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Details on Relief Loans and Other Financial Assistance for Businesses

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The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") is the latest of numerous federal, state and local efforts to aid individuals and small businesses adversely affected by COVID-19. This alert is intended to provide a very brief overview of certain provisions of the CARES Act providing for aid to small businesses.

For more information on these relief programs, please do not hesitate to contact Chadwick Hoyt, Michael Gray, David Milligan, Tom Wolford or your Neal Gerber Eisenberg attorney.

Paycheck Protection Program ($349 Billion)

The Paycheck Protection Program temporarily amends the Small Business Administration's ("SBA") Section 7(a) loan program to, among other things, expand eligibility under the program, increase the maximum loan amount the SBA can guarantee, and provide for forgiveness of the loans subject to certain conditions.

Paycheck Protection Program loans ("PPP Loans") will be made to eligible recipients by existing banks and lenders enrolled in the SBA 7(a) program and any additional lenders approved by the SBA. Lenders may begin processing applications on April 3, 2020 for small businesses and sole proprietorships, and on April 10, 2020 for independent contractors and self-employed individuals. The program is open until June 30, 2020, subject to the funding cap.

Eligible recipients include any business concern, non-profit organization, veterans organization or tribal organization that either (a) employs fewer than 500 employees or (b) is a "small business concern" under the applicable NAICS code (which is based on the number of employees or annual receipts). An eligible recipient also includes certain sole proprietors, independent contractors and self-employed individuals. For the purposes of the calculation, employees includes all individuals employed on a full-time, part-time or other basis. The applicant also must have been in operation on February 15, 2020, and had employees to which it paid salaries and for which it paid payroll taxes, or paid independent contractors.

In determining the number of employees or annual revenue, the SBA aggregates the revenues and employees of all domestic and foreign "affiliates" of a company based on a totality of the circumstances standard, which has a broader application than similar affiliation rules in the corporate and tax contexts. Under the SBA's standard, an entity is an "affiliate" of a company, subject to certain exemptions, if such entity controls, has the power to control, or is controlled by the company, or if such entity is under common control with the company by a third party – regardless of whether the control materializes by voting equity, management rights, control over strategic decisions, blocking/veto rights, or other measures, even if such rights are held by minority equityholders. Consequently, entities that have private equity, venture capital or other outside investors may not qualify, given the nature of how private equity and venture capital investments are negotiated and the broad rules for what constitutes an affiliated group in determining how employees and revenues are aggregated. These affiliation rules are waived by the CARES Act for companies with fewer than 500 employees per location that are in the accommodation and food services industries (i.e., companies with NAICS codes beginning in 72), certain franchise businesses and small businesses that receive financing through the Small Business Investment Company Act.

One item of note is that a borrower under a PPP loan is not eligible for the refundable employee retention credits program under the CARES Act, and if a borrower has any portion of the PPP loan forgiven, it is not eligible for the federal employer payroll tax deferral program under the CARES Act, so applicants will need to consider which program best fits their needs.

The maximum amount available under a PPP loan is equal to 250% of the average total monthly payroll costs for the year prior to the loan (subject to certain exclusions, including the salary of any employee to the extent it exceeds $100,000 or if the employee's principal place of residence is outside of the United States), subject to a cap of $10 million.

The proceeds of the PPP loans can be used for payroll costs, costs related to the continuation of health care benefits, employee compensation (for those making less than $100,000), mortgage interest obligations, rent, utilities, and interest on debt incurred prior to February 15, 2020.

The PPP loans are eligible to be forgiven to the extent that the proceeds have been used for specified costs incurred and expenses made during the eight-week period after the loan is made, including, subject to certain limitations, payroll costs, interest on mortgage obligations, rent, utilities and additional wages paid to tipped employees. The amount forgiven will be reduced to the extent the borrower reduces its number of employees or reduces the compensation of any employee that did not make $100,000 for the prior year by greater than 25%. The amount of forgiven debt is nontaxable at the federal level.

The PPP loans will bear interest at a fixed rate of 0.5% and have a maturity of two years. Payments on PPP loans will be deferred for a period of six months.

It is expected that the SBA will soon release more details with respect to the PPP program.

Emergency EIDL Grants ($10 Billion)

This program authorizes Economic Injury Disaster Loans (EIDL) of up to $2 million (based on economic injury to the borrower) not only to small business concerns, but also to other firms with less than 500 employees. Rules that might require a personal guarantee on an advance greater than $200,000 will be waived, as will the normal SBA requirement that the borrower demonstrate its inability to obtain credit elsewhere. An applicant may request a $10,000 advance to make payroll, provide sick leave and meet supply chain costs. Such an advance is expected to be issued within a short time frame, and the borrower will not be required to repay it, even if its loan application is subsequently denied. A borrower may receive both a PPP loan and an EIDL loan, so long as both loans are not used for the same purposes. There is also an opportunity to roll an EIDL loan into a subsequent PPP loan.

State and Local Programs

In addition, a number of state and local jurisdictions are also providing various forms of financial assistance, tax relief and other assistance to affected businesses.

For example, the City of Chicago is offering low-interest working capital loans of up to $50,000 to neighborhood entrepreneurs suffering substantial economic injury to help support rent and payroll expenses, with repayment terms of up to five years. The amount of the loan an applicant can qualify for depends on its revenues before business was affected by the coronavirus. An applicant must demonstrate a 25% drop in revenue, have less than $3 million in revenue and fewer than 50 employees, and have no current tax liens or legal judgments.

CORPORATE & SECURITIES ALERT

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Please visit our COVID-19 Resource & Information Center for more insights into financial assistance programs and other coronavirus-related issues.

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