



# Brenner, Saltzman & Wallman LLP

Attorneys at Law – Established 1963

## **CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT: WHAT SMALL BUSINESSES AND INDIVIDUALS SHOULD KNOW**

March 28, 2020

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law. The CARES Act is an approximately \$2 trillion stimulus package designed to mitigate the effects of the Coronavirus pandemic. The CARES Act includes relief for individuals, small businesses, medium and large sized businesses, state and local governments, and hospitals. There are many details about how CARES Act relief will be implemented and administered, and how certain provisions of the CARES Act will be interpreted, that are still unknown. We expect that the U.S. Small Business Administration (“SBA”) and the Secretary of the Treasury will publish additional guidance and regulations during the upcoming weeks, and we will continue to publish client alerts about the CARES Act as more information becomes available.

This Client Alert provides an overview of the relief available for small businesses (i.e., those with 500 or fewer employees), including the Paycheck Protection Program, and relief available to individuals, under the CARES Act. A separate client alert will address the relief available for businesses with more than 500 employees. Additional information for businesses is available at this link:

[https://www.sbc.senate.gov/public/\\_cache/files/9/7/97ac840c-28b7-4e49-b872-d30a995d8dae/F2CF1DD78E6D6C8C8C3BF58C6D1DDB2B.small-business-owner-s-guide-to-the-cares-act-final-.pdf](https://www.sbc.senate.gov/public/_cache/files/9/7/97ac840c-28b7-4e49-b872-d30a995d8dae/F2CF1DD78E6D6C8C8C3BF58C6D1DDB2B.small-business-owner-s-guide-to-the-cares-act-final-.pdf)

### **I. WHAT SMALL BUSINESSES SHOULD KNOW**

#### **A. Payroll Protection Program**

The CARES Act established a new \$350 billion SBA Business Loan Program category, the Paycheck Protection Program (“PPP”), which is designed to provide temporary aid to small businesses by making 100% federally-backed loans available to eligible businesses to help pay operational costs. Borrowers who participate in the Paycheck Protection Program may be eligible to have their loan forgiven if they meet certain criteria.

#### **Here is a short summary of some of the main components of the Paycheck Protection Program:**

- Any business that was operational on February 15, 2020 (the “Target Date”) and has fewer than 500 employees is eligible for a loan. Sole proprietors, independent contractors and certain self-employed individuals are also eligible for loans under the program.
- Loans will be made by SBA approved lenders (rather than directly by the SBA), and the number and type of lenders that can administer the loans will be expanded by the Treasury Department.

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- The amount of the loan, up to a maximum of \$10 million, will be equal (i) 2.5 times the average total monthly payroll costs incurred in the one-year period before the loan is made plus (ii) the outstanding amount of any SBA Disaster Loan made from and after January 1, 2020 that may be refinanced as permitted by the new program. For businesses not in existence during the period from February 15, 2019 to June 30, 2019, average total monthly payroll costs will be calculated on the basis of the period from January 1, 2020 to February 29, 2020.
- Lenders will not be expected to perform any credit analysis, and **no application fees, closing costs, collateral or personal guarantee will be required.**
- Borrowers will be required to certify in good faith that the loan is necessary due to the negative impact of the Coronavirus on their business and that the funds will be used for permitted purposes, including payroll costs (including annual compensation to sole proprietors and independent contractors of up to \$100,000), group health benefits, paid leave, payments of interest on secured debt, and utility and rent payments (collectively, “Covered Expenses”).
- The maximum interest rate will be 4% per annum and the first six months’ payments of principal and interest will be automatically deferred.

**Loan forgiveness will be available under the Paycheck Protection Program:**

- Borrowers will be eligible for loan forgiveness up to the amount of Covered Expenses paid during the eight-week period following the date of the loan.
- The loan forgiveness amount will not be included in the borrower’s gross income for federal tax purposes.
- The amount of loan forgiveness will be reduced proportionally by any reduction in retained employees compared to the prior year, and by the reduction in pay of any employee in excess of 25% of the employee’s prior-year compensation.
- If an employer has already laid off employees due to the Coronavirus, but rehires those employees by June 30, 2020, that employer will still qualify for a loan and will not be penalized for having a reduced payroll during the loan period.
- Borrowers must apply for loan forgiveness through their lenders and will be required to provide documentation to support the application, including the number of employees on payroll and pay rates, verification of payments on covered debt obligations, lease obligations and utilities.
- Any loan amount that is not forgiven will be carried forward as an ongoing loan with a term of up to 10 years at an interest rate of up to 4% per annum.

**B. SBA Economic Injury Disaster Loans and Emergency Economic Injury Grants**

The SBA Disaster Loan Program provides low interest Economic Injury Disaster Loans (“EIDLs”) of up to \$2 million to cover operating expenses that could have been paid had the disaster not occurred. EIDLs are available to businesses, nonprofits, sole proprietorships (with or without employees), independent contractors, cooperatives and employee-owned businesses, and Tribal small businesses (each an “Eligible Business”). Additional information about the SBA Disaster Loans can be found in our Client Alerts at the following link:

An Eligible Business that has applied for an EIDL and has been in operation since January 31, 2020, can request an **emergency advance in the form of a Emergency Economic Injury Grant** of up to \$10,000 (an “Emergency Grant”). The SBA will make the Emergency Grant within three days and **the Emergency Grant does not need to be repaid under any circumstances**. The Emergency Grant can be used to fund payroll, pay for sick leave, meet increased production costs due to supply chain disruptions, and to pay business obligations including debt, rent and mortgage payments.

### **C. Small Business Debt Relief Program**

Small businesses that have existing non-disaster SBA loans (such as 7(a), 504 and microloans), will receive immediate relief under the CARES Act. Under the Small Business Debt Relief Program, the SBA will cover all loan payments, including principal, interest and fees, for six (6) months. **Note that this relief will also be available to new borrowers who take out SBA loans within six months following the date the bill was signed into law.**

Debt relief under this program does not apply to loans made under the Paycheck Protection Program or Economic Injury Disaster Loans.

## **II. WHAT INDIVIDUALS SHOULD KNOW**

### **A. Direct payments to individuals**

- The federal government will send a one-time \$1,200 check to each individual who has an adjusted gross income of up to \$75,000 and each head of household with at least one child who has an adjusted gross income of up to \$112,500, or a one-time \$2,400 check to each joint tax filer with an adjusted gross income of up to \$150,000, plus an additional \$500 for each child under the age of 17.
- The amount of the check will be reduced by \$5 for each additional \$100 of income over the maximum amounts described above, and will be completely phased out for an individual whose income exceeds \$99,000, a head of household whose income exceeds \$146,500, or joint tax filers whose income exceeds \$198,000.
- Eligibility and benefit amounts will be based on 2019 income tax returns (or 2018 income tax returns if 2019 income tax returns are unavailable).
- To be eligible, U.S. residents must have a work-eligible Social Security Number and must not be claimed as a dependent by another taxpayer.

### **B. Expansion of unemployment insurance benefits**

- Individuals who do not typically qualify for unemployment insurance benefits will now be able to receive them. These individuals include those who are:
  - Self-employed;
  - Independent contractors;
  - Have limited work history; or
  - In isolation or quarantine due to the Coronavirus.

- Individuals who receive unemployment benefits will be eligible to receive an additional \$600 per week for up to 4 months.
- The federal government will fund up to an additional 13 weeks of unemployment benefits for each individual who remains unemployed after state benefits are no longer available (in most states, state benefits are available for a maximum of 26 weeks).

### **C. Withdrawals from eligible retirement plans**

- Individuals will be able to withdraw up to \$100,000 from eligible retirement plans, including 401(k)s and IRAs, as a Coronavirus-related distribution in 2020, and the 10% penalty that typically applies to early distributions will be waived.
- “Coronavirus-related distribution” means a distribution made to an individual who:
  - Is diagnosed with the Coronavirus;
  - Has a spouse or dependent who is diagnosed with the Coronavirus;
  - Is experiencing adverse financial consequences due to being quarantined, furloughed, laid off, or having reduced work hours, or unable to work because of lack of child care, due to the Coronavirus, or
  - Is experiencing adverse financial consequences due to the closing or reduction of hours of a business owned or operated by such individual due to the Coronavirus.
- Distributions can be repaid for up to three (3) years. Repaid amounts will be treated as an eligible rollover distribution and will not be taxable to the individual. Distributions that are not repaid during such three year period will be taxable as ordinary income and included ratably and retroactively over the three (3) taxable years beginning with the taxable year in which the distribution was received.