against its share of Social Security payroll taxes (6.2%) calculated as equal to fifty percent (50%) of the wages and health plan expenses paid to each eligible employee for that quarter. The credit is capped at $5,000 (because only the first $10,000 of a particular employee's costs from March 13 to the end of 2020 count). For employers with 100 or fewer employees, all employees' first $10,000 is counted for this calculation; for employers with more than 100 employees, only the first $10,000 for employees who are not providing services for COVID-19 reasons is counted.

Payroll Tax Deferral. *Only available to employers that do not receive PPP loan forgiveness – an employer must consider carefully which is more important.* Separately from the credit above, all employers are eligible, and no approval is required. Employers may defer payment of half (3.1%) of the employer's portion (6.2%) of Social Security payroll tax until the end of 2021, and the other half (3.1%) until the end of 2022.

Unions, as employers, if they otherwise meet eligibility criteria, are eligible for these three programs. Unions are *not* eligible for the Paycheck Protection Loan Program, so they do not have to choose between that program and these three programs.

There is talk of a Stimulus IV. The International Union will continue to work legislatively on all aspects of economic relief for members affected by the current crisis. Our concern and care goes out to the health and economic well-being of our officers and members.

With kind regards, I am

Fraternally yours,

Terry O'Sullivan

TERRY O'SULLIVAN
General President

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