



CARES ACT - SUMMARY OF SMALL BUSINESS RELIEF

CARES Act Provisions for Small Businesses

This Summary addresses only certain portions of Section A and Section C of the Act as they apply to small businesses; eligible businesses are those with less than 500 total employees, or a “small business concern” as defined by the Small Business Administration (SBA), or certain larger employers in the hospitality and food services industry with less than 500 employees per location.

Paycheck Protection Loans

Requirements for SBA Loans used for paying employees have been dramatically relaxed, and the procedure for obtaining these loans will be expedited. There are no guarantee requirements, the loans are capped at \$10 Million, and the maximum amount per loan is 2.5 times the average monthly payroll costs for the year before the loan is disbursed, if the business has been in existence for at least a year. If the business is new, the maximum amount is 2.5 times the average monthly payroll costs between January 1, 2020 and February 29, 2020. Seasonal employers can use the 12 week period beginning February 1, 2019 or the period from March 1, 2019 to June 30, 2019 to calculate average monthly payroll. Interest on loans is capped at 4%. Payroll costs do not include compensation for employees or sole proprietors in excess of \$100,000 per year on an annualized basis (amounts up to \$100,000 are included). The amount of any prior SBA loan or Disaster Loan does not decrease the amount of a loan under this program, and can be added to the total amount, not to exceed \$10,000,000.

Loan Criteria

The loan criteria are quite simple: The loan must be needed to continue operations during the COVID-19 emergency, and the funds must be used to pay employees, rent, mortgage, or utility payments. The loans may be used for any purpose under the existing SBA loan program, as well as payroll costs, health benefits, rent or mortgage, utilities and interest on prior indebtedness (but again, payroll costs for individual employees above \$100,000 per year on annualized basis are excluded – amounts up to \$100,000 are included). No collateral or personal guarantee is required for these loans if made prior to June 30, 2020.

Loan Deferment

Repayment of loans made pursuant to this program are presumptively deferred for 6 to 12 months, and eligible for forgiveness pursuant to the terms of the Act. Loan terms are up to 10 years. The origination fee is waived, and the maximum interest is 4%.

Loan Forgiveness

Loans made under the program are eligible for forgiveness in an amount equal to what the loan recipient spends on payroll costs (excluding payroll costs for individual employees above \$100,000 per year on annualized basis – amounts up to \$100,000 are included), rent, interest on mortgages, and utilities during the covered period (the covered period is the 8 week period beginning on the date of the origination of the loan). The amount of loan forgiveness cannot exceed the principal amount of the loan, and will be reduced for any employee cuts or reduction in wages by a percentage formula.

Disaster Loans

The SBA Disaster Loan program has also been significantly expanded by the Act. The Act provides for emergency advances of \$10,000 within 3 days, and does not require personal guarantees on loans under \$200,000. Advances can be used for payroll, rent, providing sick leave and repayment of debts, and do not have to be repaid under any circumstances. The credit requirements are also relaxed, and loans can be made on the basis on a credit score or other suitable evaluation of the ability to repay the loan. The amount of a Disaster Loan has been increased from \$350,000 to \$1,000,000. Eligible recipients of a Disaster Loan may transfer the balance into the SBA loan program described above, and the amount of the Disaster Loan does not count against the loan cap.

Employee Retention Credit

This provision provides a refundable payroll tax credit for 50% of the first \$10,000 of wages (including health benefits) per employees paid or incurred from March 13, 2020 to December 31, 2020. For employers with less than 100 full time employees, all employee wages qualify for the credit, whether the employer is open for business or shut down. For employers with greater than 100 full time employees, only wages paid to employees who when they are not providing service for COVID-19 reasons qualify for the credit. This retention credit is not available to employers who receive a Paycheck Protection loan.

Delayed Payment of Employer Payroll Taxes

All employers and self-employed individuals can defer paying the employer's share of Social Security taxes on wages paid in 2020 to the following 2 years; one-half by December 31, 2020 and one-half by December 31, 2022. This provision also does not apply to any entity receiving a Paycheck Protection loan.

Implementation

There is much we do not know about how these programs will be administered. The SBA Paycheck Protections loans will be made by banks and other private lenders, who will have to move quickly to implement the new processes. The Disaster Loan program is administered directly by the SBA, which will be issuing regulations and additional guidance within 15 days for both loan programs.