

MEMO TO CLIENTS AND FRIENDS ON CARES ACT PASSED BY THE SENATE LAST NIGHT

March 26, 2020 - Small Business Debt Relief - SEC. 1112. SUBSIDY FOR CERTAIN LOAN PAYMENTS.

The bill would require SBA to pay all principal, interest, and fees on all existing SBA loan products, including 7(a), Community Advantage, 504, and Microloan programs, for six months to provide relief to small businesses negatively affected by COVID-19. The payments will be made directly to the bank lender. SBA is to encourage regulators not to require extra reserves by banks receiving these 6 months of payments.

March 25, 2020 - Updated Summary of Key Provisions HR 748 (in revised draft being considered by the Senate today) the CARES ACT, specifically the Payroll Protection Program set forth in **Sections 1101** et. seq., which amends the SBA Act as follows:

- Expands the 7A loan program for the “covered period” beginning 2/15/2020 through 6/30/2020 and permits banks and other authorized lenders to make loans to businesses, non-profits and “small business concerns” with fewer than 500 employees that have been “substantially affected” by COVID 19 (C-19).
- Purpose of loans is to cover payroll (plus full benefits), rent, utilities, and interest expense of debt;
- Loan amounts established at lesser of \$10MM or 2.5x average monthly payroll costs incurred during the 1 year preceding the date of the new SBA loan;
- These loans can be forgiven by the lender provided recipient documents its employment records and forgiveness amount;
- Forgiveness amount is reduced by a percentage equal to the number of FTE’s before C-19 vs. post C-19; e.g., if you had 90 FTEs in 2019 and 10 during the covered period (now through year end) your forgiveness amount would be reduced by 90%; so loan recipients are incentivized to keep people employed; if you document that you kept employees on payroll but did not need to retain them during the covered period, you may be able to obtain a forgivable loan as described;
- Forgiveness is not taxable;
- Forgiveness also only applies to employee total “payroll costs” (see definition below for payroll costs) up to \$100,000 per year and is also adjusted for tipped employees.
- The SBA will make interest and principal payments on all outstanding 7a loans for the next 6 months or for the 6 months following any current deferral period in effect. The payments will be made directly to the Bank lender. SBA is to encourage regulators not to require extra reserves by Banks receiving these 6 months of payments.
- 7A Express loan authority is increased from \$350K to \$1MM;
- There are provisions for Grants to small business development centers, women and minority focused BDCs and other business advisors;

- Loans are 100% guaranteed by SBA and forgiveness can be repaid by SBA or loans may be sold individually or in pools in the secondary market or to SBA in advance of forgiveness;
- Loan amounts that are not forgiven will be payable over 10 years at no more than 4% interest rate;
- Loans are zero risk weighted for banks and are not subject to TDR provisions at least through 2020;
- Payments on these loans must have a 6-month deferral of interest and principal;
- Loan Fees for Banks making the loans are established at 5%, 3%, and 1% for loans up to \$350K, \$351k-\$2MM, and over 2MM respectively;
- No prepayment penalties are allowed;
- A loan made under the SBA 7(a) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available may be refinanced as part of a covered loan.
- Rural and underserved areas along with socially and economically disadvantaged companies and persons including veterans, military, women, and businesses less than 2 years old shall be given a priority;
- There are EIDL grants of up to \$10K per entity for small business concerns or private nonprofits and other loans with no personal guaranty to small businesses up to \$200k per year if at least one year in business.

Payroll Costs definition:

(aa) the sum of payments of any compensation with respect to employees that is a—

(AA) salary, wage, commission, or similar compensation;

(BB) payment of cash tip or equivalent;

(CC) payment for vacation, parental, family, medical, or sick leave;

(DD) allowance for dismissal or separation;

(EE) payment required for the provisions of group health care benefits, including insurance premiums;

(FF) payment of any retirement benefit; or

(GG) payment of State or local tax assessed on the compensation of employees; and

(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as prorated for the covered period.

Section 2301 et seq provides a wide range of temporary relief for taxpayers including:

- A 50% unemployment tax credit based on qualifying wages this year;
- Delayed payroll tax payments;
- Modification of NOL rules;
- Modification of non-corporate taxpayer loss limitations;
- Modification of rules for prior period losses;
- Modification of business interest limits rules;
- Modification of definition of Qualified Improvement Property.

Section 4000 et seq. provides miscellaneous provisions affecting community banks including:

- Authority for OCC to waive legal lending limit rules;
- Reduction of Qualified Community Bank Leverage from 9 to 8%;
- Relief from TDR rules;
- Relief from CECL implementation;
- Additional direct lending authority by Fed under Section 13(3) is provided for eligible businesses.

The House is expected to vote on this tomorrow and the President has said he will sign it immediately. We are preparing to facilitate applications for the Payroll Protection Program and invite you to email us if you want further information on how to obtain.

For further information contact: Patrick J. Kennedy, Jr., pkennedy@kslawllp.com 210 213 0279 or Dub Sutherland, dsutherland@kslawllp.com 210 259 3885.