

CARES Act Assistance for Small Businesses*

(Including the Self-Employed & Solo Practitioners)

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) is a \$2 trillion federal stimulus bill meant to provide relief to individuals and businesses. Many of the details and regulations as to how the provisions will be implemented are still being finalized. Below is a summary of available information on the major provisions that affect businesses.

A. The Small Business Administration (“SBA”) Economic Injury Disaster Loans (“EIDL”) - Small businesses that are currently experiencing a temporary loss of revenue due to COVID-19 can apply for working capital loans of up to \$2 million with an immediate advance of up to \$10,000. Small businesses are defined as businesses (including most non-profits) with less than 500 employees. **Individuals who operate businesses under a sole proprietorship (with or without employees) and independent contractors may also apply.**

The \$10,000 advance is designed to be disbursed in as little as 7-103 days (actual results vary) while an entity is waiting for a decision on whether it will receive an SBA loan. The \$10,000 advance serves as a grant that does not need to be repaid if the loan is declined; however, if the loan is approved, then the \$10,000 is treated as part of the loan. EIDL funds may be used for COVID-19 related sick pay, payroll, certain operational expenses, rent/mortgage, other debt obligations. EIDL loans have a 3.75% interest rate and require tax documents and a basic credit score, or some alternative means to gauge the ability to repay the borrowed amounts, but loans under \$25,000 do not require collateral.

Our firm offers assistance to potential borrowers in packaging these loans within the SBA guidelines, with a maximum fee of 3.5% of the loan amount up to \$2,500 (i.e. \$875 for a \$25,000 loan).

B. SBA Paycheck Protection Program (“PPP”) – The PPP program is designed to help organizations keep their doors open and people employed. It offers loans of up to \$10 million for small businesses that continue to pay their employees. Loans are available to cover payroll and payroll taxes, health benefits, rent or mortgage interest, utilities, and certain other obligations, and **up to 8 weeks of these costs can be completely forgiven** once costs are verified (certain constraints apply). Small businesses are defined as businesses (including most non-profits) with less than 500 employees. Individuals who operate businesses under a sole proprietorship, franchisees, and independent contractors may also apply.

The term “employee” is defined broadly and includes full and part-time workers. A business can borrow up to 2.5x the average total monthly payments for payroll up to \$10 million. The loans are guaranteed by the government, but funded through private lenders. The payroll amount is capped at \$100,000 per employee pro-rated for the covered period (February 15 – June 30, 2020). Any amounts not forgiven will incur an interest rate of 0.50%; all payments will be deferred for 6 months; however, interest will continue to accrue over this period and loan is due within 2 years. Borrowers can still apply for PPP if they have applied for and received an EIDL, but the amount they have received from the EIDL will decrease the PPP’s available loan amount. The funds are limited and available while they last. Having an existing relationship with a lender will be helpful for this process as many banks are already overwhelmed with loan requests and are prioritizing their existing customers.

C. Employment Retention Credit – This federal tax credit against the employer portion of social security taxes is available to employers when (1) their ordinary place of business is inoperable (i.e. during a statewide shutdown), or (2) if the gross receipts earned in a quarter have declined by more than 50% comparative to the same quarter of the prior year, and the employer has continued to pay employees. This credit is for the period 3/13/2020 through 12/31/2020 (up to \$5,000 per employee) and cannot be used in conjunction with a PPP loan.

*This information is provided for informational purposes only and is not intended to be legal advice. Consult your attorney for specific information, advice and assistance for your individual business and its situation.

D. Employer Payroll Tax Delay - A section of the CARES Act allows for employers and self-employed individuals to defer payment of their portion (6.2%) of the Social Security payroll tax on employees' wages. The deferral can be broken into two installments, with 50% due on 12/31/21, and the other 50% due on 12/31/22. However, this deferral cannot be elected in conjunction with SBA payroll loans such as the PPP loan.

Other Things to Consider

Tax Provisions - There are a number of additional federal tax provisions that businesses may want to consider, depending on their individual circumstances.

Larger Businesses - The CARES Act also provides various provisions to assist larger businesses with more than 500 employees.

Chapter 11 Small Business Bankruptcy Provisions – Separately from the CARES Act, Congress recently enacted an optional fast track procedure for “small business debtors.” The Act increased the debt limit to access the procedures to \$7.5 million (from \$2,725,625), which may provide a solution for companies hard hit by a short but extreme loss of revenue. It is important to work with a lawyer and financial adviser/accountant to model any business bankruptcy.

Impact of Acts of God on Contracts and Leases – Businesses should review all contracts and leases for provisions regarding Acts of God (Force Majeure) and analyze whether the COVID-19 pandemic might constitute a force majeure event under the terms of the specific provision and local state law and then determine what effect this may have on contractual obligations. This can impact obligations of the business to others such as landlords, tenants, clients, and suppliers and obligations of suppliers, clients, landlords and tenants to the business.

Business Interruption Insurance - If you have business interruption insurance and your business has experienced property damage due to COVID-19, you may want to review your policy to see if it has an exclusion that would disable coverage for an incident triggered by an epidemic or pandemic, which might apply to the COVID-19 situation. Under certain circumstances environmental pollution insurance policies may come into play as well.

State and Local Assistance Opportunities – Many states and cities have established funds to assist small businesses in their areas. For example, Pennsylvania has established a \$60 million fund, the COVID-19 Working Capital Access (CWCA) Program (administered by the Pennsylvania Industrial Development Authority (PIDA)), which provides critical working capital loans up to \$100,000 to small businesses with fewer than 100 employees located within the Commonwealth that are adversely impacted by the COVID-19 outbreak. Massachusetts also has established a \$10 million relief fund for Massachusetts small businesses affected by the coronavirus.

A lawyer can be a very helpful partner in determining the best strategy to help your business survive the COVID-19 pandemic. If you have a regular trusted legal professional, we suggest you contact them for help figuring out which federal and state assistance programs your business may be eligible for, deciphering the force majeure clause of your contracts, checking on possible insurance coverage, and strategizing about how to negotiate with your landlord.

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