CARES Act and Other Small Business Relief from COVID-19's Consequences

March 30, 2020
(updated April 2, 2020)

We summarize below the small–business provisions of **The Coronavirus Aid, Relief, and Economic Security Act** (the "CARES Act") signed into law on March 27, 2020 after receiving unanimous U.S. Senate approval on March 25, 2020 (S. 3548) and U.S. House of Representatives approval on March 27, 2020 (H.R. 748). The CARES Act is a $2 trillion stimulus package aimed at providing relief to various persons and entities including individual citizens, certain industries and small businesses impacted by the COVID-19 coronavirus pandemic and its economic consequences. The small business portion of the CARES Act is contained in Title 1 (the "Keeping American Workers Paid And Employed Act"), which earmarks $349 billion in U.S. Small Business Administration ("SBA") loan guaranties and other SBA program financing. The CARES Act expanded the SBA's Section 7(a) loan program (its primary program for providing financial assistance to small businesses) to encompass a new Paycheck Protection Program (PPP) that provides for broad short-term lending availability and loan forgiveness to small businesses.

The COVID-19 pandemic's harm to small businesses has been substantial. In addition to the direct impact of the slowdown caused by the coronavirus, small businesses will be impacted by legislation designed to protect their employees under quarantine, such as required sick pay and job protections. The CARES Act's SBA programs are intended to provide quick relief.[1]

I. Pre-CARES Act Relief

Overview of CPRSAA and FFCRA

On March 6, 2020, the Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R. 6074) (the "CPRSAA") was enacted, allowing small business owners to apply for low-interest loans due to coronavirus-related circumstances under a new SBA Economic Injury Disaster Loan ("EIDL") Program created under that $50 billion stimulus legislation. The Families First Coronavirus Response Act (H.R. 6201) (the "FFCRA") was then enacted March 18, 2020, providing additional relief. The FFCRA and CPRSAA were considered Phase 1 and Phase 2 stimulus packages (with the CARES Act being the Phase 3 stimulus).

[1] The CARES Act text is at https://assets.documentcloud.org/documents/20059055/final-final-cares-act.pdf.

Disaster Loans (EIDLs) Under the CPRSAA

An EIDL can provide vital economic support to a small business to help overcome temporary revenue loss. EIDLs allow a business that suffered working capital losses due to a declared disaster in the county in which the business is physically located, to receive up to $2 million in working capital loans. Such loans may be used to pay fixed debts, payroll, accounts payable and other bills that could have been paid had the disaster not occurred (but not to refinance long-term debt), at interest rates of 3.75% for small businesses and 2.75% for non-profit entities. These SBA loans may have up to a 30-year term, with the first payment deferred for one year, and terms generally determined on a case-by-case basis based upon ability to repay. EIDL funds come directly from the U.S. Treasury, and an applicant must apply directly to SBA's Disaster Assistance Program and not through a bank.

Small businesses in all U.S. states and territories are currently eligible to apply for a low-interest loan due to fallout from the COVID-19 pandemic. See the following links for more information on EDIL loans as well as a new "Economic Injury Disaster Advance Loan" (which allows small businesses and private non-profits to receive a non-reimbursable grant of up to $10,000 within three days after applying for the EIDL, even if the application is ultimately declined):

- https://www.sba.gov/disaster-assistance/coronavirus-covid-19
- https://www.sba.gov/funding-programs/disaster-assistance (application)

Applicants will need to submit ownership, management and affiliation information (including information as to 50% or greater affiliates and 20% or greater owners), two (2) years' worth of tax returns, a year-end and year-to-date balance sheet and income statement, a liabilities schedule, a 20% owner personal financial statement and monthly sales figures. SBA underwriting criteria include credit history, demonstrated ability to repay, pandemic-related losses and location in a declared "disaster area". The SBA requires collateral for loans above $25,000 (but will not decline a loan for lack of collateral) and will take real estate collateral when available. Initial loan proceeds usually arrive within one week after signing loan documents.

Express Bridge Loans

The SBA also has an Express Bridge Loan program of up to $25,000 available through SBA's approved "Express Lenders", involving less paperwork. Such loans are intended to be term loans or bridge loans during the EIDL application waiting period. A small business with an urgent need for cash while waiting for an EIDL decision and disbursement may qualify for an SBA Express Disaster Bridge Loan, to be repaid in full or part by EIDL loan proceeds; toward this end, the SBA has a "Lender Match" tool at https://www.sba.gov/funding-programs/loans/lender-match to help potential borrowers locate participating SBA-approved lenders within 48 hours.

CARES Act Changed EIDL Program

The CARES Act modified EIDL loans, including to provide for a grant of up to $10,000 to applicants within three (3) days after an application's submission (even if the application is ultimately declined), and to waive a personal guarantee for EIDLs over $200,000. See "CARES Act Modifications to EIDL Loan Program" on page 10.

II. CARES Act SBA Provisions

The CARES Act's Phase-3 stimulus package provides for a $349 billion program (called the "Paycheck Protection Program" or "PPP")) for small businesses through the federal guarantee of loans available at community banks. The loans will be available during an emergency period with an application deadline of June 30, 2020, with some or all of the debt forgiven under the circumstances described in "Loan Forgiveness" below. The programs are expected to be implemented quickly, with loans processed starting in early April 2020. The chart at Annex B lists certain differences between standard SBA Section 7(a) loans and PPP loans.[2]

Procuring Multiple Loans Including Both EIDL and PPP Loans

Small businesses may not procure both an EIDL loan and a PPP Loan for the same purposes (or comingle funds from separate loans for the same purposes). A business that procured an EIDL disaster loan on or after January 31, 2020 may procure a PPP loan (so long as the loans are used for separate purposes) or refinance the EIDL under the PPP program. Thus, a borrower that receives a PPP loan for employee salaries, payroll support, mortgage payments and/or other debt obligations cannot receive an EIDL for that same purpose – but it could use the PPP loan for payroll purposes and the EIDL loan for purposes such as paying accounts payable[3]. Further SBA guidance is expected on EIDL/PPP interplay.

U.S. Senate guidance provides that a business may apply for PPP loans and other SBA financial assistance (including EIDLs, regular Section 7(a) loans, 504 loans[4] and microloans[5]),

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[2] For more information, see https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources.

[3] A small business also might consider a local and/or state loan (for example, in New York, a New York State emergency loan or a New York City business continuity loan or employee retention grant).

[4] The 504 program provides loans of up to $5.5 million to approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. These are considered a good option for purchasing real estate, buildings and machinery, and provide for an application through a nonprofit "Certified Development Company" that may be located through the SBA Lender Match tool.

[5] The microloan program provides loans up to $50,000 (average: $13,000) to help small businesses commence and expand operations, delivered through mission-based lenders that may be located through the Lender Match tool.

and also receive investment capital from Small Business Investment Corporations (SBICs), so long as the business does not use its PPP loan for the same purpose as its other SBA loan(s). The Senate's example is that a business using its PPP to cover payroll for the 8-week covered period cannot use a different SBA loan product for payroll for those same costs in that period (although it could use it for payroll not during that period or for different workers).

PPP Program Loans

Under the CARES Act, up to $10 million in PPP loans may be issued to cover operational costs including payroll (which includes paid sick or medical leave), rent, health benefits and insurance premiums, with no collateral or personal guarantee requirements.

Term. A covered loan may have a term that is no longer than 10 years. March 31st guidance has indicated that PPP loans will generally have 2-year terms (with a 0.5% interest rate on unforgiven loan monies).

Interest Rate and Prepayment Penalties. Interest rates for loans during the covered period may not exceed 4%, versus the pre-CARES Act SBA loan interest rate at prime plus 2.25% to 4.75% (depending on the loan's term and amount). March 31st guidance indicated that a PPP's unforgiven portion will carry a 0.5% interest rate. PPP loans made by December 31, 2020 will carry no prepayment penalties.

Repayment Deferral. PPP loan payments are deferred for the first six months (and possibly for up to 12 months), with the SBA paying principal, interest and any associated fees owed on such deferred loans. Loans made during a period ending late September 2020 (i.e., six months after enactment) also would qualify for a six-month deferral. The CARES Act requires the SBA to disseminate deferral process guidance by late April 2020 (within 30 days after the Act's adoption).

Waiver of Collateral and Other Requirements. PPP borrowers will not need to provide collateral or a personal guarantee, and will not need to meet the "no credit elsewhere" test (i.e., the borrower cannot obtain conventional financing outside the SBA context), as contrasted with the typical 7(a) loan requirements[6].

Loan Maximums. Subject to a $10 million cap, the maximum PPP loan amount will be 2.5 times average monthly payroll costs, with average monthly payroll costs calculated as: (a) for most applicants, average monthly payroll costs incurred in calendar 2019; (b) for seasonal employers, average monthly payroll costs from February 15, 2019 to June 30, 2019; and (c) for

6 Typical 7(a) loan requirements are that (a) certain collateral be given (typically over $25,000 loan amounts, with lenders typically required to collateralize loans over $350,000 to the maximum extent possible (up to the loan amount)); (b) 20% and greater owners of the business provide a personal guarantee; and (c) the no-credit-elsewhere test be met.

businesses formed after June 30, 2019, average monthly payroll costs from January 1, 2020 to February 29, 2020. For loan amount qualification purposes, payroll costs are deemed to (1) **include**: (a) salaries, wages and similar compensation to employees, together with cash tips; (b) paid vacation, parental, sick and medical leave; (c) severance payments; (d) group health care benefit payments (including insurance premiums); (e) retirement benefit payments; (f) state and local payroll tax payments; and (g) compensation to sole proprietors or independent contractors (including commission-based compensation), capped at $100,000 in one year, as pro-rated for the February 15, 2020 to June 30, 2020 "covered period"; and (2) **exclude**: (a) individual employee compensation above an annual $100,000 salary, as pro-rated for the covered period; (b) qualified sick and family leave wages for which credit is allowed under FFCRA Sections 7001 or 7003; (c) federal taxes imposed under Internal Revenue Code chapters 21, 22 and 24; and (d) compensation to employees whose principal place of residence is outside the U.S.

Use of Loan Proceeds. Businesses may use PPP loans for the following purposes:

- Payroll costs (as described in "Loan Maximums" above), including commissions or similar compensation payments;
- Continuing group health care benefits, including paid sick, medical and family leave, and insurance premiums;
- Rent payments;
- Mortgage interest payments (but not for payment / prepayment of principal);
- Utility payments;
- Interest payments on other debt obligations incurred before the February 15, 2020 to June 30, 2020 covered period.; and
- Standard Section 7(a) loan permitted purposes, including working capital; expansion/renovation; new construction; purchase of land or buildings; purchase of equipment, fixtures; lease-hold improvements; refinancing debt for compelling reasons; seasonal line of credit; inventory; and starting a business.

Eligibility. Under the CARES Act, while applications must be submitted by June 30, 2020, the loan window period begins February 15, 2020 and ends December 31, 2020. The CARES Act makes the following entities eligible for PPP loans:

- any business with 500 or fewer employees;
- a business with over 500 employees that meets the entity's covered industry SBA size standard (see below);

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- an "eligible self-employed individual" (as defined in FFCRA Section 7002(b)) or an individual that operates as a sole proprietor or independent contractor; or
- any 501(c)(3) nonprofit organization, veterans organization or tribal business concern with 500 or fewer employees (or that has over 500 employees and meets the relevant entity's covered industry SBA size standard).

To determine a business's eligibility, a lender must determine whether the business:

- was operating / in business on February 15, 2020,
- either had salaried employees or independent contractors (and incurred payroll taxes) and
- has been substantially impacted by COVID-19.

A small business is generally defined with reference to a business's industry, small business including (a) a wholesale business of up to 100 employees, (b) certain manufacturing businesses of up to 500 employees (with higher caps for specific businesses[7]), (c) certain retail or service industries business of up to $7 million in annual receipts (with higher caps for many service businesses[8]) and (d) under an alternate size standard[9], a business with both a maximum $15 million tangible net worth and a maximum $5 million average net income after U.S. federal income taxes (excluding any carry-over losses) for the two (2) full fiscal years before the application date.

Businesses with over 500 employees may qualify to participate for a loan, if the covered industry's SBA "alternate size standard" allows a larger entity to participate. The applicable size standard may be employee-based or receipts-based, with the North American Industry Classification (NAICS) code setting forth whether the size standard is employee-based or receipts-based. An employee-based standard counts all persons employed (whether full-time, part-time or other) and is subject to a maximum of 1,500 employees. A receipts-based standard is based on the average annual receipts for the three most recently completed fiscal years, subject to a maximum annual receipt amount of $41.5 million. An alternate size standard allows 7(a) loan eligibility to a business with both a maximum $15 million tangible net worth and a maximum $5 million average net income after U.S. federal income taxes (excluding any carry-over losses) for the two (2) full fiscal years before the application date.

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7 The SBA has indicated that a manufacturing business may be considered small if it is a (a) general and heavy construction contractor business with up to $33.5 million in average receipts or (b) special trade contractor business with up to $14 million in receipts, (c) land subdivision area business with up to $7 million in receipts, (d) dredging business with up to $20 million in annual receipts or (e) particular type of manufacturing business with up to 1,500 employees.

8 Exceptions include grocery stores, department stores, car dealers and electronics sales businesses (up to $35.5 million in average annual receipts), computer programming, data processing and systems design businesses (up to $25 million in receipts) and engineering companies (up to $35.5 million in receipts).

9 The SBA's size standard portal is located at https://www.sba.gov/federal-contracting/contracting-guide/size-standards, with its size standard tool at https://www.sba.gov/size-standards/.

The CARES Act allows lenders to make eligibility determinations without having to go through the usual SBA channels. Unlike typical SBA loans, the CARES Act gives the lender authority to make its own credit decisions.

Affiliation Rules – CARES Act Exemptions and Exclusions. The CARES Act waives affiliation rules for PPP loans for:

- Restaurant businesses with 500 or fewer employees per physical location or overall, if they operate under NAICS code 72 (Accommodation and Food Services);
- Franchises to which the SBA has assigned a franchise identifier code; and
- Businesses owned in whole or part by a small business investment company (SBIC) under the Small Business Investment Act of 1958, Section 301 (and such businesses are not aggregated with each other or the SBIC).

Other small businesses must analyze the SBA's affiliation rules for purposes of determining employee numbers and annual receipts, and in analyzing the "alternate size standard" described below. A small business is an affiliate of any other entity as to which a control relationship exists (i.e., controlling, controlled by and under common control with, the entity); and affiliates (such as entities in a parent/subsidiary or sibling-entity relationship) need to aggregate their employees and finances for small business eligibility determinations. The SBA considers a 50% or greater ownership relationship to be an affiliation; and a large voting block, interlocking directorships or management, or contractual arrangements may also evidence affiliation. A business with any institutional investors will need to analyze whether such investors have any affiliation exclusions. SBA exclusions from the affiliation rules include:

- "Venture capital operating companies" (as defined in U.S. Department of Labor regulations);
- Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974, as amended (ERISA); and
- Investment companies (as defined in the Investment Company Act of 1940, as amended) that are unregistered under such Act registration due to being beneficially owned by fewer than 100 persons and whose principal purpose (as evidenced by their organizational documents or sales literature) is securities investments instead of operating a commercial enterprise.

Loan Forgiveness. PPP borrowers are eligible for loan forgiveness (up to the amount of the loan principal) as to monies spent during the loan period's first eight (8) weeks on: (a) payroll costs (excluding prorated amounts for persons compensated more than $100,000)**, which are expected to make up 75% of forgiven costs due to expected high demand**; and (b) other costs including group health insurance premiums and other healthcare costs; rent payments on a lease in force prior to February 15, 2020; interest payments on any mortgage incurred prior to

February 15, 2020; and electricity, gas, water, transportation, telephone or internet access expenses for services that began before February 15, 2020.

The loan forgiveness amount will be reduced by a quotient obtained by dividing the average FTE employees per month during the covered period by the average number of full-time equivalent employees (called "FTEs") employed monthly between either (at the borrower's option): (a) February 15, 2019 to June 30, 2019, or (b) January 1, 2020 to February 29, 2020. The forgiven amount will be reduced proportionately according to two tests:

- a layoff cutback, relating to reductions in "full-time equivalent" (FTE) employee numbers compared to the prior period, pursuant to which a FTE employee reduction between February 15, 2020 and late April 2020 (i.e., 30 days after the Act's enactment) will not lead to a loan forgiveness cutback if by June 30, 2020 the employer has re-hired such employee; and

- a salary-reduction cutback, relating to reductions in employee salaries or wages beyond 25% of the prior year's amounts (with the baseline amounts being the employee's salary or wages during the most recent full quarter in which the employee was employed before the February 15, 2020 to June 30, 2020 covered period), pursuant to which a salary reduction between February 15, 2020 and late April 2020 (i.e., 30 days after the Act's enactment), will not lead to a loan forgiveness cutback if by June 30, 2020 the employer has reinstated the prior salary or wages (as to this cutback test, while the law's wording is somewhat ambiguous, it appears that only employees who received salary or wages during any 2019 pay period at an annualized rate of $100,000 or less will be counted in the forgiveness-cutback calculations (so that loan forgiveness is not reduced by salary reductions of over-$100,000 employees)).

Employers of seasonal employees (or who pay additional wages to tipped workers) may be entitled to additional forgiveness.

The loan forgiveness provisions also indicate that:

- forgiven amounts will not create cancellation of indebtedness income and will not be taxable as gross income[10];
- employers seeking forgiveness will need to certify as to accurate documentation and uses of proceeds and to provide their lenders with relevant backup calculations and documentation; and

[10] Because PPP loan funds used for certain payroll costs are expected to be tax-deductible, we are monitoring for guidance that may clarify the tax impact of the PPP loans, payroll expenses and the loan forgiveness provisions.

- borrowers may expect forgiveness decisions within 60 days post-request, with reimbursement within 90 days thereafter.

Borrowers should consider placing PPP loans subject to possible forgiveness into a separate account until a loan forgiveness determination is made.

Other PPP Loan Aspects. Under the PPP program:

- Eligible borrowers will be required to make a good faith certification that they will use funds for permitted uses, are not receiving other SBA funds (e.g., EIDL disaster funds) for the same purposes and that they have been economically affected by the COVID-19 pandemic.
- Borrower and lender 7(a) loan fees (usually 2% to 3% of the loan's value) are waived.
- Imposes personal liability (and possible criminal charges) on persons using PPP funds for unauthorized uses.
- Government guarantees of PPP loans were increased to 100% through December 31, 2020, after which guarantee percentages would return to 85% for loans up to $150,000 and 75% for loans exceeding $150,000.
- SBA 7(a) lending authority statutory limitations are removed through December 31, 2020.
- There will be a grant program for development centers for small businesses so as facilitate coronavirus-related entrepreneurial development, that gives priority to women and minority owned centers.[11]

Payroll Tax Credits/Deferrals and Other Tax Changes

The CARES Act also created two payroll-related tax benefits (a payroll tax credit available to small businesses that do not procure PPP loans, and a payroll tax deferral available to taxpayers without forgiven PPP loan funds) and a Social Security tax credit; and it increased certain charitable deduction limits, as described in Annex A below. A business should consider whether it prefers a payroll tax credit or a PPP loan (or a payroll tax deferral or loan forgiveness), as part of its loan planning process.

[11] The U.S. Senate indicated that it is its sense that guidance should be issued to lenders and agents to ensure that small business concerns and entities are prioritized in underserved markets, rural markets, veteran- and military-owned businesses, women-owned and controlled businesses, new businesses (i.e., in operation for under two (2) years), and small business concerns owned and controlled by socially and economically disadvantaged individuals.

CARES Act Modifications to EIDL Loan Program

The CARES Act modified the EIDL loan process favorably to potential applicants. During calendar year 2020 the SBA may now advance to an EIDL applicant a grant of up to $10,000 within three (3) days after applying for the EIDL (so long as the small business applicant was in operation on January 31, 2020 and self-certifies as to EIDL eligibility), for use in making payroll, paying for sick leave, meeting increased production costs due to supply chain disruptions or paying business obligations (including debts, rent and mortgage payments). The business must first apply for the EIDL and then request the advance. Such advance need not be repaid even if the loan application is denied or the applicant ultimately procures a PPP loan (but the loan forgiveness under any CARES Act loan will be reduced by the grant amount). EIDL disaster loans up to $200,000 no longer require a personal guarantee or meeting the credit-elsewhere test. In addition, under the CARES Act, the category of permitted EIDL applicants was expanded to include (a) any business with 500 or fewer employees, (b) any individual who operates under a sole proprietorship (with or without employees) or as an independent contractor and (c) any employee stock ownership plan (ESOP), cooperative or tribal business (in each case with 500 or fewer employees),

SBA Express Loan Program Changes

As to the SBA's Express loan program[12], the CARES act provided for a PPP Express loan that increased the Express maximum loan amount from $350,000 to $1 million through December 31, 2020 (after which it reverts to $350,000), and permanently waived fees for veterans under this program. Other Express loan program provisions remained, including the 36-hour turnaround time and requirements that a business be a small business that is operated for profit, be engaged in U.S. operations, have operated for at least two (2) years and show a financing need. The chart at Exhibit A lists certain differences between the regular Express loan program and its PPP version. A borrower under multiple SBA loans may not use different loan proceeds for the same purpose.

Application Process and Logistics

While more information is expected to be forthcoming, it appears that SBA loan applicants may apply for SBA loans at any bank, which may be a bank with whom they already have a relationship. A small business should consider approaching its current bank(s) to discuss a possible PPP or other loan application and mechanics and timing thereof.

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12 This program allows an applicant to work with an approved lender to arrange an SBA-guaranteed loan of up to $350,000 for no more than 7 years with an option to revolve, and with a 36-hour turnaround time for processing a completed application (and the same required uses of proceeds as with a standard 7(a) loan). These loans allow a lender to use its existing collateral policy for loans between $25,000 and $350,000.

Small businesses may file applications starting April 3, 2020 (for small businesses and sole proprietorships) or April 10, 2020 (for independent contractors and self-employed persons), link although some lenders' online applications are not available yet and other lenders are not yet SBA-approved. With a June 30, 2020 deadline, significant interest and a cap on funding, businesses should contact their bank to start the process and should set up an SBA website account and file an application at their earliest opportunity. The PPP loan application form is available at https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf. Additional guidance is expected, including in early April 2020 and late April 2020.

Applicants should expect to include tax and other documentation verifying payroll information (including FTE employee numbers), salaries, pay rates, payroll costs, benefits costs, separation costs, leave policies, mortgage interest payments, rent payments, state and local payroll taxes, utilities and other debt obligation information (including for the 8-week period after the loan is made, for forgiveness purposes). Documentation may include payment receipts, cancelled checks or wire transfer documentation. Applicants should expect loan forgiveness applications to be processed within two months.

Implementation.

The CARES Act requires the SBA to issue implementing regulations and guidance by late April 2020 (30 days after passage of the CARES Act).

III. Continued Review and Updates

We continue to monitor guidance relating to the CARES Act and will review regulations expected to be issued in April 2020 fleshing out the CARES Act. We will be issuing additional analysis and/or updating this memorandum as appropriate in upcoming weeks.

Consult Your Advisor

If you think that your business might qualify for one of the loans described above, since the application filing deadline is June 30, 2020, and loan processing may involve a lead time, we recommend starting the application process as soon as practicable. If you think that your business might qualify for some of the other relief described above, our attorneys are available to discuss these matters with you.

Robinson Brog is working with its clients to address various coronavirus-related matters in the litigation, bankruptcy, estate planning, tax and corporate/commercial arenas, including contract analysis and revision such as force majeure-related provisions. For advice regarding the impact of the coronavirus pandemic on you, your business or your matter, please do not hesitate to reach out to your primary Robinson Brog contact. If you have any questions regarding this memorandum, please contact one of the authors below or the other attorneys on the COVID-19 coronavirus response team or the Robinson Brog attorney with whom you regularly work.

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Annex A

Tax Changes:

(Payroll Tax Relief, Social Security Credit and Charitable Donations)

Payroll Tax Relief

The CARES Act also created two payroll-related tax benefits.

Payroll Tax Credit. Under the "Employee Retention Credit For Employers Subject To Closure Due to COVID-19" credit, a small business that does NOT procure a PPP loan will qualify for a one-year tax credit against the employer's share of payroll taxes (about 6%), equal to 50% of qualified wages (including wage-related healthcare costs to group healthcare plans) paid to each employee (up to $10,000 per employee), if it continued to pay its employees while:

- its operations were partially or fully suspended due to governmental authority action relating to the pandemic crisis; or
- it continued operations its gross receipts for the relevant quarter were less than 50% of what they were for the corresponding 2019 quarter (as to which the credit will continue until the next quarter shows gross receipts over 80% of the corresponding 2019 quarter).

The qualified wage analysis depends on the business's size: so that for a business with over 100 employees, only wages paid during a shutdown count, whereas businesses with 100 or fewer employees may count wages paid during both a shutdown and those paid during a sharp business decline.

While a PPP loan subject to forgiveness is likely to be more favorable than a payroll tax credit, each business should weigh the costs and benefits of a PPP loan (including the time and administrative costs in procuring and administering it) against the benefits of a payroll tax credit.

Payroll Tax Deferral. Employers whose PPP loan debt is NOT forgiven generally may now defer payroll taxes from March 27, 2020 until December 31, 2020, with 50% of the unpaid payroll taxes being payable on December 31, 2021 and the other 50% payable by December 31, 2022. Each business should weigh the costs and benefits of a forgiven PPP loan against the benefits of a payroll tax deferral. While each business needs to weigh the costs and benefits of a PPP versus a payroll tax deferral, a PPP subject to loan forgiveness is likely to be more favorable than a payroll tax deferral.

Social Security Tax Credit

Under the CARES Act, a business that is subject to a full or partial pandemic-related business suspension will receive a Social Security tax credit, equal to 50% of the business's portion of the 6.2% social security taxes payable on W-2 "qualifying wages" that the business paid its employees between March 13, 2020 and December 31, 2020 (up to $10,000 per employee). The social security credit is applied after the FFCRA-related tax credits are given, as to payments of emergency sick and family leave wages to employees. A business will be eligible for the tax credit for a full or partial suspension or if its gross receipts for a quarter are less than 50% of the gross receipts for the corresponding quarter in 2019. Qualifying wages exclude the FFCRA required leave payments, and include (a) as to employers with 100 or fewer full-time employees in 2019, all wages to employees (whether or not they provide services) and (b) as to employers with over 100 full-time employees in 2019, all wages paid to employees who are not providing services due to the suspension or business slow-down.

Charitable Donation Changes

The CARES Act increases corporate charitable deduction limits for cash gifts to "public charities" during 2020 (without specifying that the relevant contribution needs to relate to relief from consequences of the pandemic). Corporations may now deduct up to 25% (increased from 10%) of their net income for cash distributions made to public charities for taxable years beginning in 2020. Further guidance may be forthcoming as to possible donations to operating and other foundations. A corporation also may gift food inventory subject to an increased special limitation of 25% (up from 15%) in 2020.

Annex B

CARES Act and Paycheck Protection Program
Differences from Standard SBA 7(a) Loans

7(a) LOAN PROGRAM	STANDARD (BEFORE CARES ACT)	PAYCHECK PROTECTION PROGRAM /PPP (CARES ACT)
Funding Source	Lender matched by SBA	Lender matched by SBA
Maximum Loan	**$5,000,000**	**Up to $10,000,000 - eligible loan amount is lesser of average of certain fixed monthly payroll costs x 2.5, or $10,000,000**
Loan Terms	Repayment terms up to 10 years	Same as prior column – Repayment terms up to 10 years
Interest rate maximum	**Prime + 2.25% to 4.75% depending on amount and term of loan**	**Up to 4% (during the covered period, a covered loan shall bear an interest rate not to exceed 4%)**
Fees	**2% to 3% of loan**	**Waived**
Deferment of payments	**N/A** (not previously allowed)	**6 months to 12 months**
Uses	• Acquire land • Purchase existing building • Convert, expand or renovate buildings • Acquire and install fixed assets • Acquire inventory • Purchase supplies and raw materials • Purchase or start a business • Leasehold Improvements • Term working capital • Refinance certain outstanding debts	**Standard uses in prior column plus:** • **Payroll support (including paid sick, medical, or family leave and costs related to the continuation of group health care benefits during those leave periods)** • **Employee salaries** • **Mortgage payments** • **Rent** • **Utilities** • **Any other debt obligations incurred before the covered period**
SBA Guarantee	• **85% for loans up to $150,000** • **75% for loans greater than $150,000**	• **100%**
Collateral	Lenders are not required to take collateral for loans up to $25,000. For loans in excess of $350,000, the SBA requires that the lender collateralize the loan to the maximum extent possible up to the loan amount	Waived
Forgiveness of Loan	N/A (not previously allowed)	**The following costs may be eligible for forgiveness:** • **Payroll costs** • **Interest payments on covered mortgage obligation (which exclude prepayments or principal payment on covered mortgage obligation)** • **Any payment on any covered rent obligation** • **Any covered utility payment.**

EXPRESS LOAN PROGRAM	**EXISTING RULES**	**PAYCHECK PROTECTION PROGRAM /PPP (CARES ACT)**
Maximum Loan	**$350,000**	**$1,000,000 until December 31, 2020 then $350,000 starting January 1, 2021**
Loan Terms	Repayment terms up to 7 years	Same as prior column – Repayment terms up to 7 years
Turnaround Time	36 hours	Same as prior column - 36 hours
Funds Availability	90 days after approval	Same as prior column - 90 days after approval
SBA Guarantee	50%[13]	Same as prior column - 50%
Collateral	Lenders are not required to take collateral for loans under $25,000. Lenders can use their existing policies for loans over $25,000 up to $350,000	Waived
Veterans Fees	Incurred	Waived permanently

13 Due to the SBA's guarantee of 50% of the loan amount to third-party lenders, this loan can assist businesses that do not meet traditional lending criteria and lack a credit history.