COVID-19 SMALL BUSINESS COVID RELIEF FINANCING

The relief packages have come in the form of two laws (thus far): the Families First Coronavirus Relief Act (“FFCRA”) and the Coronavirus Aid, Relief, and Economic Security Act (“CARES”). Although there are a number of programs in the FFCRA and CARES Acts, the following summary focuses on those key programs that:

- Provide sources of funding to pay your payroll, rent and other fixed expenses;
- Waive certain tax obligations to improve your business’s cashflow,
- Provide payroll tax credits for certain payments made to your employees; and
- Support your employees who are laid off, get sick themselves, or who have family members who are sick or need care while the shelter in place remains in effect.

Sources of Funding

The Acts’ provisions to provide funding to you are generally made through Small Business Administration Loans. To make the funding available to a broader small business community, the qualification criteria has generally been simplified to include any business that has fewer than 500 employees (or the applicable SBA size standard for your industry, if it is higher). For restaurants and other hospitality industry businesses, the 500-person standard is applied on a per-location basis). These programs also apply to sole proprietors, independent contractors, non-profits, and tribal entities, and are not limited by the size of the small business’s annual receipts or franchise and affiliation rules, as would normally apply.

“Paycheck Protection Program” Loans and Loan Forgiveness

Background

The Paycheck Protection Program (“PPP”) is a new category of Small Business Administration “Section 7(a)” Loan. These loans are funded through commercial lenders (and not the SBA, itself). Your usual banker will be able to tell you whether they intend to participate in PPP. Initial payments under the PPP loan will be deferred for six months, and your lender may permit deferral for up to a year. In most cases, 8 weeks of expenses will be forgiven and not need to be repaid (more detail below).

- Maximum Loan Amount: 2.5 times your average monthly “payroll costs” for the prior 12 months (up to $10 million)
- Maximum Loan Term: 10 Years
- Maximum Loan Interest: 4%
  (Term and Interest subject to lender terms and conditions)
- Guaranteed 100% by the SBA; No Personal Guarantees Required
### Payroll Costs Include . . . .

- Salaries, wages, commissions, etc.
- Cash tips or equivalent.
- Payment of regular vacation, parental, family, medical or sick leave.
- Payments for group health care benefits and insurance premiums.
- Payment of any retirement benefit.
- State or local tax assessed on the compensation of employees (e.g., State Unemployment Tax).

### Payroll Costs Exclude . . . .

- Any portion of salaries and wages that exceed an annualized $100,000.
- Federal taxes (FICA, FUTA) and income tax withholding.
- Payment of coronavirus-related sick leave and family medical leave programs (discussed below).
- Any employee whose principal residence is outside the United States (including territories and possessions).

#### Calculating the Maximum Loan Amount

\[
\left( \frac{\text{Total Annual Allowed Payroll Expenses}}{12} \right) \times 2.5 = \text{Maximum Loan Amount}
\]

Seasonal employers will measure their expenses from February 15, 2019 through May 10, 2019 or March 1, 2019 through June 30, 2019, at the borrower’s election. Employers who were not in business for the period February 15 through June 30, 2019, may request to use the average monthly costs of January and February 2020.

#### Uses

Although the maximum loan amount is indexed to your payroll costs, the PPP loan can be used for payroll costs, rent, mortgage interest, utilities, and interest on other debt obligations incurred before February 15, 2020.

#### Applying

If you decide to apply for a PPP loan, you will work with a commercial lender that provides SBA loans. We expect SBA regulations to be released in the coming days or weeks that should describe in detail what information will be required for loan approval, but we expect lenders to require documentation of the expenses to calculate the maximum loan amount and certain certifications that you will use the proceeds only for authorized expenses and that you have not requested another SBA loan to cover the same expenses.

#### Deadline

The loan must be *made* by June 30, 2020, so plan ahead.
Loan Forgiveness

The qualified expenses actually paid by the loan recipient in the first eight (8) weeks of the loan (the “covered period”) up to the entire principal of the loan may be completely forgiven, subject to maintaining/rehiring the size of your workforce and maintaining employee salaries and wages. So, if your loan funds on Monday, April 13, 2020, PPP loan principal will be forgiven for authorized expenses incurred and paid through June 7, 2020. Remember, interest will be waived for the first six months, minimum, so no interest will have accrued. Sorry, it appears you will not be eligible for forgiveness for past due bills or mortgage principal/prepayment fees; nor will you get credit for advance payment of expenses not yet incurred. Also, forgiveness applies only to lease and mortgages entered into before February 15, 2020. So, for example, if you have moved to downsize your offices since that date, your mortgage and rental expenses will not be eligible for forgiveness.

Documentation of the expenses will be strictly enforced by the lender.

Effect of Layoffs and Salary/Wage Reduction on Loan Forgiveness

If you lay off any workers or reduce the wages of employees not earning an annualized $100,000 or more for any pay period in 2019 by more than 25% during the 8-week covered period, the amount of forgiveness will be reduced as follows

Reduction Based on Number of Employees

The reduction of forgiveness is essentially a percentage of your eligible costs that reflects the numbers of employees that worked for you through the 8-week covered period as compared to either February 15, 2019 through June 30, 2019 or January 1, 2020 through February 29, 2020 as follows:

\[ \text{Reduction} = \text{Eligible Costs} \times \left( \frac{\text{Avg. FTEs per month employed during 8 week period}}{\text{Avg per month between 2/15/19 to 6/30/19 OR 1/1/2020 to 2/29/2020}} \right) \]

Seasonal employers will use the February to June benchmark.

So, if you had 100 employees during one of the relevant benchmark periods, and you retained 85 of them, only 85% of eligible expenses will be forgiven, provided they are not also affected by the other potential reduction in forgiveness based on wages paid.

Reduction Based on Wages Paid

If you reduce the wages or salaries of any workers not earning $100,000/year by more than 25% during the 8-week period (as compared to their most recent full quarter), your forgiveness will be reduced dollar for dollar for such reductions.
Effect of Rehiring Employees and Restoring Wages by June 30, 2020

If you restore the size of your workforce and the employees’ wages by June 30, 2020 (the reduction formulas above will not be applied to your forgiveness amount. But be careful, the measuring periods for workforce and wage reductions is different than that for calculating the reduction in forgiveness. If between February 15 and April 26, 2020 you.....

... reduce FTE as compared to 2/15/2020... OR

... reduce salary for any employee (of those earning <$100,000) as compared to 2/15/2020, regardless of whether it is by greater than 25%...

... but then restore the levels of FTE or salary/wages of the affected employee(s) by June 30, 2020, then that particular reduction will not be applied to your potential forgiveness.

Example

Assume you had 100 FTE employees in the period from 2/15/2019 through 6/30/2019 and, because of reasons unrelated to coronavirus you reduced your workforce to 75 in September. Then, because of supply chain disruptions caused by the outbreak in Wuhan, you furloughed another 25 workers and reduced the salaries of the remaining 50 employees by 30% effective February 14.

Your average FTE for the period 2/15/2019 through 6/30/2019 was 100. Your average for January 2020 was 75 and your average for February was (75+50)/2 or 62.5. The January/February average is then 68.75. Because that is the smaller benchmark number, you use that in your formula to calculate the reduction in forgiveness due to FTE, as follows:

\[
\text{Total Forgiven} = \text{Eligible Expenses in Period} \times \left( \frac{50}{68.75} \right)
\]

The forgiveness would be further reduced by the 30% pay cut.

Caution for the Well-Meaning Employer

In your attempt to be loyal to the remaining employees, you do not layoff or reduce salaries after the February 14 actions. But because you did not have a reduction in force or salaries in the period between February 15 and April 26, 2020, you would not qualify for the safe harbor by restoring the workforce and salaries to February 15 levels. Both FTE and wage reductions would apply. However, you could protect your forgiveness with the wage safe harbor by reducing the wage of any single employee – even if only for a day, it appears – then restore it, at any time before June 30, 2020 (or before applying for forgiveness if before then).

The only way to avoid the FTE reduction, however, safe harbor or no, will be to return your FTE to 68.75 by June 30.
Economic Injury Disaster Loans and $10,000 Grants

We anticipate that the PPP loans will be the most popular loans because of the forgiveness available. But the CARES Act also expands the availability and reduces qualification requirements for other loan programs, including the Economic Injury Disaster Loan (“EIDL”) Program. Like PPP, the EIDL program has been expanded to include all businesses with not more than 500 employees, sole proprietorships and independent contractors, nonprofits and tribal small business concerns. The EIDL program is also expanded to include cooperatives and employee stock ownership plan (ESOP) companies with not more than 500 employees.

To qualify for an EIDL program loan generally, an applicant must demonstrate that it has “suffered a substantial economic injury” as a result of the declared disaster and that the applicant was unable to obtain credit elsewhere. However, for the coronavirus emergency, the economic injury will be presumed and the applicant need not prove that it was unable to obtain credit elsewhere.

The EIDL program differs from PPP in significant ways, including:

- **Maximum Loan Amount:** $2,000,000
- **Loan Origination:** Direct with SBA or through Commercial Lender
- **Simplified Application:** May qualify based solely on credit score; tax returns not required.
- **Forgiveness:** Not eligible, but can be converted to a PPP loan.

Businesses in dire need of quick cash may want to consider applying for the EIDL program loan and requesting an emergency grant of up to $10,000. That grant is to be paid within 3 days of submitting the EIDL application and request. The grant need not be repaid, even if you are not approved for the EIDL loan. If, however, you convert your EIDL program loan to a PPP loan, the grant will be deducted from the PPP loan forgiveness amount.

Other SBA Loans

Business owners may also want to consider other SBA loan programs, such as the SBA Express program (SBA application determination in 36 hours; maximum loan amount $350,000) or the Microloan program (up to $50,000). Under the CARES Act, these and other SBA loan programs, the SBA will pay the principal, interest and fees that are owed on a loan originated before September 27, 2020 as follows:

<table>
<thead>
<tr>
<th>Your loan originated …</th>
<th>SBA 6-month payments begin with …</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 3/27/2020 and is not on deferment</td>
<td>Next scheduled due date.</td>
</tr>
<tr>
<td>Before 3/27/2020, but is on deferment</td>
<td>First payment after deferment period.</td>
</tr>
</tbody>
</table>

Payroll Tax Credits and Payment Holiday

There is a refundable payroll tax credit available for businesses who were required to fully or partially suspend the business as a result of coronavirus shutdown orders, or its gross receipts have declined 50% as compared to the same quarter in 2019. The credit is equal to 50% of the wages paid for each employee (up to $10,000 per
quarter). These tax credits are in addition to those related to payment of health benefits and emergency and family leave under FFCRA.

Further, for any payroll tax that is required to be paid between March 27, 2020, and December 31, 2020, payments may be deferred and paid as follows: fifty percent (50%) must be paid by December 31, 2021, with any balance remaining due on December 31, 2022. Note, however, that if you have any of your PPP loan forgiven, you may not defer payment of your payroll taxes.