

March 27, 2020

## CLIENT ALERT

This afternoon the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) became law. It contains a broad expanse of programs covering much of the economy, including provisions for direct payments to individuals, support for particularly hard-hit industries, enhanced provisions to cover health care costs for those who fall ill, and many others. Notable to our business clients, it includes a robust series of economic support provisions designed to make it easier for small and medium size business to meet payroll, rent, debt service and utility obligations. This brief update focuses on those provisions.

### 1. CARES ACT LOANS

One of the major components of the CARES Act is the inclusion of \$349 billion for small businesses through government-backed loans administered by the Small Business Administration. Congress has designed the program to make funds available to qualifying businesses quickly through banks and nonbank lenders approved to make SBA loans.

#### Maximum Loan Amounts

The maximum loan amount is 2.5 times average total monthly payroll costs incurred in the one-year period before the loan is made (or for seasonal employers, the average monthly payroll costs for the 12 weeks beginning on February 15, 2019, or from March 1, 2019 to June 30, 2019) **plus** the balance of any existing SBA Disaster Relief Loans made since January 31, 2020. For businesses that are new since June, 2019, the limit will be 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020. The overall cap is \$10 million.

#### Borrower requirements

To be eligible, a business or nonprofit must have no more than the greater of (1) 500 employees or (2) the number of employees established by the SBA for the borrower’s industry sector. These loans are also available to some sole proprietors, independent contractors, and self-employed individuals (using the eligibility criteria for benefits under the Families First Coronavirus Relief Act).

Borrowers must make a good-faith certification that:

- The loan is needed to continue operations during the COVID-19 emergency;
- Funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments;
- The applicant does not have any other application pending under this program for the same purpose; and
- From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.

## Permitted Uses of Proceeds

Permitted uses of loan proceeds include payroll, but also other categories of expense:

- Payroll costs include salary, wage, commissions, paid leave; severance payments; payment for group health benefits, including insurance premiums; retirement benefits; state and local payroll taxes; and compensation to sole proprietors or independent contractors (including commission-based compensation) up to \$100,000 in 1 year, prorated for the covered period. Payroll costs exclude individual employee compensation above \$100,000 per year, prorated for the covered period; certain federal taxes; compensation to employees whose principal place of residence is outside of the US; and sick and family leave wages for which credit is allowed under the Families First Act;
- Payments of interest on mortgage obligations;
- Rent/lease agreement payments;
- Utilities; and
- Interest on any other pre-existing debt obligations.

## Payment Deferral and Forgiveness.

Repayment of principal, interest and fees can be deferred for six months to one year.

Up to the full initial principal balance will be forgiven (without incurring loan forgiveness income) for the following expenses during the eight week period after the loan disbursement:

- Payroll costs;
- Interest payments on mortgages;
- Rent; and
- Utility payments.

Forgiveness amounts will be reduced on a pro rata basis for any reduction in payroll costs or employee count during the period. To encourage employers to rehire employees who have already been laid off due to the emergency, borrowers that rehire those workers will not be penalized for having a reduced payroll at the beginning of the period.

## 2. CHANGES TO TAX LAWS

The CARES Act makes some changes to the Tax Cuts and Jobs Act of 2017 to better permit businesses to recover COVID-19 related losses. The applicability of these tax changes will be heavily dependent upon the specific tax situation of each business.

The CARES Act:

- Suspends the existing cap on net operating loss carryforwards, which is otherwise 80% of taxable income for three years. As a result, there is no limit on net operating loss carryforwards for tax years beginning in 2018, 2019, and 2020.
- Permits net operating losses from tax years 2018, 2019, and 2020 to be carried back five years.
- Suspends the limitations on the use of a pass-through business' losses against non-business income for three years, so that the limits would not apply to tax years beginning in 2018, 2019, and 2020.

For most businesses, the first step in seeking assistance under the CARES Act will be to contact your existing commercial lender. Brann & Isaacson will be glad to answer other questions you may have concerning the CARES Act loan program.