FEDERAL GOVERNMENT PROVIDES ASSISTANCE TO SMALL BUSINESSES TO HELP OFFSET COVID-19 LOSSES

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On March 27, 2020, the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act") was signed by President Trump thus becoming law. The CARES Act created a new Small Business Administration (the "SBA") loan program known as the Paycheck Protection Program (the "PPP"). Below is a summary of several key provisions of the PPP.

In order to qualify for a loan under the PPP, a small business must employ less than 500 workers which includes a combination of both full and part-time workers. In addition, the applicable business must meet the size standard in the relevant industry based upon SBA standards. The SBA defines a *"size standard"* as "*the largest that a concern can be and still qualify as a small business for Federal Government programs.*" For the most part, size standards are the average annual receipts of a firm calculated over a five year average.

The maximum loan amount is capped at $10 million and will be limited to 2.5 times the average monthly payroll costs of the business over the year prior to the making of the loan, excluding the prorated portion of any annual compensation above $100,000 for any person. Under the PPP, "payroll costs" include vacation, parental, family, medical and sick leave; allowances for dismissal or separation; payments for group health care benefits, including insurance premiums and retirement benefits.

To the extent that any portion of the SBA loan is used for maintaining payroll, making payments for rental obligations, mortgage interest payments or for utility costs, the borrower will be eligible for loan forgiveness. The forgiven portion of the loan will only be for costs incurred from the date of the loan through the next eight week period beginning on the date of the loan. Payroll forgiveness is capped at $100,000 per employee. The interest portion must be on any mortgage incurred before 2/15/20, rent on any lease in force before 2/15/20 and utilities for service that began before 2/15/20. The cancellation of indebtedness will not result in any income recognized and incurred by the borrower business for tax purposes.

The amount forgiven will be reduced if there is a reduction in either (a) the number of employees retained compared to the prior year; or (b) in pay of any employee beyond 25% of prior year compensation.

To calculate the amount of the loan available to be forgiven based on employee reductions, the amount forgiven will be reduced in direct proportion to the number of layoffs. Businesses can choose to compare their reduced workforce numbers to either their average full-time employees from February 15 – June 30, 2019, or their average full-time employees from January 1 – February 29, 2020. Note the reduction does not apply if, by June 30, 2020, a borrower rehires the same number of employees who were laid off between February 15, 2020 and 30 days after enactment of the CARES Act (or April 27, 2020).

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For salary/wage reductions, the amount of loan forgiven will be reduced dollar-for-dollar for the amounts of any salary or wage reductions in excess of 25% as compared to the employee's most recent full quarter. However, this applies only to such salary/wage reductions for employees who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of more than $100,000. Salary/wage reductions for employees above that pay range do not impact eligibility for loan forgiveness. Again, the reduction does not apply if, by June 30, 2020, a borrower restores any salaries/wages reduced between February 15, 2020, and 30 days after enactment of the CARES Act.

Loans will be made directly by SBA approved lenders such as banks and credit unions, and those lenders will also decide whether to accept a borrower's application for forgiveness. Such decision must be made within 60 days of receipt of the application for forgiveness. Not later than 90 days after the loan forgiveness amount has been agreed to by the lender, the SBA is authorized to reimburse the lender directly for the principal amount of any forgiven debt, plus interest accrued through the date of repayment. All loans will mature in a period of two years and carry interest at 0.05% fixed rate to the extent not forgiven.

Lenders will not require collateral or any personal guarantee as security for these loans. The only instance in which a lender will have recourse against any individual, shareholder, member, or partner of a borrower would be when the loan proceeds are used for an unauthorized purpose.

Prepayment penalties are not allowed. Payments of principal, interest and fees will be deferred for at least 6 months, but not more than 1 year. The SBA will not collect any yearly or guarantee fees for the loan. The typical SBA requirement that borrowers not be able to obtain credit elsewhere is being waived.

Borrowers must certify that the loan is necessary due to the uncertainty of current economic conditions; that proceeds will be used to retain workers and maintain payroll or make mortgage, rent or utility payments; and that they are not receiving money from another SBA program for the same uses.

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