

SMALL BUSINESSES AND THE CARES ACT

APRIL 7, 2020

Presented by:

Paula Calimafde, Esq.

SBLC President and General Counsel

Jessica Summers, Esq.

SBLC Strategic Policy Director

Paul Merski

Independent Community Bankers of America



OVERVIEW OF THE CARES ACT

- The Coronavirus Aid, Relief, and Economic Security Act – the CARES Act – was signed into law on March 27, 2020
- This is a giant \$2.2 trillion stimulus bill – the largest spending bill in history. The bill is intended to help shore up the economy and provide relief for businesses, including small businesses, and most individuals
- Congress designed many of the provisions to free up cash so that businesses can keep their workforces employed while they navigate and weather the impact of the coronavirus



PAYCHECK PROTECTION PROGRAM [PPP]

- This requires **immediate action** on the part of most small businesses
- New SBA 7(a) loan program - the PPP - \$349 billion
- Applications are being accepted now – system is being swamped by applications
- Almost a no-brainer



PAYCHECK PROTECTION PROGRAM - OVERVIEW

- Maximum loan = basically the lesser of \$10m or 2.5 x average monthly payroll with adjustments (more detail on this later)
- **Interest rate on loan – 1%**
- **Maturity – 2 years** from the date the borrower applies for loan forgiveness?
- **No payments for 6 months** following the date of disbursement of loan (interest does accrue during 6 month period)



PPP – OVERVIEW, CONT.

- PPP loan can be forgiven in whole or in part (more details on forgiveness later)
- Small businesses have to apply for the loan using the application provided by their bank – small community banks are proving to be more responsive and nimble
- **First come, first served - Run, don't walk, to your bank!**
- **Most banks working with their existing customers right now**
- Some of the larger banks are still not accepting applications while others started last Friday! Some are asking customers to fill out new applications

© 2020 Small Business Legislative Council All Rights Reserved



PPP – OVERVIEW, CONT.

- Proceeds of the loan can be used for:
 - Payroll costs (more on this later)
 - Mortgage interest payments, rent payments, utility payments
 - Interest payments on debt obligations incurred before 2/15/2020 and/or refinancing an SBA EIDL loan between 1/31/2020 and 4/3/2020
 - Health care insurance premiums and costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave



PPP - ELIGIBILITY

- **Eligibility - Most small businesses with 500 or fewer employees whose principal place of residence is the US, also small 501(c)(3) organizations.
Special rules for hotel and restaurant businesses operating as franchises**
- Business had to be in operation on 2/15/2020 and had employees and/or independent contractors



PPP – ELIGIBILITY, CONT.

- Companies with common ownership in many cases will not be eligible for a PPP Loan - additional guidance coming soon on affiliation rules
- Sole proprietors, independent contractors, eligible self-employed individuals also eligible as long as working on 2/15/2020



PPP – WHAT QUALIFIES AS PAYROLL COSTS?

- Payroll costs consist of compensation to employees (whose principal place of residence is in the US) comprised of:
 - Salary, wages, commissions, cash tips, payment for vacation, parental, family, medical or sick leave, allowance for separation or dismissal, payment for group health coverage, including insurance premiums, retirement benefits, payment of state and local taxes on the compensation
- For sole proprietors & independent contractors – wage, commissions, income or net earnings



PPP – WHAT IS NOT A PAYROLL COST?

- Compensation in excess of an annual salary of \$100,000 (pro-rated)
- Federal employment taxes imposed or withheld between 2/15/2020 and 6/30/2020 and income taxes required to be withheld from employees
- Qualified sick and family leave wages for which a tax credit is allowed under the Families First Coronavirus Response Act (FFCRA)
- Any compensation of an employee whose principal place of residence is outside the US



PPP – WHAT IS NOT A PAYROLL COST? CONT.

- Independent contractors do not count as employees for purposes of the PPP loan calculation since they can apply for their own PPP loan
- Simple, right? Well, not so fast....
- Here's what the AICPA is saying:

For the calculation of the average monthly payroll cost, applicants should use gross payroll (including tax expenses) — based on 2019 data — for the PPP loan application and forgiveness



PPP – WHAT IS NOT A PAYROLL COST? CONT.

- Accountants are having a hard time determining how to calculate payroll costs
 - Many are using the gross payroll for calendar year 2019 to determine average monthly payroll cost
 - Others are using the 12 month period before the loan and for periods between 2/15/2020 and 6/30/2020 they are excluding federal employment taxes and income taxes to be withheld from employees



PPP – WHAT IS NOT A PAYROLL COST? CONT.

- Some are filling in the bank's application with the information requested, others are adding in health care premiums and retirement contributions actually paid (some are pro-rating the retirement contribution on an annual basis)
- More guidance needed but the applications are going in now



PPP – CERTIFICATIONS

- Company must certify among other items that:
 - **“Current economic uncertainty makes this loan request necessary to support the ongoing operations of the applicant.”**



PPP – CERTIFICATIONS, CONT.

- Funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments and utility payments. No more than 25% of loan can be used for non-payroll costs
- Between 2/15/2020 and ending on 12/31/2020, the applicant has not and will not receive another loan under the PPP



PPP – LOAN FORGIVENESS

- Max forgiveness = principal amount of the loan
- Forgiveness = 8 weeks of: payroll costs + mortgage interest + rent + utilities
- BUT...
 - not more than 25% of loan forgiveness can be attributable to non-payroll costs
 - forgiveness amount subject to reduction if number of employees OR employee salaries are reduced (more on this later)



PPP – LOAN FORGIVENESS: DEFINITIONS

- Rent - “Rent obligated under a leasing agreement in force before February 15, 2020”
- Utilities – “Payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which the service began before February 15, 2020”



PPP – LOAN FORGIVENESS: REDUCTION IN FORGIVENESS

- Amount eligible for forgiveness will be reduced proportionately based on:
 - the avg. number of full-time equivalent employees employed by the business during the covered period of the loan
- COMPARED TO EITHER*
- the average number of full-time equivalent employees employed by the business between ***Feb. 15 and June 30, 2019***
- OR
- the average number of full-time equivalent employees employed by the business between ***Jan. 1 and Feb. 29, 2020***

*Special rules apply for seasonal employers



PPP – LOAN FORGIVENESS: REDUCTION IN FORGIVENESS, CONT.

- Amount eligible for forgiveness will ALSO be reduced to the extent that the salary or wages for any employee making \$100,000 or less per year are reduced by more than 25% during the covered loan period as compared to the employee's salary or wages during the most recent full quarter before the covered loan period



PPP – LOAN FORGIVENESS: REDUCTION IN FORGIVENESS, CONT.

- BUT businesses that reduce compensation or employment rolls between February 15 and April 26, 2020 may still be eligible for loan forgiveness without reduction in the forgiveness amount if the employer has “eliminated the reduction” by June 30, 2020
- We anticipate more detail on this to come in the regulations



PPP – LOAN FORGIVENESS: ADDITIONAL CONSIDERATIONS

- To obtain forgiveness employers will need to document that the loan funds were used for a covered purpose
- If the employer got an EIDL loan – proceeds from any advance of the EIDL up to \$10k will be deducted from loan forgiveness amount
- Forgiven loan amounts will be excluded from gross income



NO REQUIRED MINIMUM DISTRIBUTIONS (RMD) FOR 2020

- Participants in defined contribution plans (profit sharing plans and 401(k) plans), 403(b) plans, 457(b) plans sponsored by governmental entities and IRA owners or their beneficiaries will **not** be required to take RMDs in 2020
- In 2021, the RMDs will start up again but the missing 2020 RMDs do not have to be made up
- RMDs still required from defined benefit plans



NO REQUIRED MINIMUM DISTRIBUTIONS (RMD) FOR 2020, CONT.

- Purpose is to avoid forcing individuals to sell stocks being held by the plans or IRAs at a low value to pay out an inflated RMD calculated on the account balance as it stood on December 31, 2019
- **Planning Tip** - Individuals who do not need their RMDs should consider converting some of their traditional IRA to a Roth IRA since they will not have taxable income from the RMD. Amount of income is determined at the time of conversion. A conversion in-kind from a traditional IRA to a Roth IRA of depressed stocks will give rise to a larger value Roth when the market turns around



PENALTY FREE DISTRIBUTION UP TO \$100,000 FROM RETIREMENT PLAN

- Plan participants (or spouses or dependents) who have been diagnosed with COVID-19, or suffered financial consequences directly because of coronavirus, can receive a distribution of up to \$100,000 from the plan. Available between 1/1/2020 and 12/31/2020
- Distributions are exempt from 10% early withdrawal penalty. Can be repaid over 3 years or if not repaid, can be taken into income over a 3 year period. Employer can rely upon self-certification by participant that the conditions for eligibility are met



PENALTY FREE DISTRIBUTION UP TO \$100,000 FROM RETIREMENT PLAN, CONT.

- More guidance by IRS is needed – many experts believe this is an optional provision – others do not – it is not clear whether an interest factor would be imposed on repayment (unlikely, but possible). Not clear how fast the major brokerage house and major retirement plan platforms are going to be able to implement this new provision



TEMPORARY INCREASE IN PLAN LOAN LIMIT AND ONE YEAR DELAY IN PLAN LOAN REPAYMENT

- Plan participants (or spouses or dependents) who have been diagnosed with COVID-19, or suffered financial consequences directly because of coronavirus, within 180 days after 3/27/2020, can take a plan loan up to \$100,000 or their vested account balance in the plan, whichever is less
- This is an increase from the general limits on plan loans which are the lesser of \$50,000 or 50% of the vested account balance (note a plan is not required to offer plan loans and some plans provide for loans up to \$10,000 regardless of the vested account balance)



TEMPORARY INCREASE IN PLAN LOAN LIMIT AND ONE YEAR DELAY IN PLAN LOAN REPAYMENT, CONT.

- Most experts believe this is optional since offering loans is optional
- CARES Act also postpones for 1 year any loan repayment that is due after 3/27/2020 and before 12/31/2020. It appears this may be a mandatory provision even if the plan participant wants to continue to pay the loan. More guidance is needed. Large plan providers will have a difficult time implementing these new rules
- Plans have until the end of plan year beginning on or after 1/1/2022 to adopt a retroactive amendment



RELIEF FOR FUNDING OF SINGLE EMPLOYER DEFINED BENEFIT PLANS (DB PLANS)

- Delays funding of minimum required contributions for single employer DB plans due in 2020 until 1/1/21. Interest is due then as well
- CARES Act allows plans to use the plan's funded status for the last plan year before 1/1/20 for IRC section 436 for plan years that include calendar year 2020
- This is not considered to be enough relief for DB plans and it is anticipated that more relief will be coming in relief act 4



EMPLOYEE RETENTION CREDIT

- Refundable tax credit against employer payroll taxes
- Eligibility – business of any size that has either:
 - had to fully or partially suspend operations due to a government order related to the coronavirus OR
 - experienced more than a 50% reduction (compared to same quarter in the prior year) in gross receipts
- Credit = 50% of the first \$10,000 of wages paid to an employee between March 13, 2020 and December 31, 2020
 - Max credit = \$5,000 per employee



EMPLOYEE RETENTION CREDIT, CONT.

- What wages count towards the credit?
 - For employers with 100 or fewer employees – all wages and health plan expenses count
 - Employers with 100 or more employees - only wages and health plan expenses paid to employees who are not actually performing services (including remote) to the employer due to the virus count
 - Wages for which the employer got a FFCRA payroll tax credit are excluded
- Not available to employers that have received PPP loan forgiveness



FFCRA CREDIT

- The Families First Coronavirus Response Act (the "FFCRA") requires employers with 500 or fewer employees to provide paid sick leave and emergency family leave to qualifying employees
- Employers are eligible to receive a refundable tax credit that matches dollar for dollar the cost of their providing that leave
- BUT - no double dipping with PPP loan
 - Leave wages can not count as "payroll costs" for the purposes of the PPP loan



DELAY OF EMPLOYER PAYROLL TAX

- Allows employers of any size to delay payment of 2020 employer payroll taxes
- Deferred taxes to be paid in two installments:
 - 50% by December 31, 2021
 - 50% by December 31, 2022
- BUT this provision does not apply to any employer who has had a PPP loan forgiven



ECONOMIC INJURY DISASTER LOAN (EIDL) GRANTS

- **Emergency loans of up to \$2m to assist companies suffering financial distress due to the coronavirus**
- **Any EIDL COVID-19 loan made before 12/31/2020 does not require personal guarantees on loans below \$200k**
- Requirement that applicant is not able to obtain credit elsewhere is waived



ECONOMIC INJURY DISASTER LOAN (EIDL) GRANTS, CONT.

- The CARES Act provides EIDL loan applicants (whether approved or not) an emergency grant up to \$10,000 which the company will receive in 3 days. This grant may be used to pay sick leave to employees with COVID-19, maintaining payroll, paying rent or mortgage payments, repaying obligations that cannot be met and paying increased costs to obtain materials due to a disruption of the normal supply chain
- This “grant” does not have to be repaid but if you get a PPP loan then amount of forgiveness is reduced by the amount of the EIDL grant



**THANK YOU FOR PARTICIPATING
IN TODAY'S WEBINAR!**

