CARES Act of March 27, 2020

Summary of "Phase 3" Provisions Affecting Cash Flow and Finances

I. Basic Terms of SBA Business Interruption Loan/Payroll Protection Program. This loan program is generally available only for businesses with less than 500 employees (or more for certain industries)– for businesses that are close to this number, or affiliated with other businesses that could exceed this number of employees if combined, please contact your Corrigan Krause service provider for assistance. The loans are also available to sole proprietors, self-employed and independent contractors, and certain non-profits. You would apply for this loan with an SBA-approved lender, which can be your current bank. The SBA is directed to provide rules for standard operating procedures that lenders must follow within 30 days.

A. Information Needed for Loan Application.

1. Total payroll for 4-1-2019 through 3-31-2020, including:
   a. Salary
   b. Bonus
   c. Health insurance premiums plus other payments related to group health insurance
   d. State and local taxes paid (not federal taxes or withholdings)
   e. Separation payments

2. When determining payroll costs, which will drive the amount available to be borrowed, you will exclude any portion of an employee's annual salary, commission and bonus compensation over $100,000 for 4-1-2019 through 3-31-2020 – this excess is excluded because only the $100k annual rate is eligible for the loan.

3. Documentation Needed:

   a. documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in subsection (d), including:

      (i) payroll tax filings reported to the Internal Revenue Service; and
      (ii) State income, payroll, and unemployment insurance filings.

   b. documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
   c. a certification from a representative of the eligible recipient authorized to make such certifications that:

      (i) the documentation presented is true and correct; and
      (ii) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and

(iii) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient (*note: this certification appears to be the only hardship-related requirement for this loan program, but it is so general that it is likely true for every business*).

B. Loan Amount; Use of Proceeds.

1. The maximum loan amount is generally 250% of your adjusted annual monthly payroll costs, but is subject to an overall cap of $10 million.

2. The proceeds may be used to pay for:

   a. Payroll (salaries, commissions or similar compensation, plus costs)
   b. Group health insurance premiums and costs
   c. Rent
   d. Utilities
   e. Interest on pre-existing debt, including mortgage interest (note: for purposes of forgiveness, only mortgage interest is counted)
   f. Other typical Section 7(a) loan purposes, like general working capital or real estate, BUT proceeds used for these purposes will not be forgivable.

Although there are no regulations on compliance yet, we suggest you keep the forgivable loan proceeds segregated from general accounts and then apply them (with proper documentation) only to the permitted use of proceeds. This will ensure obtaining the maximum forgiveness without undue complications arising from questioning of use of funds.

C. Loan Terms and Conditions.

1. No personal guaranties, and non-recourse to business owners (note: this is a departure from normal SBA requirements)
2. No collateral required
3. Subject to forgiveness upon meeting certain conditions (see item D below), making it "free" money
4. To the extent not forgiven, up to a 10-year term with interest not to exceed 4%; payments to be deferred for 6-12 months
5. Lender has 60 days to make a decision on loan, although it is not clear what credit underwriting, if any, is to be done. Under certain circumstances, borrowers can obtain an emergency advance of up to $10,000 within 3 days of an application being submitted.

D. Loan Forgiveness.

1. All loan principal that is used for the eligible use of proceeds are forgiven, subject to reductions below.
2. It is not clear whether interest on the loan is forgiven, although it seems likely that the loan payment deferral is intended to mean accrued interest would also be forgiven.
3. The amount of the loan to be forgiven is reduced pro rata by the percentage reduction in FTEs from 2-15-20 through 6-30-20 vs. the "comparison period". The comparison period is either (at borrower's option) 2-15-19 through 6-30-19 or 1-1-20 through 2-29-20.

4. The amount of the loan to be forgiven is reduced by any reduction of over 25% in compensation to a covered employees from 2-15-20 through 6-30-20 vs. the average in 4th quarter 2019 (it appears this reduction does not apply if compensation is reduced for employees receiving over $100k on an annualized basis – i.e., the loan will not include compensation of over $100k on an annualized basis, so the borrower is not penalized on the forgiveness side).
5. The forgiveness reductions will not factor in jobs or compensation cut between 2-15-20 and 4-30-20 if the cuts are “cured” by 6-30-2020. For this purpose, a “cure” means employees rehired or payroll restored.

E. Tax Effect of Forgiveness. Normally, the amount of any forgiven loan is treated as taxable ordinary income, but for this loan its forgiveness amount is not taxable income.

F. Clarity. Remember, this loan program is different (and better for small businesses) than the previously announced SBA Economic Injury Disaster loans (see item IV below) and the CARES Act loans for larger companies. These different loan programs are mutually exclusive, so businesses will not be able to obtain multiple types of COVID-related government-supported loans.

II. SBA 7(a) Loan Subsidy. For any already-outstanding SBA 7(a) loans, the government will now make the next 6 months of payments at no cost to the borrower. This does not include new loans made under the Business Interruption/Payroll Protection loans described above. This loan does not require a showing of hardship, as all businesses with SBA 7(a) loans currently outstanding are eligible.

III. Payroll Tax Provisions. The Act contains two provisions for payroll tax relief, but these are only available if the business does not use a Business Interruption/Payroll Protection forgivable loan.

A. Employee Retention Credit. This tax credit only applies to businesses that are fully or partially suspended or closed due to a government order and can demonstrate substantial revenue losses. The credit applies against employer-paid payroll taxes and is 50% of qualified wages (wages that count for this purpose are limited to $10,000 per employee, per quarter) paid from March 12, 2020 through December 31, 2020. If the credit exceeds employment taxes, the excess will be paid to the employer as a tax refund.

B. Payroll Tax Deferral. Provides a deferral of the employer’s share of payroll taxes until 12-31-2021 (half the deferred amount) and 12-31-2022 (the other half).

IV. SBA EID Loans. While not covered by the CARES Act, it is important to remember that since the COVID situation has been declared a disaster in Ohio (and all other states), the SBA will make available Economic Injury Disaster loans to qualified small business borrowers.

A. SBA’s Economic Injury Disaster Loans offer up to $2 million in assistance and can provide support to small businesses to help overcome the temporary loss of revenue they are experiencing.

B. These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can’t be paid because of the disaster’s impact.

C. The interest rate is 3.75%.

D. The loans have long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower’s ability to repay.

E. Unlike the CARES Act Business Interruption/Payroll Protection loans, these EID loans will typically require personal guaranties and a pledge of assets.

F. Currently, the online application process has been suspended due to overwhelming volume. Borrowers must download an application (including IRS authorization form), complete and submit it to SBA.

G. Application review should take 2-3 weeks, with 5 additional days to fund after approval.

V. Existing Loans. Many lenders are providing accommodations on existing loan facilities, which is consistent with the expectations laid out in the CARES Act. As part of your cash flow planning, make sure you ask existing lenders about payment deferrals or other accommodations that may be available.

VI. CAVEATS. The CARES Act was, by necessity, hastily drafted and therefore may be subject to correction or modification moving forward. In addition, we are still waiting regulations and other guidance to be issued for the loan programs, FMLA changes, etc. Finally, we have seen numerous summaries and statements about the contents of the CARES Act that appear to vary from the actual text, so if you have any questions feel free to contact Corrigan Krause for clarification.