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SUMMARY OF KEY PROVISIONS OF PAYCHECK PROTECTION PROGRAM

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which became law on March 27, provides assistance to individuals, families, and businesses affected by the 2020 coronavirus pandemic.

An important vehicle for providing that assistance is the Paycheck Protection Program, which provides government loans to small businesses, nonprofit organizations, and self-employed individuals to cover payroll expenses and certain mortgage, rent, and utility expenses. Perhaps most importantly, the Program provides for certain loan amounts spent over an 8-week period to be forgiven if the borrower maintains its employment and wage levels. Key features of the Program are summarized below.

Paycheck Protection Program Loans

Eligibility for Loans
Businesses and nonprofit organizations with 500 or fewer employees are eligible for Paycheck Protection Loans. Eligible borrowers are defined broadly, to include individuals who operate as sole proprietorships or as independent contractors, veterans organizations, nonprofits, and Tribal businesses. Unlike other Small Business Administration (SBA) loans, there is no requirement that borrowers be unable to obtain credit elsewhere in order to qualify for a Paycheck Protection Loan.

Permitted Uses
Borrowers may use Paycheck Protection Loans (in addition to for the traditional uses of SBA loans such as for working capital and acquisition of supplies) for the following expenses ("Permitted Program Expenses") incurred from February 15, 2020 through June 30, 2020:

- payroll costs for U.S. residents, including for employees all salaries, commissions, tips, retirement contributions, covered leave (including paid sick or medical), and similar compensation; payments for group health care benefits; and payments for vacation and leave not otherwise covered by the Families First Coronavirus Response Act; and all net earnings for sole proprietors, independent contractors and self-employed individuals; but importantly all compensation for any employee or self-employed individual is capped at $100,000/year as pro-rated for the period from February 15 to June 30, 2020;
- rent;
- interest on any mortgage obligation (but not principal payments);
- utilities; and

- interest on any other debt obligations incurred before February 15, 2020.

Maximum Loan Amount
The maximum amount of any Paycheck Protection Loan is 2.5 times the borrower's average monthly payroll costs (subject to the $100,000 annual cap described above) during the 1-year period before the loan date, not to exceed $10,000,000.

Interest Rate
Paycheck Protection Loans bear interest at a rate not to exceed 4%.

Loan Payment Deferment; Maturity; Prepayment
All Paycheck Protection Loans payments (including principal, interest, and fees) will be deferred for between 6 months to 1 year. Any loan balance remaining after any loan forgiveness will have a maturity date not more than 10 years from the date the borrower applied for loan forgiveness. The loan may be prepaid at any time without penalty.

No Guarantees or Collateral
No personal guarantee or collateral is required for Paycheck Protection Loans.

Eligible Lenders
Any lender who works with the SBA will be able to make Paycheck Protection Loans. The US Treasury is working to authorize almost all FDIC lenders to make the loans.

Application Process
Applicants for Paycheck Protection Loans must apply directly to their banks or other approved lenders by June 30, 2020. Regulations and forms for the application process will be promulgated by the SBA within the first two weeks of April and that SBA guidance will determine the information needed to apply for a Paycheck Protection Loan. At a minimum, each business or organization preparing to apply for a loan should be prepared to:

- Provide a good faith certification, required by the CARES Act, that (i) "the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient"; (ii) the borrowed "funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments"; and (iii) the applicant has not received or applied for a loan *for the same purposes*;
- Provide documentation of the applicant's average monthly payroll costs during the 1-year period before the loan date (using $100,000 as the annual salary for any employee making in excess of that amount); and
- Provide evidence or examples of how the current economic circumstances make the loan necessary to support the operations of the business, such as supply chain disruptions, staffing challenges, a decrease in gross receipts or customers, or a business closure.

No Fees
There are no fees for applying or receiving a Paycheck Protection Loan.

Forgiveness of Paycheck Protection Program Loans

Amount Subject to Forgiveness

All borrowers of a Paycheck Protection Loan are eligible for forgiveness of the loan (or a portion thereof) in an amount equal to the amount of payments made for Program Purposes (described above) during the 8-week period commencing on the date the loan was made. There may be some minor differences in Program Expenses made during the 8-week period and amounts forgiven; for example, although pre-existing debt obligations (other than mortgage interest) are a Program Expense, they do not apply for loan forgiveness.

Reduction in Amount Subject to Forgiveness

Amounts that could otherwise be forgiven will be reduced to the extent the borrower reduces its full-time equivalent employees or reduces any employee's salary or wages in excess of 25%. For purposes of determining any reduction, the borrower's average number of full-time equivalent employees per month from February 15, 2020 through June 30, 2020 will be compared to borrower's average number of full-time equivalent employees per month either (at borrower's election) from February 15, 2019 through June 30, 2019 or from January 1, 2020 through February 29, 2020. Note that the reduction in wages for any employee who earned more than $100,000 on an annualized basis in any pay period in 2019 will not count against a borrower for purposes of this calculation.

Treatment of Re-Hires; Restored Wages

If by June 30, 2020, a borrower re-hires any employee terminated, or reverses any reduction in wages implemented, between February 15, 2020 and April 26, 2020, those terminations and reductions will not reduce the loan forgiveness amount.

Tax Treatment

Any Payment Protection Loan amounts forgiven will not be considered part of a borrower's gross income.

Contact us to learn more

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