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As the second step in countering the effects of the Coronavirus, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the "Act" or "CARES") on March 27, 2020. The Act is 880 pages long and contains legislation that affects many different areas of the law. Among other things, the Act provides stimulus funding in the form of loans.

The following information is intended to assist employers to understand the details related to the different loans and a possible payroll tax credit. It does not address other provisions of the Act dealing with unemployment insurance, individual tax credits, and retirement provisions, provisions related to government entities, updated tax provisions, Health Savings Accounts, provisions affecting companies with more than 500 employees, tax changes to the Tax Cuts and Jobs Act, mortgage or foreclosure provisions, and many of the "miscellaneous provisions" of the bill. Note that regulations for the Act have not been published, so the information provided below is subject to change.

Paycheck Protection Program ("PPP"):

General Information:

This is an expansion of the Small Business Administration's existing Section 7(a) loan program. The SBA has been directed to make loans to "eligible" businesses to cover certain "operational costs" like payroll, interest payments on mortgages, rent, health benefits, insurance premiums, utilities, etc.

- For interest payments on mortgages, the mortgage obligation must have been incurred before February 15, 2020.
- For rent, a lease must have been in effect before February 15, 2020.
- For utilities, the services must have commenced, before February 15, 2020.

The loans are federally backed and are forgivable subject to certain conditions. They do not require collateral or a personal guarantee. The Administrator has no recourse against any party unless the proceeds are used for an unauthorized purpose.

The maximum loan an eligible business may receive is $10,000,000.

Timeframe: February 15, 2020 to June 30, 2020.

Who Is Eligible?

Any business concern, sole proprietor, self-employed individual, independent contractor, nonprofit organization, veterans' organization, or tribal business:

- If it employs less than 500 employees (including full-time and part-time employees); or
- If applicable – the number of employees established by the SBA for the industry.

For hospitality and dining industries, the business is eligible:

- If the business employs 500 or fewer employees per location; and
- Is assigned to "Sector 72" under the North American Industry Classification System, which is entitled "Accommodation and Food Services."

SBA regulations related to entity affiliations are waived for the covered period for business concerns, non-profits, and veterans' organizations for:

- Businesses listed under Section 72 (Accommodation and Food Services) in NAICS with 500 or fewer employees;
- Franchise businesses with SBA franchisor identifier codes; and
- Businesses that receive financial assistance from a company licensed under Section 301 of the Small Business Investment Act.

Furthermore, the following persons identified in the Families First Coronavirus Response Act are eligible loan recipients, subject to some documentation requirements:

- Sole proprietors;
- Independent contractors; and
- Self-employed individuals.

Loan Details:

The loan amount is:

- 2.5 X average total monthly payroll costs incurred in the one-year period before the loan is made (but See Note 1); plus
- The outstanding balance of any loan made under the SBA's Disaster Loan Program after January 31, 2020 and before the termination of this program.

Note 1: for seasonal employers the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019).

Or, If the business was not in existence from February 15, 2019 to June 30, 2019:

- 2.5 X average monthly payroll payments from January 1, 2020 to February 29, 2020; plus
- The outstanding balance of a loan made under the SBA's Disaster Loan Program after January 31, 2020 and before the termination of this program.

Any amounts forgiven are treated as cancelled debt, but are not treated as taxable income to the borrower.

For any amount that is not forgiven, the maximum interest rate that can be charged is 4%. There is no subsidy recoupment fee and no prepayment penalty.

In any circumstance, the loan may not be greater than $10,000,000.

Borrower Requirements:

The borrower must certify that:

- The loan is necessary to support the ongoing operations due to the uncertainty of the current economic conditions;
- Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- The applicant does not have any other application pending under this program; and
- From February 15, 2020 to December 31, 2020, the applicant has not received duplicative amounts under this program.

Use of Proceeds:

Loan proceeds that are used for the following expenses during the 8-week period after the loan is made will be forgiven:

- Payroll costs such as: salary; wages; commissions; paid leave; group health benefits like insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors and independent contractors (limited to $100,000 in one year and prorated for the covered period).
  - *Note that 75 percent of the loan proceeds must be paid for payroll costs. Further guidance will be issued on this point.*
- Payments of interest on mortgage obligations;
- Lease payments; and
- Utilities (electricity, gas, water, transportation, telephone or internet access).

Excluded Uses:

Loan proceeds used for the following are not eligible for forgiveness:

- Individual employee compensation above $100,000 per year, prorated for the covered period;
- Certain federal taxes;
- Compensation to employees whose principal place of residence is outside of the US; and
- Sick and family leave wages for which credit is allowed under the Families First Coronavirus Response Act.

Loan Forgiveness and Payment Deferral Relief:

Documentation: To Obtain Loan Forgiveness the borrower must submit the following items to their lender:

- Documentation verifying full time employees on payroll and their pay rates;
- Documentation on covered costs/payments like rent, utility, and mortgage payments;
- Certification from a business representative that the documentation is true and correct and that forgiveness amounts were used to retain employees and make other forgiveness-eligible payments; and
- Any other documentation required by the Administrator.

Limitations: Indebtedness for loans obtained under the CARES Act is forgiven in an amount equal to the following costs incurred and payments made during the covered period, which is the 8-week period following the date the loan is made:

- Payroll costs (*must constitute 75 percent of the loan proceeds*);
- Interest payments on mortgages;
- Rent; and
- Utility payments.

The debt relief may not exceed the principal amount of the loan.

- *Note: There is a formula used to reduce the maximum loan forgiveness if there are employee cuts or a greater than 25% reduction in wages. However, the forgiveness reduction rules will not apply to an employer who, between February 15, 2020 and 30 days after the CARES Act is enacted cuts employees or has a greater than 25% reduction in wages if: (a) an employer has replaced the full time equivalent employees no later than June 30, 2020; or (b) any salary reduction is reversed by June 30, 2020.*

- *Please contact us if you would like to request more information on these formulas.*

Additional Notes on Forgiveness and Reduction:

- Employers with tipped employees may receive forgiveness for additional wages paid to those employees.
- Emergency advances under the expanded SBA Economic Injury Disaster Loan Program will be excluded from the amounts forgiven.

The Administrator must reimburse lenders within 90 days of determining the ultimate amount forgiven.

Expansion of SBA Economic Injury Disaster Loan Program ("EIDL"):

General Information:

This program allows lenders to approve applicants for disaster loans based solely on credit scores or appropriate alternative methods. The covered period for Expansion of the Economic Injury Disaster Loan Program is January 31, 2020 to December 31, 2020.

Who is Eligible?

The following are eligible to obtain SBA disaster loans:

- Businesses with fewer than 500 employees;
- Sole proprietorships (whether they have employees or not);
- Independent contractors;
- Cooperatives with 500 or fewer employees;
- ESOPs with 500 or fewer employees; and
- Tribal small business concerns.

There is no requirement that the business have been in operation for any specific period of time; however, the business must have been in operation on January 31, 2020.

Loan Details:

Entities applying for loans under the Disaster Loan Program may request an emergency advance of up to $10,000 which does not have to be repaid even if the loan is later denied. The advance is supposed to be paid within 3 days after the application is submitted.

According to the CARES Act, all states have sufficient economic damage for small businesses to qualify for assistance under this loan program.

Borrower Requirements:

Personal guarantees are waived on advances and loans of $200,000 or less for all applicants.

There is no requirement that the applicant be unable to find credit elsewhere.

Use of Proceeds:

Advances may be used for:

- Providing sick leave to employees unable to work due to the direct effect of COVID-19;
- Maintaining payroll during business disruptions during slowdowns;
- Meeting increased supply chain costs;
- Making rent or mortgage payments; and
- Repaying debts that cannot be paid due to lost revenue.

Loan Forgiveness and Payment Deferral Relief:

The $10,000 advance is eligible for loan forgiveness.

Employee Retention Tax Credit:

General Information:

This is a credit against an employer's payroll tax. The credit is available to all employers regardless of size, including tax-exempt organizations.

This credit may not be claimed by an employer that receives a Small Business Interruption Loan under Section 7(a) of the Small Business Act (i.e. the Paycheck Protection Program).

This credit is not allowed for any paid time off under the Families First Coronavirus Response Act.

Who is eligible?

If the employer had 100 or fewer employees on average in 2019, the credit is based on wages paid to all employees, regardless of whether they worked or not.

For employers with an average of more than 100 full-time employees during 2019, only employees who are currently not providing services for the employer due to COVID-19 causes are eligible for the credit. The credit is effective for wages paid after March 12, 2020 and before January 1, 2021.

- *Please note: that even if the wages are qualified wages, there is a limitation clause that qualified wages may not "exceed the amount such employee would have been paid for working an equivalent duration during the 30 days immediately preceding such period."*

The employer must have carried on business in 2020 and meet one of the following criteria:

- Have business operations fully or partially suspended due to orders from a governmental entity limiting commerce, travel, or group meetings; or
- Experience a decline in gross receipts of more than 50 percent when compared to the same quarter in the prior year.

Once the employer's gross receipts go above 80 percent of a comparable quarter in 2019, they no longer qualify after the end of that quarter.

Credit Details:

Eligible employers are entitled to a refundable credit against payroll tax liability equal to 50% of the first $10,000 in wages per employee (including the value of health plan benefits). The credit is only claimed against the FICA taxes (the 6.2% part of the employer's payroll taxes). If the credit exceeds the employer's share of FICA taxes, the excess will be refunded to the employer.

Delay of Payment of Employer Payroll Taxes:

General Information:

The CARES Act postpones the due date for the employer's share of FICA payroll taxes (the 6.2%) and 50% of self-employment taxes attributable to wages paid during 2020. Any amounts deferred are to be paid over the next two years, half are due December 31, 2021; and half are due December 31, 2022.

Who is Eligible?

- Applies to all Employers regardless of size.

Exclusions:

- Not available to employers who receive Small Business Interruption Loan under Section 7(a) of the Small Business Act (i.e. the Paycheck Protection Program).

Financial Assistance for Fishery Participants:

(see also: https://www.fisheries.noaa.gov/resources-fishing/frequent-questions-fishery-disaster-assistance_)

General Information:

Financial Assistance for fishery participates is provided as follows through the National Marine Fisheries Service:

- $300,000,000 will be provided for assistance for fishermen.

Who is eligible?

Disaster assistance is available to Triable, subsistence, commercial, and charter fishermen, as well as aquaculture farmers.

To be eligible, recipients must have, as a result of the coronavirus pandemic, incurred (1) economic revenue losses greater than 35% as compared to the prior 5 years average revenue; or (2) any negative impacts to subsistence, cultural, or ceremonial fisheries. Funds are to remain available until September 30, 2021.

- *Note: Funds may be awarded under this section on a rolling basis, and within a fishing season to ensure rapid delivery of funds. Relief may include direct payment.*

Loan Payment Subsidies for Certain Loans:

This Section concerns loans guaranteed by the SBA under the SBA Business Loan Program or Title V of the Small Business Investment Act or made by an intermediary to a small business using loans or grants received under the SBA's microloan Program.

The Administrator must pay the principal, interest, and any associated fees owed in a regular servicing status:

- For loans made before this bill is enacted that *are not* on deferment, for the 6-month period beginning with the next payment due;
- For Loans made before this bill is enacted that *are on* deferment, for the 6-month period beginning with the next payment due after deferment; and
- For loans made within 6 months of enactment of this bill, for 6 months after the first payment is due.