Federal Financial Support by way of SBA loans for Small Businesses

On March 27, 2020, Congress passed, and the President signed into law, the CARES Act, a $2 trillion stimulus and rescue bill designed to address the impact of the COVID-19 pandemic on the US economy and healthcare system. Among many other things, the CARES Act provides:

- $300 billion in financial aid directed to individuals, including direct payments of $1,200 to all Americans earning less than $75,000 (phasing out through incomes up to $99,000), or $150,000 for joint returns (phasing out through joint return incomes of $198,000) and $112,500 for head of household), plus $500 for each dependent child.
- $260 billion to expand eligibility for unemployment insurance to many workers previously not eligible (such as furloughed workers and the self-employed), and add $600 per week on top of current State unemployment benefits for up to four months.
- $500 billion in financial assistance to mid-sized and large businesses, of which $46 billion is earmarked for the airline industry, to be administered by the Department of the Treasury in the form of loans, loan guarantees and investments.
- $340 billion in aid to state and local governments.
- $117 billion in aid to hospitals and a $100 billion public health and social emergency fund earmarked for health care providers.
- $349 billion for loan guarantees by the Small Business Administration of loans to small businesses.

This memorandum highlights the provisions of the so-called “Payroll Protection Program” under the Keeping Workers Paid and Employed Act that should be of interest to US small businesses.

As outlined above, one of the provisions of the CARES Act allocates $350 billion in new funding for “Payroll Protection Loans” guaranteed by the Small Business Administration for eligible small businesses and restaurants. In addition to favorable loan terms, proceeds of Payroll Protection Loans used by borrowers for payroll, rent, utilities and mortgage interest during the 8 week period following the date of the loan may be forgiven, in essence turning a portion (or all) of the loan into a grant.

Payroll Protection Loans under this program will be made by SBA approved banks and other lending institutions. The SBA will guarantee 100% of the loan.

Here are the highlights of the new SBA Payroll Protection Loan program:

**Eligible Businesses.** During the period February 15 to June 30, 2020, businesses in operation prior to February 1, 2020 with no more than 500 employees (or such higher number of employees as set by the SBA on an industry basis) are eligible for a Payroll
Protection Loan. Also, businesses in the “Accommodations and Food Service Industry” (NAICS 72) who employ not more than 500 employees per physical location are eligible for an SBA loan under the program (and SBA affiliation rules are waived for NAICS 72 businesses). Finally, sole proprietorships and self-employed individuals are also eligible for a Payroll Protection Loan. “Employees,” for purposes of the 500 employee limit, includes full and part-time employees.

**Maximum Loan Amount.** The maximum loan amount under the program is 2.5 times the businesses average monthly payroll costs during the 1 year period prior to the date the loan is made (plus the amount of any SBA Economic Injury Disaster Loan obtained by the borrower after January 31, 2020). For seasonal employers, the maximum amount is 2.5 times average monthly payroll costs during the 12 week period beginning February 15, 2019 or March 1, 2019. In all events, the cap on Payroll Protection Loans is $10 million.

**Allowable Uses of Loans.** During the period February 15 to June 30, 2020 (the “covered period”), loan proceeds may be used for payroll costs; health care benefits; employee compensation; interest on mortgages; rent; utilities; interest on debt incurred before February 15, 2020; and refinancing SBA Economic Injury Disaster Loan made after January 31, 2020.

**Loan Terms.** Under this program, interest rates on Payroll Protection Loans are not to exceed 4% per annum; repayment terms are up to 10 years; lenders are required to offer payment deferment of up to 9 months; no prepayment penalties; no personal guarantee requirement, loans are non-recourse to individual shareholders, members or partners (except to the extent loan proceeds are used for purposes not specified in the program); no collateral requirement; and no requirement that the business is unable to obtain credit elsewhere.

**Loan Amount Eligible for Forgiveness.** Some or all of the Payroll Protection Loan is eligible for forgiveness, effectively turning the forgiven portion of the loan into a Federal grant. Subject to reduction as outlined below, the amount of the loan eligible for forgiveness is the amount equal to the borrower’s payroll costs (including additional wages paid to tipped employees), mortgage interest, rent and utility payments incurred and paid during the 8 week period beginning on the date of origination of the Payroll Protection Loan, not to exceed the principal amount of the loan.

**Reduction in Forgivable Amount of Loan.** The portion of the Payroll Protection Loan eligible for forgiveness will be reduced based on reductions in employee headcount, and reductions in pay, as follows (unless the rehire exemption outlined below is applicable):

- The amount eligible to be forgiven shall be reduced by multiplying such amount by the borrower’s
  - average number of full time equivalent employees per month employed during the 8 week period following the date of the loan
  - divided by
  - average number of full time equivalent employees during the period February 15, 2019 to June 30, 2019 (or, alternatively at the option of borrower, the period January 1, 2020 to February 29, 2020).

- In addition, the amount eligible to be forgiven shall be reduced by the amount that pay for any employee earning less than $100,000 per year is reduced during the 8 week period in excess of 25% of such employee’s pay for the prior calendar quarter. (So borrowers can reduce employee pay by up to 25% without impacting loan forgiveness; and pay can be reduced for employees earning more than $100,000 without impacting loan forgiveness.)
Rehire Exemption from Reduction in Forgivable Amount. If between February 15, 2020 and April 26, 2020, a Borrower reduced the number of its full time equivalent employees and/or reduced by more than 25% the pay of its employees earning less than $100,000 per year, and by June 30, 2020, the borrower eliminates such reduction in number of employees and reduction in pay, then the amount eligible for loan forgiveness shall not be reduced by reason of the prior reduction of number of employees or reduction in pay of employees earning less than $100,000 per year.

Please do not hesitate to contact us for further information or assistance with the needs of your business.

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1 Numerically, $2,000,000,000,000.00
2 Allocations of the Federal funding are estimated.
3 Payroll costs includes salary, wage, commission or similar; cash tip; payment of vacation, family, medical, sick leave; allowance for dismissal or separation; health care insurance premiums; retirement benefits; state or local tax assessed on employee compensation; compensation to or income of a sole proprietor or independent contractor that is wage, commission, earnings from self-employment not more than $100,000 in 1 year, prorated for covered period [§37,500]; but not: compensation of any employee in excess of $100,000 in 1 year, prorated for covered period [§37,500]; Federal payroll taxes and income taxes taxes withheld; compensation for a non-US resident; qualified sick leave and family leave for which payroll tax credit is allowed under the Family First Coronavirus Response Act.
4 Amounts forgiven shall be treated as cancelled indebtedness.

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