Client Update
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Small Business Interruption Loan Program under the "Coronavirus Aid, Relief, and Economic Security Act" (NOT FINAL LAW - SUMMARY AS PASSED BY U.S. SENATE ONLY)

Key Takeaways:

- On Wednesday March 25, 2020, Senate passed the bi-partisan Coronavirus Aid, Relief, and Economic Security Act (the, "CARES Act") as "Phase III" of the Federal government's response to the COVID-19 outbreak. The CARES Act is NOT yet law.
- $349 billion dedicated to prevent layoffs and business closures while workers have to stay home during the outbreak.
- Companies (including nonprofits and other unincorporated businesses) with 500 employees or fewer that maintain their payroll during coronavirus can receive cash-flow assistance.
- If employers maintain payroll, the portion of the loans used for covered payroll costs, interest on mortgage obligations, rent, and utilities would be forgiven.

I. Qualifications

- *Eligibility*: Any business concern, nonprofit organization, veterans organization, or Tribal business concern which employs not greater than: (x) 500 employees, or (y) if applicable, the size standard promulgated by the SBA, if higher. Section 1102(a)(1)(B); new 15 U.S.C. § 636(a)(36)(D). Sole proprietors, independent contractors and certain self-employed individuals are also eligible. Businesses that employ not more than 500 persons per physical location, and that are assigned a NAICS number beginning with 72 (i.e. the Accommodation and Food Services sector) also qualify. The term "employee" includes individuals employed on a full-time, part-time, or other basis.
- *February 15, 2020 Eligibility Look-Through Date*: In evaluating the eligibility of a borrower under the program, a lender under this program will only consider if the potential borrower was in operation as of February 15, 2020, and had employees for whom the potential borrower paid salaries and payroll taxes. *See* Section 1102(a)(1); new 15 U.S.C. § 636(a)(36)(F)(ii).

II. Terms

- *Amount*: The loan amount available to a potential borrower under the program is the lesser: (x) of two and a half (2.5) times the average total monthly payments by the applicant for payroll costs (discussed in the following bullet point) incurred during the 1 year period before the date on which the loan is made or (y) $10,000,000.00. Section 1102(a)(2); new15 U.S.C. § 636(a)(36)(E).
- *Payroll Costs:* For purposes of Section 1102, "payroll costs" mean the sum of payments to an employee as compensation, such as salary, wages or commissions; tips; payment for

leave (sickness, bereavement, vacation, medical, etc.); separation allowance; payment for group health care benefits & premiums; payment of retirement benefits; or, payment of state or local tax on the compensation of employees. It does not include compensation of employees for the amount in excess of $100,000, prorated for the covered period (i.e. February 15, 2020 to June 30, 2020); certain payroll taxes (i.e. FICA and income tax withholding); and certain payments for family and sick leave for which a tax credit is received.

- *Allowable Uses*: A recipient will use the proceeds of the loan to cover payroll costs (as defined above); payment of group health care benefits & premiums; employee salaries; interest payments on mortgage obligations; rent; utilities; and any interest on any other debt obligations incurred before February 15, 2020. *See* Section 1102(a)(2); new 15 U.S.C. § 636(a)(36)(F)(i).

- *Other Terms:* The interest rate on a loan made under the program will not exceed 4 percent. All loans are nonrecourse and no personal guarantee. *See* Section 1102(a)(1); new 15 U.S.C. § 636(a)(36)(F)(i)(v), (J), (L).

III. **Loan Forgiveness.**

- *Loan Forgiveness*: A borrower under the program would be eligible for loan forgiveness in an amount up to the amount spent over an eight week period by the borrower on: (a) the total payroll costs (as defined above) incurred by the borrower during the covered period (eight weeks beginning on the date of the loan); (b) payment of interest on mortgages on real or personal property incurred before February 15, 2020; (c) rent obligations (i.e. rent due on a lease in force prior to February 15, 2020); and (d) utility payments where the utility service began before February 15, 2020. See Section 1106(b).

- *Loan Forgiveness Reduction: Reduction in Workforce.* There are two mechanisms for a reduction in the potential amount forgiven. The first is a formula based on a reduction in employees employed by the borrower during the covered period, meaning the eight week period beginning on the date of the loan. Specifically, the total potentially maximum forgivable amount is multiplied by the quotient obtained by taking: (x) the average number of full-time equivalent employees during the covered period divided by, at the option of the borrower, either (a) the average number of full time employees from February 15, 2019 to June 30, 2019, or (b) the average number of full time employees from January 1, 2020 to February 29, 2020. Section 1106(d)(2)(A).

- *Loan Forgiveness Reduction: Decrease in Compensation.* The maximum amount that is forgivable is also reduced by the amount of any reduction in total salary or wages of any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than $100,000 during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period. Section 1106(d)(3)(A), (B).

- *Exemption for Re-Hires*. The amount of loan forgiveness is determined without regard to a reduction in the number of full-time equivalent employees or a reduction in the salary of one or more employees from February 15, 2020 to thirty (30) days after adoption of the CARES Act if the employer eliminates the reduction in full-time equivalent employees and reduction in salary of such employees. Section 1106(d)(5).

III. Program

- *Amount*: $349 billion available until September 30, 2021. The program will be administered until the COVID-19 national emergency expires. The program will be on a "first to file" basis and is expected it be heavily oversubscribed. Section 1107(a)(1).

- *Lenders*: Secretary of the Treasury is directed to establish a list of criteria for insured depository institutions and other lenders new to the SBA program to participate in a small business interruptions program. He will further set out the terms, including compensation these institutions may receive, underwriting standards, regarding the program. *See* Section 1109.

Contact Us

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