<u>Coronavirus Aid, Relief, and Economic Security Act (CARES Act)</u>

Small Business Provisions Summary

Below is a summary of certain provisions applicable to small businesses under the CARES Act.

- <u>Small Business Assistance</u>. $349 billion is available to assist small businesses through the Small Business Administration (SBA).

- <u>Small Business Paycheck Protection Program (PPP)</u>.

  - The CARES Act expands the ability to obtain loans under Section 7(a) of the Small Business Act through a new $349 billion Paycheck Protection Program.

  - Under the program, small businesses include (i) businesses that have fewer than 500 employees; (ii) self-employed individuals; (iii) sole proprietors; (iv) independent contractors; and (v) businesses in the accommodation and food services sector with fewer than 500 employees per location. The measure defines "employee" for purposes of determining whether a business employs less than 500 employees to include full-time, part-time, and other basis employees.

  - Loans are available to eligible borrowers under the program through June 30, 2020, fees are waived, payments are deferred by at least six months (but not more than one year), and the SBA's "credit elsewhere" test (the ability to obtain funding from other sources without undue hardship) is waived.

  - The maximum loan amount under the Section 7(a) Paycheck Protection Program is the **<u>lesser</u>** of 2.5x your average monthly payroll costs over the last twelve months or $10 million.

    - Applicable uses of loan funds include (i) payroll costs, (ii) costs related to the continuation of group health care benefits, like paid sick, family, or medical leave, (iii) insurance premiums, (iv) employee salaries or wages, (v) interest on any mortgage obligation, (vi) rent, (vii) utilities, and (viii) the interest on other debt obligations.

    - "Payroll costs" include salaries, wages, and other compensation, certain employment taxes, and qualified sick and family leave subject to certain credits, among other things.

  - Loans under the program are 100% guaranteed by the federal government, which is an increase to the existing guarantee percentages under the current SBA loan program.

  - Collateral and personal guarantees are not required.

  - To be eligible, a borrower must have been in operation on February 15, 2020, and have paid employee salaries and payroll taxes.

  - Loans under the program are eligible for forgiveness up to the aggregate amount of payroll cost, interest payments on mortgage obligations, rent payments and utility payments made during the eight-week period following loan origination as long as the amount does not exceed the original principal.

    - The amount forgiven is lowered by reductions in full-time employment and in situations where total salaries and wages for workers making less than $100,000 fall by more than 25% from the applicable prior period, but this can be mitigated by rehiring employees and restoring compensation.

    - Amounts not forgiven continue to be guaranteed and will have a maximum maturity date of 10 years from the date the borrower applied for loan forgiveness.

  - Borrowers are required to certify that (i) the uncertainty of current economic conditions makes the loan request necessary to support the borrower's ongoing operations, (ii) funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments, and (iii) the recipient does not have an application pending or received funding under this section for the same purpose and duplicative amounts.

  - The loans will be at an interest rate no higher than 4%.

- <u>Other Small Business Programs</u>.

  - The legislation also includes or expands a number of other programs targeted at small businesses:

    - Raising the maximum loan available under the existing *Express Loan program* from $350,000 to $1 million.

    - Supporting a grant program for small business development centers to facilitate coronavirus-related entrepreneurial development, with priority for women and minority business centers.

    - Requiring the SBA to pay for six months the principal, interest and associated fees for SBA-guaranteed loans made under existing SBA loan programs that are in regular servicing status, with borrowers relieved of the obligation to pay these amounts and financial institution lenders encouraged not to increase their reserves in connection with such payments.

  - Economic Injury Disaster Loan (EIDL) Program.

    - The EIDL does not contain forgiveness provisions and is for small businesses that can prove economic damage.

    - EIDL loans may require a personal guarantee and/or the posting of collateral, as these loans have previously required.

    - The application process for the EIDL loan is available on the SBAs disaster relief site. The process could take a few weeks.

    - Subject to final regulations, borrowers can borrow under the Paycheck Protection Program and the EIDL program, but will be precluded from obtaining all or part of a PPP loan if they have already obtained an EIDL loan for the same purpose.

    - An EIDL loan made after January 31, 2020 and before the date on which PPP loans are made available may be refinanced into a PPP loan.

    - Eligible entities may also, in connection with the EIDL application, make an initial draw of $10K that must be paid by the SBA within three days of submission of the application.

- <u>CARES Act Process</u>.

  - SBA has emergency rulemaking authority and has 15 days to promulgate implementing regulations, without regard to ordinary notice requirements.

  - Borrowers will need to apply through banks, credit unions and other lenders.

  - Treasury Secretary Steven Mnuchin said the department plans to issue new regulations that will make it possible for almost all FDIC-insured banks to make SBA loans.

  - Approach your lender and inquire about applying for a 7(a) small business loan.

  - Loan information will be available from a variety of lenders and at www.SBA.gov.

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All of the foregoing is subject to the promulgation of implementing regulations for the CARES Act, as well as further guidance from the federal government, lenders and other institutions and agencies. We recommend that you consult your attorneys and advisers for further advice and counsel.