

March 26, 2020

**CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (“CARES”) ACT**

President Trump signed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act on Friday, March 27<sup>th</sup> in an effort to minimize the negative economic impact of COVID-19. It is the largest stimulus package in modern history, totaling more than \$2 trillion in loans, grants, and other appropriations. Between February 15, 2020 and June 30, 2020, the Act authorizes \$349 billion of the general business loans by amending Section 7(a) of the Small Business Act (15 U.S.C. 636 et seq.). Southern Strategy Group (“SSG”) is actively reviewing the Act and will continue to update our guidance accordingly.

Although the CARES Act should be reviewed in full, this guidance focuses on Title I of Division A of the Act in particular - the Keeping American Workers Paid and Employed Act, which creates the Paycheck Protection Program, establishes parameters for loan forgiveness, and provides for emergency Economic Injury Disaster Loans (“EIDL”).

Title II, called the Relief for Workers Affected by Coronavirus Act, will also be of interest to employers, but it is not addressed in this guidance. It creates a temporary unemployment assistance program through December 31, 2020 to provide payments for those not traditionally eligible for unemployment benefits. It will be addressed in a future guidance.

Businesses, including independent contractors and sole proprietors, as well as individuals and several other entities may qualify for loans to help offset economic damages caused by COVID-19. The Paycheck Protection Program and the subsequent loan forgiveness provisions should be of great interest to all businesses and other entities during these unusual and difficult times. Several relevant sections of Title I of the CARES Act are explained below.

**Title I – Keeping American Workers Paid and Employed Act**

**§1102. Paycheck Protection Program.** The program allows the Administrator of the Small Business Administration (“SBA”) to guarantee one hundred (100) percent of loans made to eligible recipients during the Covered Period, beginning on February 15, 2020 and ending on June 30, 2020. The federal government will guarantee one hundred (100) percent of loans made for the Paycheck Protection Program through December 31, 2020.

Payroll Costs. These costs include the sum of any compensation which is: a salary, wage, or commission; cash payment; payment of vacation, parental, family, medical, or sick leave; allowance for dismissal or separation; payment for required provisions of group health benefits, including insurance premiums; payment of any retirement benefit; payment of state or local tax assessed on the compensation; and the sum of payments or 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 that is not more than \$100,000 in one (1) year, as prorated for the covered period.

These costs shall not include: the compensation on an employee's annual salary in excess of \$100,000; taxes imposed or withheld under Internal Revenue Code 21, 22, or 24; any compensation of an employee outside of the United States ; qualified sick leave wages credited under §7001 of the Act; or qualified family leave wages credited under §7003 of the Act. Employees are defined as individuals employed on a full-time, part-time, or other basis.

Business Eligibility. Any business; including individuals who operate under a sole proprietorship or as an independent contractor, and other eligible self-employed individuals; 501 (c)(3) nonprofit organization; 501(c)(19) veterans' organization; or 31(b)(2)(C) Tribal business is eligible to receive a covered loan, if it employs not more than the greater of:

- 500 employees; or
- if applicable, the size standard in number of employees established by the Administration for the industry in which it operates.

Sole Proprietors, Independent Contractors, and Self-Employed Individuals are eligible to receive a covered loan by submitting necessary documentation to the Administrator, including payroll tax filings, Forms 1099-MISC, and income and expenses from the business. The SBA will register covered loans for eligible recipients using the borrower's TIN.

Multiple Locations and Affiliations. Businesses that employ not more than five hundred (500) employees per physical location that is assigned a NAICS code beginning with seventy-two (72) may receive a covered loan. During the covered period, the provisions applicable to affiliations; including hospitality and restaurant businesses, franchises, and businesses that receive financing through SBIC; are waived.

Maximum Loan Amount. During the covered period, the maximum amount of the loan is the lesser of \$10 million or a formula that multiplies average monthly payroll costs during the one (1) year period before the loan is made, with exceptions for seasonal employers and applicants that were not in business on February 15, 2019, by two and one-half (2.5).

Allowable Uses. During the covered period, an eligible recipient may use the loan for: payroll costs; costs related to continuation of group health care benefits during paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensation; payments of interest on mortgages (which shall not include prepayment of or

payment of principal); rent; utilities; and interest on any other debt incurred before the covered period.

Delegated Authority. Lenders approved to make covered loans are delegated authority to also approve covered loans. The lender must determine whether: the borrower was in operation on February 15, 2020; had employees for whom the borrower paid salaries and payroll taxes; or paid independent contractors, as reported on Form 1099-MISC.

Borrower Requirements and Guarantee Waiver. A borrower must certify in good faith that the loan request is necessary to support: ongoing operations; the funds will be used to retain workers and maintain payroll; or to make mortgage, lease, or utility payments; and the borrower does not have duplicate or conflicting applications outstanding. During the covered period, a business' ability to obtain credit elsewhere shall not affect its ability to qualify for a covered loan. During the covered period, no personal guarantee or collateral shall be required for the covered loan.

Maturity, Deferment, and Fees. In accordance with §1106, any remaining balance after reduction based on loan forgiveness has a maximum maturity of ten (10) years from the application date and shall bear an interest rate not to exceed four (4) percent. Each covered loan shall be deferred for a period of not less than six (6) months, including the payment of principal, interest, and fees, but not more than one (1) year. The Administrator will waive borrower and lender fees, and may not collect any fee for any guarantee sold into the secondary market. Borrowers will not be charged a prepayment fee.

Duplication. A borrower may receive an EIDL in accordance with §1110 during the period beginning on January 31, 2020 and end on the date which covered loans are made available. The EIDL must be made for a purpose other than paying payroll costs or other uses approved for covered loans.

**§1106. Loan Forgiveness.** A covered loan recipient is eligible for forgiveness of indebtedness equal to the sum of the following costs incurred and payments made for: payroll costs; interest on any covered mortgage obligation (which shall not include prepayment of or payment of principal); covered rent obligations; and covered utility payments. Any amount forgiven shall be excluded from the eligible recipient's gross income.

Limits on Forgiveness. The amount of forgiveness shall not exceed the principal amount of the covered loan. The amount shall be reduced together with any reduction to the total salary or wages of any employee during the covered period that exceeds twenty-five (25) percent of employee's total salary and wages during the most recent quarter the employee was employed prior to the covered period. For this subparagraph, employee reductions are limited to wages or salary at an annualized rate of \$100,000. An eligible recipient with tipped employees may receive forgiveness for additional wages paid to those employees.

Exemption for Re-Hires. An employer that re-hires employees shall not be penalized for the temporary reduction in the number of full-time equivalent employees during the period beginning February 15, 2020 and ending on the date that is thirty (30) days after the date of enactment of this Act, but no later than June 30, 2020.

Application for Forgiveness. An eligible recipient shall submit to the lender: (1) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods limiting the amount of forgiveness, including payroll tax filings and state income, payroll, and unemployment insurance filings; (2) documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments of covered mortgage or lease obligations, and covered utility payments; (3) a certification the documents presented are true and correct, and amount requested was used to retain employees, make interest payments on covered mortgage or rent obligations, or make covered utility payments; and (4) any other documentation the Administrator determines necessary. No eligible recipient shall receive forgiveness without submitted the required documentation.

**§1110. Emergency EIDL Grants.** The Administrator has been authorized to administer \$10 billion to carry out grants until December 31, 2020. The applicant may be approved based solely on their credit score and shall not require the applicant to submit a tax return.

Eligibility. A business with not more than five hundred (500) employees; any individual operating under a sole proprietorship, with or without employees, or as an independent contractor; a cooperative with not more than five hundred (500) employees; an ESOP with not more than five hundred (500) employees; a tribal small business concern with not more than five hundred (500) employees; private nonprofit organizations; and small agricultural cooperatives shall be eligible for a disaster loan during the covered period, which is the period beginning on January 31, 2020 and ending on December 31, 2020.

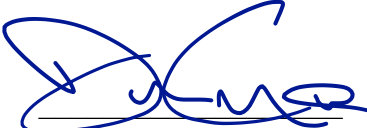
Terms. The Administrator shall waive any rules related to: the personal guarantee on advances and loans of not more than \$200,000 during the covered period; the requirement that an applicant be in business for one (1) year prior to the disaster, so long as the business was in operation on January 31, 2020; and the requirement the applicant be unable to obtain credit elsewhere.

Emergency Grant. An eligible entity may request an advance, to be paid within three (3) days, which shall not be more than \$10,000. The advance may be used to address any allowable purpose, including: providing paid sick leave to employees due to the direct effect of COVID-19; maintaining payroll to retain employees during business disruptions; meeting increased costs to obtain materials due to interrupted supply chains; making rent or mortgage payments; or repaying obligations that cannot be met due to revenue losses. If approved, the amount shall be reduced from of a loan forgiveness amount for a loan for payroll costs made under the Paycheck Protection Program. An applicant shall not be required to repay any advance, even if subsequently denied a disaster loan.

• • •

SSG will continue to monitor the CARES Act and other developments at the federal, state, and local level throughout the duration of COVID-19 and beyond. You may find additional information at the [U.S. Small Business Administration](#).

The CARES Act has many other provisions that may benefit your business or your family individually. Please contact our office for additional information on the CARES Act or for any other situation in which SSG may be able to provide assistance or further guidance.



Donelson T. Caffery III