



March 26, 2020

SALA has been closely monitoring the Omnibus CARES act that the Senate passed on Wednesday March 25<sup>th</sup> and that we expect the House to pass on Friday March 27<sup>th</sup>. The bill, as you have probably heard, is massive and includes many provisions. The summary list below is an outline of much of what is in the bill as it relates to nonprofits, small businesses and individuals. We will send out additional information as warranted.

### **Bill Status**

Senate Passed Omnibus CARES Act 03.25.20 (Phase Three)

House to Vote Friday, March 27 (remote, voice vote is expected)

### **SBA Loans (Economic Injury Disaster Loans EIDLs)**

- \$367 billion is available to small businesses.
- The interest rate cannot exceed 4%.
- No recourse against any individual, shareholder, member, or partner of an eligible loan recipient for non-payment unless the borrower uses the loan proceeds for reasons not included in the bill.
- Eligible Borrowers
  - Eligible businesses include any business, nonprofit, veterans' organization, or tribe if it employs not more than 500 employees (includes full-time, part-time).
- There is a special eligibility rule for businesses in the hospitality industry and with more than one physical location. If the business employs 500 or fewer employees per location and is assigned to the food services sector (Sector 72 NAICS code) the business is eligible to receive a loan.
- Sole proprietors, independent contractors, and eligible self-employed individuals are eligible for loan recipients. There are some restrictions and documentation required.
- No collateral or personal guarantee is required for a loan.
- In many cases, portfolio companies or private equity and VC funds may not be eligible as a result of the SBA's rules on aggregation.
  - These rules may require a portfolio company's size to be considered with all other portfolio companies of its major investors, including private equity and venture capital funds. This makes eligibility difficult for portfolio companies.
- The loans may not be used for dividends or payment of existing debt. Also, loans are only available to those who show they are unable to meet their existing financial obligations. A loss of expected profits or sales are not sufficient to qualify for a loan. Loan recipients must show they have exhausted all reasonably available funds.

### **Loan Maximum, Eligibility & Uses**

The maximum loan amount is capped at \$10 million and is the lesser of:

- (a) 5 times average total monthly payroll costs incurred in the twelve months prior to the loan being made (adjusted for seasonal workers);

Or

(b) For businesses that did not exist from 02.15.19 - 06.30.19: 5 times the average total monthly payroll payments from 01.01.20 - 02.29.20

Businesses may, in addition to uses already allowed under the SBA's Business Loan Program, use the loans for:

- Payroll costs:
  - Compensation to employees, ( includes salary, wage, commissions, cash, etc.); paid leave; severance payments; payment for group health benefits; retirement benefits; state and local



payroll taxes; and compensation to sole proprietors and/or independent contractors up to \$100,000 in 1 year, prorated;

- Excludes: individual employee compensation above \$100,000 per year, prorated; certain federal taxes; compensation to employees outside the US

Note: Credit for sick and family leave wages is allowed under the Families First Act;

- Payments of interest on mortgages;
- Rent/lease;
- Utilities; and
- Interest on any other debt obligations.

Lenders must consider if the borrower was in operation on 02.15.20 and had employees and/or contractors.

### **Loan Forgiveness & Deferral**

Loans qualify for forgiveness provisions in Section 1106. Specifically, indebtedness is forgiven in an amount equal to the following costs incurred and payments made during the covered period but not greater than the loan:

- Payroll costs;
- Interest payments on mortgages;
- Rent; and
- Utility payments.

Forgiveness amounts will be reduced for any employee cuts or reductions in wages.

Employee, for purposes of this forgiveness, are those who did not receive, during any single pay period in 2019, a salary or wages at an annualized rate of pay over \$100,000. Payments made to those who were paid more than this would not be eligible for forgiveness.

Additionally, there is relief from the reduction penalties for those who rehire employees or make up for wage reductions by 06.30.20.

There are, of course, documentation requirements to verify the conditions above prior to the loan being granted forgiveness.

### **Unemployment Provisions Included**

Independent contracts and "Gig-Economy" workers who are not typically eligible for unemployment are eligible with this bill.

Benefits are available immediately and the one-week waiting period has been waived. Recipients are also eligible for an additional \$600 per week for up to 4 months.

### **Rebates**

It is estimated that the rebates below may not arrive for 3 - 4 weeks. The plan is for the payments to go to most via ACH to the accounts on file with the IRS. Payments are as follows:

- \$1,200 to individuals
- \$2,400 to joint filers
- \$500 for each child

These rebates are limited to those making up to \$75,000 as individuals or \$150,000 for joint filers. Amounts are phased out for those making more than \$75,000, and completely phased out at \$99,000 and \$198,000 for individuals and joint filers respectively.



The IRS will determine limits based on either the 2019 or 2018 tax returns depending on what years have been filed. There are additional provisions for retirees as well.

### **Business Provisions**

A refundable credit against payroll tax equal to 50% of the first \$10,000 in wages per employee is available to employers. Note that the wage calculation does include health plan benefits.

Employers may postpone paying employer payroll taxes and 50% of self-employment taxes. The amounts will be payable with half due 12.31.21 and half due 12.31.22.

The act will temporarily increase the limitation on interest deductions imposed by the Tax Cut and Jobs Act. Specifically, the Act would increase the 30% of adjusted taxable income threshold to 50% for tax years beginning in 2019 and 2020.

### **Other Provisions**

There are a number of other provisions including:

- Foreclosure moratorium for at least 60 days
- Eviction protection
- Credit reporting relief

We hope this summary helps you get a basic understanding of the provisions of this relief act as they may apply to your organization or personal situation.