CARES ACT FACT SHEET

This Fact Sheet is provided to give information about the key provisions of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, hereinafter the "Act"). There are three main programs of the Act under Title I – Keeping American Workers Paid and Employed Act. The three main programs are: the Paycheck Protection Program ("PPP"); the Economic Injury Disaster Loan Grant ("EIDL Grant"); and the Debt Relief Program ("DRP").

THE PAYCHECK PROTECTION PROGRAM (PPP)

PPP was created to give borrowers cashflow assistance to cover payroll costs for a period of eight (8) weeks after the loan is made, who are or have been impacted by COVID-19. It is a loan that has a term of two (2) years with a fixed interest rate of 1%, and a maximum loan amount of $10 Million. It is available through June 30, 2020. The loans are available on a first-come, first-served basis. It has a repayment deferral period of 6 months with interest accruing during that period. The loan proceeds must be used during the Eight (8) week period immediately following the time the borrower receives the loan proceeds. The loan is provided through the SBA under section 7(a). All fees associated with the loan application are waived. There is no prepayment penalty associated with these loans. There is no guaranty requirement by the borrower. The loans are 100% guaranteed by the SBA. $349 Billion has been appropriated for these loans. There are loan forgiveness provisions. While not specifically required by the Act, applications should be made through your lender where you have an existing business banking relationship. Banks are giving preferential treatment on a first-come, first-serve basis to their existing customers and clients who have accounts and credit facilities already in place. Applications to these loans are available on April 3, 2020. Independent Contractors and Sole Proprietors can begin the application process on April 10, 2020. Borrowers may also apply for assistance and relief through the EIDL and DRP so long as there is no duplication in the use of funds. Borrowers need to make sure that they utilize funds from other loans for costs not associated with costs covered under the PPP during the covered period to make sure they qualify for the maximum amount of loan forgiveness. Borrowers must also make a good-faith certification that they will use the funds for the intended purpose.

MAXIMUM LOAN AMOUNT

The equation to calculate the loan amount requested by the borrower takes the borrower's average total monthly payroll costs incurred one year prior to the date of the loan application multiplied by 2.5.

Average Monthly Payroll Costs x 2.5 = Maximum Loan Amount

A variation to this equation has been created for seasonal employers. Instead of the one-year period prior to the loan application date, seasonal employees take the average monthly payroll costs for the 12-week period beginning February 15, 2019 (or March 1, 2019, as elected by borrower) through June 30, 2019.

For borrowers who were not in business during the periods in 2019, borrowers will calculate the average monthly payroll costs for the period from January 1, 2020 through February 29, 2020 and then multiply that average by 2.5.

Payroll Costs Include:

Compensation (salary, wage, commission, or similar compensation, payment of cash tip or equivalent).

Payment for vacation, parental, family, medical, or sick leave.

Allowance for dismissal or separation.

Payment required for the provisions of group health care benefits, including insurance premiums.

Payment of any retirement benefit.

Payment of State or local tax assessed on the compensation of employees.

Payroll Costs Exclude:

Employee/owner compensation over $100,000. For the purposes of salaries, the compensation is capped at $100,000 per year. So, if an employee or owner makes over $100,000 a year, the loan for that salary is capped at $8,333.33 per month or $20,833.32 for the covered period.

Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code.

Compensation of employees whose principal place of residence is outside of the U.S.

Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.

ELIGIBLE BORROWERS

Eligible borrowers must have been in operation on February 15, 2020 and include:

Businesses with fewer than 500 employees, which includes full time, part time, and other basis.

Small businesses as defined by the Small Business Administration (SBA) Size Standards at 13 C.F.R. 121.201.

501(c)(3) nonprofits, 501(c)(19) veteran's organization, and Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees.

Hotels, motels, lodging accommodations, restaurants, food and drink services, with fewer than 500 employees at each physical location without regard to affiliation under 13 C.F.R. 121.103.

Businesses that receive financial assistance from Small Business Investment Act Companies licensed under the Small Business Investment Act of 1958 without regard to affiliation under 13 C.F.R. 121.10.

Sole proprietors and independent contractors.

LOAN DEFERMENT

Payments of principal, interest, and fees will be deferred for a period of 6 months; however, interest will accrue during this 6-month period. To be eligible the borrower must be "impacted" which it is presumed that the borrower is impacted by COVID-19.

LOAN FORGIVENESS

The PPP has a forgiveness provision, if the borrower uses the funds for the allowed uses under the program. Only 25% of the PPP Loan proceeds may be used for non-payroll costs for the borrower to be eligible for complete forgiveness. If the borrower spends more than 25% of the loan proceeds for allowed uses such as rent, mortgage interest, utilities, or interest on debt obligations, then that amount of the loan will not be forgiven. The Borrower must certify that the loans were used for the intended purposes.

Allowed Uses:

Payroll costs, as set forth above.

Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums.

Employee salaries, commissions, or similar compensations, as set forth above.

Payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation). The mortgage must have existed before February 15, 2020.

Rent (including rent under a lease agreement). The lease agreement must have existed before February 15, 2020.

Utilities. The utilities service agreement must have existed before February 15, 2020.

Interest on any other debt obligations that were incurred before February 15, 2020.

For purposes of obtaining a PPP loan, borrowers should consider opening a separate bank account to deposit these funds. In doing so, when the borrower makes application for loan forgiveness, the borrower can clearly document that the proceeds were used for the intended purpose and will have less difficulty in obtaining forgiveness of the loan. Alternatively, borrowers should closely consult with their accountant, in advance of dispersing the loan proceeds to make sure they have adequate accounting procedures in place to fully document that the loan proceeds are being used for purposes for which loan forgiveness applies. A borrower may also retroactively apply funds to reimburse the borrower for the expenses already paid during the covered period prior to obtaining the loan proceeds. It is important to clearly documents how those funds were used for the purpose of providing documentation when applying for the loan forgiveness. Also, employees who have a salary above the allowable cap of $100,000, should receive two checks from the borrower; one from the bank account with the PPP proceeds for the covered amount; and second check from another source to ensure compliance with the allowable uses. Failing to do so could result in extra documentation, accounting, and possible exclusions from loan forgiveness. When the loan is forgiven, there will be no income liability for tax purposes and the loan will be treated as a grant. Practice Tip: No one wants to be in the position where his or her application for loan forgiveness is denied merely because of inadequate documentation.

Limitation on Forgiveness:

The purpose of this program is to ensure that the workforce remains employed during the pandemic. The forgiveness amount may not exceed the principal amount borrowed. The forgiveness incentive is limited if a borrower reduces the number of employees or compensation to employees.

Employee Reduction:

The loan forgiveness amount will be reduced by taking the loan amount and multiplying it by the average number of full-time equivalent employees during the covered period, then divided by the average number of full-time equivalent employees the borrower had from February 15, 2019 through June 30, 2019. The borrower may elect to use the period of January 1, 2020 through February 29, 2020. For seasonal employers, the period is February 15, 2019 through June 30, 2019.

Compensation Reduction:

The loan forgiveness amount will be reduced by the amount of reduction in compensation to full-time equivalent employees during the covered period in excess of 25% of the total compensation the employee received during the most recent full quarter preceding the covered period.

Exemption for Reduction:

If there is a reduction in employment or compensation which occurred between February 15, 2020 through April 26, 2020, and that reduction was eliminated on or before June 30, 2020, then no reduction in forgiveness will occur. In other words, if the borrower lays off employees during the above period but rehires or replaces those employees by June 30th, the employer will still be able to obtain loan forgiveness without a reduction of the forgiven amount.

Documentation Required for Forgiveness:

Once the borrower submits an application for loan forgiveness to the lender servicing the loan, the lender has 60 days to issue a decision on the application. The borrower must submit the following documentation with the application and failure to do so will preclude forgiveness:

Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the covered period.

Payroll tax filings reported to the IRS.

State income, payroll, and unemployment insurance filings.

Documentation including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage and/or lease obligations, utility payments.

Certification from an authorized representative of the borrower stating that the documentation provided is true and correct; and the amount for with forgiveness is requested was used for the purposes allowed under the loan.

Any other documents that are determined necessary.

GOOD FAITH CERTIFICATION REQUIREMENT

Borrowers are required to make a good faith certification that states:

1. The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on a Form 1099-MISC.

2. Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.

3. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments; I understand that if the funds are knowingly used for unauthorized purposes, the federal government may hold me legally liable such as for charges of fraud. As explained above, not more than 25 percent of loan proceeds may be used for non-payroll costs.

4. Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan will be provided to the lender.

5. Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. As explained above, not more than 25 percent of the forgiven amount may be for non-payroll costs.

6. During the period beginning on February 15, 2020 and ending on December 31, 2020, the applicant has not and will not receive another loan under this program.

7. I further certify that the information provided in this application and the information provided in all supporting documents and forms is true and accurate in all material respects. I understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC §§ 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to $250,000; under 15 USC § 645 by imprisonment of not more than two years and/or a fine of not more than $5,000; and, if submitted to a federally insured institution, under 18 USC § 1014 by imprisonment of not more than thirty years and/or a fine of not more than $1,000,000.

8. I acknowledge that the lender will confirm the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those submitted to the Internal Revenue Service. I also understand, acknowledge, and agree that the Lender can share the tax

information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

INTERIM FINAL RULE

The Small Business Administration issued an Interim Final Rule on April 2nd ("Interim Rule") to outline key provisions of the PPP Loan as formal guidance to the public. This Interim Final Rule may be subject to change. The US Treasury has also issued a fact sheet ("Fact Sheet") to provide guidance to the public related to the PPP Loan. The SBA and Treasurer department guidance have revised the implementation of this program as follows:

Covered Period:

The Act states the covered period for the loan is from February 15th through June 30th, and that the loan proceeds must be used during the covered period. The Interim Rule and Fact Sheet state that the covered period is eight (8) weeks from the date the borrower receives the loan proceeds, so the loan proceeds would have to be used during that 8-week period.

Loan Term:

The Act states that the maximum term of the loan is 10 years. The Interim Rule and Fact Sheet state that the loan term is for two (2) years.

Interest Rate:

The Act states that the maximum interest rate for the loan is Four Percent (4%). The Interim Rule and Fact Sheet state that the interest rate is fixed at One Percent (1%).

Deferment:

The Act states that deferment of the loan is for 6 months up to 12 months. The Interim Rule and Fact Sheet state that deferment is only for 6 months, and interest on the loan accrues during the deferment period. The reasoning was that the interest rate was lowered to 1%.

Loan Forgiveness:

The Act states that the loan will be forgiven if the borrower uses the loan proceeds for the allowed uses described above. The Interim Rule and Fact Sheet state that only 25% of the loan proceeds may be used for non-payroll allowed uses, i.e. rent, mortgage interest, utilities, interest on debt obligations. This limitation was created to effectuate the core purpose of the Act – Payroll Protection – keeping workers paid and employed. Additional guidance will be provided by the SBA regarding loan forgiveness.

Good Faith Certification:

The Act states substantially less than the Interim Rule and Fact Sheet related to the certification. The Act only requires what is set forth in the second and third paragraph listed above. The additional requirements set forth above are reflected in the Interim Rule and Fact Sheet and taken verbatim from the Interim Rule, which is the most comprehensive.

Independent Contractors - 1099 Employees:

The Act states that "payroll costs" include "the sum of payments of any compensation to or income for a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation…" The Fact Sheet mirrors this language. It also states that "[s]tarting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders." The Interim Rule also somewhat mirrors the description of payroll costs stated in the Act.

The Interim Rule also states in various locations the following:

That borrowers are eligible if, and must certify, among other things, "paid independent contractors, as reported on a Form 1099-MISC."

"[A]re an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, you were in operation on February 15, 2020."

In calculating the loan amount to "[s]ubtract any compensation paid to an employee in excess of an annual salary of $100,000 and/or amounts paid to an independent contractor or sole proprietor in excess of $100,000 per year."

"[I]ndependent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan <u>calculation</u>."

"[I]ndependent contractors have the ability to apply for a PPP loan on their own so they do not count for purposes of a borrower's PPP loan <u>forgiveness</u>."

Because there is a conflict in the Act and subsequent interpretations set forth in the Interim Rule and Fact Sheet, it would be prudent for loan applicants not to include 1099 compensation in their payroll calculations and advise that employment class to make their own loan requests with lenders with whom they have existing relationships. In the alternative, if the employer does make the loan application which takes into account 1099 compensation as part of the payroll cost calculation, the employer must take precautions to ensure that the independent contractors do not make a duplicative loan requests, which would violate the Act and could subject the borrower and/or independent contractor to criminal charges brought by the government, including charges for fraud. It would also be prudent for borrowers to follow the guidelines of the subsequent interpretations related to the other items discussed in this section.

THE ECONOMIC INJURY DISASTER LOAN(EIDL) GRANT

Loan Program Not Enacted Under the Act:

Although not new enacted under the Act, the EIDL program is administered through the SBA under the Small Business Act, Section 7(b)(2), and was created to provide financial assistance to businesses following a declared disaster to help overcome the economic injury that was sustained. The loans are provided by and should be applied for directly from the SBA. Loans are up to $2 Million and have low interest rates. There is no loan forgiveness. Contact a local SBA office for additional details related to and assistance with a loan application.

There are however provisions of the EIDL program that are amended in the Act. Those amendments are:

A waiver of a personal guaranty on advances and loans of $200,000 or less.

The business must be in operation since January 31, 2020.

The applicant may be able to obtain credit elsewhere.

An application may be approved based solely on credit score of applicants and shall not require tax returns or tax return transcript for such approval; or use alternative appropriate methods to determine applicant's ability to repay.

Grant Enacted Under the Act:

Under the Act, borrowers who make application for a loan under EIDL may also apply for a $10,000 grant that is paid within 3 business days of submitting the loan application. The covered period of the Grant is January 1, 2020 through December 31, 2020. Borrower eligibility is similar to the PPP but must have been in operation since January 31, 2020. $10 Billion has been appropriated for these Grants. These loans are funded directly through the SBA. **You must apply for an EIDL loan to be eligible and apply for the Grant.**

Uses for the grant may include:

Paid sick leave for employees directly affected by COVID-19.

Maintaining payroll to retain employees during business disruption or substantial slowdown.

Meeting increased costs to obtain materials unavailable due to supply chain interruptions.

Rent or mortgage payments.

Repaying obligations that cannot be met due to revenue loss.

Because the language of the Act states that the grant "may" be used for the foregoing uses, it is not a strict application and therefore, an employer can likely use the funds for any purpose without consequence. There is one provision in the Act that states if a borrower obtains an EIDL loan and a PPP loan, or converts the EIDL loan into a PPP loan, the $10,000 grant will be offset in the amount forgiven under the PPP loan. In other words, if the borrower applied and received both the PPP loan and the grant and qualifies for forgiveness for their PPP loan, the amount forgiven will be reduced by $10,000 and the Borrower will have to pay that amount back to the lender through the term of the loan. **In the Interim Rule, if the EIDL Loan was used for payroll costs, your PPP Loan must be used to refinance you EIDL Loan.**

No repayment of the advance is required, including if the applicant is denied for the EIDL loan. Borrowers should consider applying immediately for the EIDL loan to obtain relief from the Grant.

THE DEBT RELIEF PROGRAM (DRP)

The SBA will cover payments, including principal, interest, and fees, on all existing 7(a) loans, 504 loans, and microloans ("covered loans"). The DRP relief will be available for new borrowers also. This relief is not available for PPP loans or EIDL loans. $17 Billion has been appropriated for this relief.

The coverage period begins from the date of the enactment of the Act (March 27, 2020). The six-month period begins when the next payment is due. If a loan is already on deferment, then the six-month period begins when the next payment is due after the deferment period.

Any new loans made after March 27, 2020 and for the following six-month period, will also be granted relief under the DRP.

The SBA also encourages lenders to provide payment deferments and extend maturity on covered loans to avoid balloon payments or increases in debt payments resulting from deferments as a result of the COVID-19 crisis.

SUMMARY

The PPP provides borrowers with cashflow to cover payroll expenses to keep their employees during the current economic crisis. Potentially all of the principal amount of the loan may be forgiven if the borrower uses the funds as required and properly documents the use of proceeds. The subsequent interpretations of the Act create more confusion than clarity related to independent contractors/1099 employees.

The EIDL grant can be an instant cash injection used to fund a business's immediate cash needs. This money is 100% forgiven but the borrower must apply for an EIDL loan even if they are denied the loan.

The DRP provides existing and new borrowers 6 months of payments for SBA loans.

The money, benefits, and relief received under the Act are tax free.

Disclaimer:

This Fact Sheet is provided for informational purposes only. You should consult with your attorney, tax advisor, or accountant to determine how any of these programs may apply to your particular situation.

Conclusion:

It is important for our small businesses to stay open during this crisis. The laws are changing rapidly, and interpretations of the laws and the foregoing provisions of the CARES Act may change based on guidance provided by various governmental authorities. Parker Schwartz, PLLC is available to assist you in any way to ensure that your business stays open and that the economy continues through these uncertain times. The firm is doing its part in helping its clients interpret the new laws and provide guidance, advice, and counsel. Please do not hesitate to contact us with any questions, as we are all working during this time.

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