CARES Act Creates Additional Loans for Small Business

Note: This article was posted on March 30, 2020 at 1 pm PDT. *Because the COVID-19 situation is rapidly changing as the federal government and State of California continue to fight this pandemic, individuals and businesses should consult with their counsel for the latest developments and updated guidance on this topic.*

Congress has recognized the extreme strain the COVID-19 pandemic and economic downturn has placed on small businesses. On March 27, 2020, Congress passed and President Trump signed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or "Act") to boost the economy and help small businesses bridge the gap during the pandemic. The CARES Act assists small businesses in three main ways: (1) "Paycheck Protection Program" loans to pay and retain workers; (2) Emergency Injury Disaster Loans ("EIDL") and grants; and (3) partial loan forgiveness and subsidies.

Paycheck Protection Program Loans

The CARES Act creates a $349 billion "Paycheck Protection Program" to assist small businesses pay and retain their employees. Modeled after the Small Business Association's ("SBA") 7(a) loan program, which provides business loans and loan guarantees to small businesses, the CARES Act's loan guarantee creates loans for small businesses (as defined by the SBA, but generally up to 500 employees; SBA affiliation rules are waived), 501(c)(3) non-profits, sole proprietorships, self-employed individuals, and independent contractors (collectively "Small Businesses") to pay themselves and their employees' wages during the pandemic with a 100% government guarantee.

While particular circumstances may vary, Small Businesses can generally receive a loan for payroll costs (including salaries, benefits, and taxes) for up to 2 ½ months, at 4% interest or less. However, the total amount of the loan cannot exceed $10 million, and the loan amount cannot include compensation paid to any individual in excess of $100,000 annually. To receive the loan, a borrower must certify the loan will be used to retain employees, maintain group health care benefits, maintain payroll, make mortgage interest payments (the loan cannot be used to pay principal on a mortgage), make rent payments, make utility payments, or make interest payments on any other debt obligations that were incurred before February 15, 2020.

Economic Injury Disaster Loan Grants

The CARES Act makes it easier for Small Businesses to qualify for an Emergency Injury Disaster Loan ("EIDL") by waiving: (1) all prerequisites other than having an acceptable credit score; (2) personal guarantee requirements for loans under $200,000; (3) the requirement that Small Businesses exhaust all other potential credit lines before applying for an EIDL; and (4) the requirement that Small Businesses be in business for at least one year before the disaster (though Small Businesses must have been in business before January 31, 2020).

EIDL funds can be used for paying sick leave due to COVID-19, maintaining payroll, retaining employees during disruptions and slowdowns, meeting increased costs to obtain materials unavailable from the applicant's original source due to supply chain interruptions, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

Additionally, the CARES Act creates an emergency grant where qualifying Small Businesses can receive an advance of up to $10,000. These funds must be used for the same purposes as EIDL, but Small Business need not repay any amounts of the advance even if later denied a loan under Section 7(b)(2) of the Small Business Act.

Loan Forgiveness and Subsidies

The CARES Act creates a loan forgiveness program for loans paid under the Act's paycheck protection program. The SBA will pay a portion of a Small Business's principal, interest, and any associated fees that are owed on a covered loan in a regular servicing status. However, the loan forgiveness may be reduced under certain circumstances if the employer reduces employment. It is not yet clear how the application process for loan forgiveness will take place.

Further, the CARES Act creates a $17 billion subsidy to repay covered loans made under Section 7(a) of the Small Business Act, excluding loans made under the Act's paycheck protection program. The subsidy will pay principal, interest, and any associated fees on covered loans in regular servicing status. According to the Act, it is the "Sense of Congress" that subsidies are appropriate for *all* qualifying borrowers, though it is unclear if that means all borrowers will receive the subsidy.

The Maloney Firm is monitoring SBA rulemaking for updates, specifics, and clarifications and will update this piece accordingly.

Depending on the length of the Coronavirus pandemic and local 'shelter in place' orders, the CARES Act may only serve as Band-Aid on an economic wound requiring significant, long-term federal assistance. For the short term, Small Businesses should take advantage of the CARES Act's benefits and programs to help make ends meet. If you have questions about whether your small business qualifies, the specific requirements of the CARES Act, or how to take advantage of the CARES Act's benefits, consult with your counsel.

For more information regarding this article, call The Maloney Firm at 310.540.1505.